



SIMON FRASER UNIVERSITY  
ENGAGING THE WORLD

**TO:** Senate

**FROM** Joy Johnson  
Chair – Senate Committee on Agenda and Rules (SCAR)

**DATE:** August 30, 2024

**SUBJECT:** Proposed Public Interest Disclosure Policy

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SCAR has reviewed S.24-112 (Proposed Public Interest Disclosure Policy) and is forwarding it to Senate for information.

## SENATE BRIEFING NOTE

<b>SUBJECT</b>	Public Interest Disclosure Policy and Procedure
<b>DATE</b>	August 22, 2024
<b>SPONSOR</b>	Margarita Fullerton, University Secretary
<b>UNIT/DEPARTMENT</b>	Board Office
<b>PREPARED BY</b>	Alison Blair, Interim Director of Internal Audit
<b>RESOURCE PEOPLE TO ATTEND MEETING</b>	Alison Blair, Interim Director of Internal Audit Margarita Fullerton, University Secretary

### TOPIC

The Public Interest Disclosure Act (PIDA) requires universities including SFU to implement PIDA by Dec. 1, 2024. The Community Consultation period closed on July 11, 2024, feedback was received from APSA, CUPE and SFUFA Joint Committee following the consultation period and minor changes from the overall consultation and subsequent feedback have been incorporated into the Policy and Procedures which require Executive Team and Board approval.

### BACKGROUND

In July 2021, the Province announced it would be expanding the scope of PIDA in phases, protecting more public sector employees who bring forward concerns about wrongdoing in their organizations. Research universities are required to implement PIDA's requirements by December 1, 2024.

PIDA requires certain public bodies to create mechanisms for:

- a) receiving requests for advice about making an allegation of wrongdoing
- b) receiving and investigating allegations of wrongdoing made by current and former employees, current and former SFU Board members (which allegations may be made anonymously); and
- c) for addressing any wrongdoing that might be found.

PIDA also requires protections against disclosure of the identity of employees who disclose wrongdoing and against reprisal against disclosers and others who participate in investigations of wrongdoing.

The PIDA Policy and Procedures were brought to the Executive Team in June and to the June 2024 GRCC and Board of Governors for information prior to the Community Consultation which closed July 11, 2024.

## CONSULTATION THEMES

The following is a summary of the feedback received during consultation and the actions taken to address the feedback:

Themes	Action
1. Who can report under PIDA vs. GP41	Clarified scope, strengthened FAQ's/Flow Charts and GP41 scope is being reviewed.
2. Confidentiality – Anonymity & FOI	Clarified FOI information through Privacy Office. Edit to PIDA Procedures to "notify" discloser if disclosure submitted to another office. Can disclose to BC Ombuds and can submit anonymously to PIDA (secure server). Added to FAQ's.
3. Academic Freedom	Added language re: Academic Freedom and Collective Agreements to Policy s. 3.2 and Procedures s. 8.1
4. Reprisal – language not strong enough	Added language to Policy s. 4.12 to 4.14; s. 11.3 Procedures.
5. Reporting to a Public Body – concern with reporting to Police, EMBC, Provincial Health Officer	Response via email – it is only acceptable in urgent situations-imminent threat to health, life, safety-to publicly disclose to EMBC, Prov. Health Officer or the Police. Added to FAQ's.

## CONSIDERATIONS

1. Designated Officer - The policy and procedures propose that the Director of Internal Audit (DIA) act as the Designated Officer at SFU. If a disclosure of wrongdoing is received in respect of the DIA or any person in the office of Internal Audit, General Counsel would assume the role of Designated Officer.
2. Intersection with other university policies -The definition of wrongdoing under PIDA is broad, and PIDA allows for anonymous reporting. Employees can report wrongdoing under the new public interest disclosure policy/procedures that falls under the PIDA definitions of wrongdoing. The Designated Officer may determine that a report would be more appropriately addressed under another university policy, in which case the Designated Officer will either refer the employee to the applicable policy or notify the employee and forward the report to the university office(s) that manage the applicable policy e.g. GP18 (Human Rights), GP44 (Sexual Violence Prevention and Support), and GP47 (Bullying and Harassment). Regardless of the decision made by the DO to investigate or forward the report to another office, the Discloser has the right to directly report to the Office of the BC Ombudsperson.
3. The working group determined that rather than amending the whistleblower policy, developing a new "Public Interest Disclosure" policy that would live alongside the existing whistleblower policy would be preferable. The working group is exploring options to enable anonymous reporting, as required by PIDA. At this time, the preferred option is an online form which can be anonymously completed and stored on a secure server. As SFU is required to comply with PIDA by December 1, 2024, our hard deadline for approval of this policy by the Board is the September Board meeting. This is to ensure sufficient time remains following approval to operationalize the process before December 1.

## CHANGE MANAGEMENT STRATEGY

The following groups have been consulted, in addition to the Community Consultation held June 20-July 11, 2024:

- Executive Team
- SFUFA-SFU Executive Joint Consultation Committee
- Senior Directors Admin/Finance
- SCAR and Senate
- Dean's Council
- TSSU, APSA, CUPE, PolyParty
- SFUFA Joint Committee via email
- Board of Governors – June 2024 GRCC and Board for information/discussion prior to consultation.

1. We are working with Communications & Marketing to develop supporting material to properly inform employees of the meaning of wrongdoing under PIDA, the options available to those who would like to make a report, and relay other important information about SFU's PIDA process.
2. We will also work with Communications & Marketing to ensure employees are informed of all the complaints mechanisms and policies (Protected Disclosure of Wrongdoing (GP 41), Sexual Violence (GP 44), Bullying & Harassment (GP 47), etc.) that exist at SFU, and which one/s would be the most appropriate to use depending on the nature of their complaint.
3. We will work with Communications & Marketing following approval of the policy to determine how best to provide education and training on the new policy and procedure to employees and supervisors who may receive disclosures of wrongdoing.
4. FAQ's have been developed and will be provided. Flowcharts for those receiving disclosures and for those submitting disclosures are being developed.

## NEXT STEPS

1. Approval by the Executive Team of the Final Policy and Procedures August 27, 2024.
2. Senate Sept. 9<sup>th</sup> with Final Policy and Procedures including consultation changes for information.
3. Submit for approval to GRCC and September Board August 27, 2024.
4. Post new Policy/Procedure on Policy Gazette and PIDA web-site.
5. Maintain communications through Marketing and Communications throughout implementation.
6. Set up training for stakeholder groups and provide FAQ's and Flow Charts.
7. Ensure secure Server in place for PIDA Disclosures and to maintain anonymity where required.
8. Develop on-line form for submission and a web-site.
9. Ensure all is in place to go live with PIDA at Dec. 1, 2024.
10. Develop template/format for annual on-line public reporting of PIDA disclosures.

## ATTACHMENTS

- Public Interest Disclosure Act Policy
- Public Interest Disclosure Act - Procedure

## PUBLIC INTEREST DISCLOSURE

<b>Date</b> [date]	<b>Number</b> [number]
<b>Date of Last Review/Revision</b> [date]	<b>Mandated Review</b> [date]

**Policy Authority:** Margarita Fullerton, University Secretary

Associated Procedure(s): Public Interest Disclosure Procedures

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### EXECUTIVE SUMMARY

This policy and its associated procedures explain:

- SFU's obligations under the *Public Interest Disclosure Act* (SBC 2018, c.22, "PIDA")
- The meaning of Wrongdoing under PIDA;
- The options available to Employees who would like to make Disclosures of Wrongdoing, seek advice about making a Disclosure, or make a complaint about Reprisal; and
- The steps the University will take following receipt of a Disclosure.

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### Table of Contents

GLOSSARY .....	2
1.0 PREAMBLE.....	3
2.0 PURPOSE.....	3
3.0 SCOPE AND JURISDICTION.....	3
4.0 POLICY .....	4
5.0 ROLES AND RESPONSIBILITIES .....	5
6.0 CONSEQUENCES OF NON-COMPLIANCE .....	6
7.0 ANNUAL REPORTING .....	6
8.0 RELATED LEGAL, POLICY AUTHORITIES AND AGREEMENTS .....	7
9.0 ACCESS TO INFORMATION AND PROTECTION OF PRIVACY.....	7
10.0 RETENTION AND DISPOSAL OF RECORDS .....	7
11.0 POLICY REVIEW .....	7
12.0 POLICY AUTHORITY.....	7
13.0 INTERPRETATION.....	7
14.0 PROCEDURES AND OTHER ASSOCIATED DOCUMENTS .....	8

## GLOSSARY

**Designated Officer** means the employee(s) designated by the President in this policy's associated procedures, to receive requests for advice, and receive and address Disclosures of Wrongdoing.

**Discloser** means an Employee who requests advice or makes a Disclosure or a complaint about alleged Reprisal.

**Disclosure** means a disclosure of Wrongdoing made by a Discloser in accordance with this policy and its associated procedures.

**Employee** means all former and current employees of Simon Fraser University, and for the purposes of this policy also includes former and current members of the SFU Board of Governors.

**Ombudsperson** means the Ombudsperson of British Columbia appointed under the *Ombudsperson Act* (RSBC 1996, c.340). For clarity, this provincial Ombudsperson is distinct from the SFU Ombudsperson.

**Public Policy** means a high-level, strategic policy objective of the public body. These decisions, which may involve the delivery of services or implementation of a public program, typically require the use of expert opinions, consultation with stakeholders, and are often considered by a number of people in senior leadership within an organization.

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**Reprisal** means any of the following measures of reprisal against an Employee, or counsel or direct that any of the following measures of reprisal be taken against an Employee, by reason that the Employee has, in good faith, made a request for advice, a Disclosure or a complaint about a reprisal or cooperated with an investigation:

- a. a disciplinary measure;
- b. a demotion;
- c. a termination of employment;
- d. any measure that adversely affects the employee's employment or working conditions; a threat to take any of the measures referred to in paragraphs (a) to (d).

**Supervisor** means an individual who instructs, directs, and controls Employees in the performance of their duties.

**Wrongdoing** means any of the following:

- a. a serious act or omission that, if proven, would constitute an offence under any BC or Canadian law;
- 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 an Employee's duties or functions;
- c. a serious misuse of public funds or public assets;
- d. a gross or systemic mismanagement; and
- e. knowingly directing or counselling a person to commit any of the above.

## 1.0 PREAMBLE

- 1.1 PIDA protects all Employees who in good faith request advice about making, or make, a Disclosure of Wrongdoing or complaint about Reprisal, and who cooperate with an investigation under PIDA. Simon Fraser University (“SFU” or the “University”) is committed to its obligations under PIDA and adopts this policy and procedures to meet them. All Disclosures received under this policy will be addressed in the manner set out in its associated procedures, and the privacy of all Disclosers will be managed as required by PIDA and the *Freedom of Information and Protection of Privacy Act* (RSBC 1996, c.165, “FIPPA”).
- 1.2 This policy provides guidance to current and former Employees who wish to make a Disclosure or seek advice about making a Disclosure regarding Wrongdoing occurring within the University and establishes a separate procedure pursuant to which Employees can make Disclosures and seek protection against Reprisal.

## 2.0 PURPOSE

- 2.1 This policy and its associated procedures facilitate SFU in complying with its obligations under PIDA. PIDA requires certain public bodies to provide Employees with a process for making Disclosures, seeking advice about making a Disclosure, or making a complaint about Reprisals. PIDA allows Employees to:
  - a. request advice about disclosing, and Disclose Wrongdoing occurring within SFU, which Employees may do anonymously;
  - b. report retaliation (called a Reprisal) against them for making a Disclosure of Wrongdoing, requesting advice, or participating in an investigation of Wrongdoing; and
  - c. make Disclosures to the Ombudsperson directly.

## 3.0 SCOPE AND JURISDICTION

- 3.1 This policy applies exclusively to Employees across the University, including all its programs and services, units and departments (both academic and administrative).

3.2 Individual employment or contractual disputes, except with respect to Reprisals, do not normally meet the definition of Wrongdoing and so may not fall within the scope and jurisdiction of this policy. For those matters, after an initial assessment, they may be referred to other applicable processes, such as collective agreement processes, applicable laws (such as the *Workers Compensation Act* and the *Human Rights Code*), or other University policies (such as GP47 (Bullying and Harassment), GP18 (Human Rights), or I10.11 (Protection of Privacy)).

This Policy must comply with all relevant provisions in any applicable collective agreement, including academic freedom, notice, timelines, and other process requirements; and members of unions and employee associations have all rights to representation that their collective agreements confer.

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3.3 There are no time limits for making a Disclosure under this policy; provided that former Employees may only make Disclosures relating to Wrongdoing that occurred or were discovered while they were employed by SFU or on the University's Board of Governors, as applicable.

3.4 Contractors, students, volunteers, and members of the public may not make Disclosures under this policy. However, PIDA prohibits Reprisals against contractors because a contractor or their employees cooperated with an investigation under this policy and its associated procedures, in the form of (for example): cancelling contracts, withholding payment, or refusing to enter into future contracts.

## 4.0 POLICY

### **Wrongdoing**

4.1 The definition of Wrongdoing under PIDA is adopted for purposes of this policy.

### **Requesting Advice**

4.2 Employees have a right to seek advice about making a Disclosure or an alleged Reprisal from:

- a) their union or employee association representative;
- b) a lawyer (at their own expense);
- c) their Supervisor;
- d) a Designated Officer; or
- e) the Ombudsperson.

4.3 Employees can request advice about matters such as:

- a) whether their concern meets the definition of Wrongdoing;
- b) what other mechanisms might be appropriate for addressing their concerns;
- c) how their privacy will be managed;
- d) how to make a Disclosure;
- e) the steps that the University will take after a Disclosure is made; or
- f) whether to direct their Disclosure to the Ombudsperson.

4.4 Employees who request advice about making a Disclosure are protected from Reprisal regardless of whether they make a Disclosure.

### **Making a Disclosure**

4.5 The University is committed to the highest standards of ethical conduct and a culture of honest, transparent, and accountable behaviour. SFU takes all Disclosures seriously.

4.6 Employees may make a Disclosure in the manner set out in this policy's associated procedures, to:

- a) their Supervisor (current Employees only);
- b) a Designated Officer; or

- c) the Ombudsperson.

4.7 Employees must make Disclosures in good faith based on a reasonable belief that Wrongdoing has occurred or is about to occur.

4.8 When a Disclosure is received by a Discloser's Supervisor or a Designated Officer, the applicable Designated Officer will follow the process set out in this policy's associated procedures.

4.9 Employees may also make a public disclosure of Wrongdoing under limited, exceptional circumstances as set out in this policy's associated procedures.

#### **Employee Protection and Reprisal**

4.10 Reprisal is prohibited. Employees must not engage in any Reprisal against a person who has, in good faith, requested advice about making a Disclosure, has made a Disclosure or complaint about reprisal, or has cooperated in an investigation conducted in accordance with this policy.

4.11 Employees are protected from Reprisals resulting from:

- a. seeking advice about making a Disclosure;
- b. seeking advice about concerns of Reprisal;
- c. making a Disclosure;
- d. reporting a Reprisal; and
- e. cooperating with an investigation in accordance with this policy and its associated procedures.

4.12 The Ombudsperson is responsible for investigating complaints of Reprisal. An Employee who believes that Reprisal has taken place against them may contact the [Ombudsperson](#) to make a complaint.

4.13 Reprisal complaints made to a Supervisor or the Designated Officer will be forwarded to and investigated by the office of the Ombudsperson.

4.14 Reprisal is unacceptable and prohibited conduct that, if found to have occurred, may result in a range of corrective measures and disciplinary sanctions including, where appropriate, dismissal or permanent suspension.

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## **5.0 ROLES AND RESPONSIBILITIES**

### **All Employees**

5.1 All Employees are responsible for acting with honesty, integrity and accountability and complying with applicable law and University policy in their work and dealings with others at the University.

### **The President**

5.2 The President is responsible for assigning the role of Designated Officer and responding to the Ombudsperson regarding steps taken to address recommendations relating to a finding of

Wrongdoing made by the Ombudsperson. The President may delegate their responsibilities to other senior officials of SFU, provided that the President is responsible for ensuring that their delegates properly carry out those responsibilities.

#### **Designated Officer**

5.3 The Designated Officer is responsible for publishing annual reports on the University's activities under PIDA, and exercising the responsibilities assigned to them by the President under this policy and its associated procedures.

#### **University Secretary**

5.4 The University Secretary is responsible for ensuring that instruction is available to all Employees about PIDA, this policy and its associated procedures.

#### **Supervisors**

5.5 Supervisors are responsible for responding to requests for advice from Employees, receiving Disclosures and referring Disclosures to the Designated Officer, or other senior official, as set out in this policy's associated procedures.

### **6.0 CONSEQUENCES OF NON-COMPLIANCE**

6.1 Those who are found to have engaged in Wrongdoing may be subject to disciplinary action, up to and including termination of employment, services, or privileges. Those who are found to have engaged in Wrongdoing may also face other legal consequences such as penalties under PIDA.

6.2 An Employee who makes a bad faith, malicious or intentionally false Disclosure may be subject to discipline, up to and including termination of employment. Such Employees may also face other legal consequences such as penalties under PIDA or civil claims brought by affected individual(s).

6.3 An Employee who does not strictly protect confidentiality and privacy as required by this policy, its associated procedures, and applicable law may be subject to disciplinary action, up to and including termination of employment. Those who breach confidentiality and privacy may also face other legal consequences such as penalties under PIDA or civil claims brought by affected individual(s).

6.4 The University will not tolerate Reprisals. This protection does not apply to protect an Employee from the consequences of their own Wrongdoing, misconduct or improper activity unrelated to their rights under PIDA. An employee who engages in Reprisal may be subject to discipline, up to and including termination of employment.

### **7.0 ANNUAL REPORTING**

7.1 The President, or their delegate, is required to annually publish a report on the University's activities under PIDA. This report will contain the information in section 13.1 of the policy's associated procedures and be published as set out in the procedures.

## **8.0 RELATED LEGAL, POLICY AUTHORITIES AND AGREEMENTS**

8.1 The legal and other University policy authorities and agreements that may bear on the administration of this policy and may be consulted as needed include but are not limited to:

- 8.1.1 *University Act* (RSBC, 1996, c.468)
- 8.1.2 *Freedom of Information and Protection of Privacy Act* (RSBC 1996, c. 165)
- 8.1.3 *Public Interest Disclosure Act* (SBC 2018, c. 22),
- 8.1.4 *Workers Compensation Act* (SBC 2019, c.165)
- 8.1.5 Occupational Health & Safety and WorkSafe BC regulations, policies, and guidelines
- 8.1.6 Protected Disclosure of Wrongdoing (GP41)
- 8.1.7 Conflict of Interest and Conflict of Commitment (GP 37)
- 8.1.8 Bullying and Harassment (GP 47)
- 8.1.9 Human Rights (GP 18)
- 8.1.10 Sexualized Violence (GP 44)
- 8.1.11 University Health and Safety (GP 17)
- 8.1.12 Code of Faculty Ethics and Responsibilities (A 30.01)
- 8.1.13 Collective agreements and human resources employment policies

## **9.0 ACCESS TO INFORMATION AND PROTECTION OF PRIVACY**

9.1 The information and records made and received to administer this policy are subject to the access to information and protection of privacy provisions of British Columbia's *Freedom of Information and Protection of Privacy Act* and the University's Information Policy series.

## **10.0 RETENTION AND DISPOSAL OF RECORDS**

10.1 Information and records made and received to administer this policy are evidence of the University's actions to carry out various activities, including investigating reported wrongdoing or misconduct, processing internal complaints or reports, documenting whistleblower complaints, protecting whistleblowers, developing and upholding policies and procedures, providing employee training, communicating with stakeholders, managing records, appointing oversight bodies, taking corrective actions, and reporting annually on whistleblowing activities... Information and records must be retained and disposed of in accordance with a records retention schedule approved by the University Archivist.

## **11.0 POLICY REVIEW**

11.1 This policy must be reviewed every five years and may always be reviewed as needed.

## **12.0 POLICY AUTHORITY**

12.1 This policy is administered under the authority of the University Secretary.

## **13.0 INTERPRETATION**

13.1 Questions of interpretation or application of this policy or its procedures shall be referred to the University Secretary whose decision shall be final.

## **14.0 PROCEDURES AND OTHER ASSOCIATED DOCUMENTS**

14.1 The procedures for this policy are: Public Interest Disclosure - Procedures

## PUBLIC INTEREST DISCLOSURE - Procedures

<b>Date</b> [date]	<b>Number</b> [number of parent policy]
<b>Date of Last Review/Revision</b> [date]	<b>Mandated Review</b> [date]

**Policy Authority:** Margarita Fullerton, University Secretary

Parent Policy: Public Interest Disclosure— Policy

### GLOSSARY

**Designated Officer** means the employee(s) designated by the President in this policy's associated procedures, to receive requests for advice, and receive and address Disclosures of Wrongdoing.

**Discloser** means an Employee who requests advice or makes a Disclosure or a complaint about alleged Reprisal.

**Disclosure** means a disclosure of Wrongdoing made by a Discloser in accordance with the policy and these procedures.

**Employee** means all former and current employees of Simon Fraser University, and for the purposes of the policy and these procedures also include former and current members of the SFU Board of Governors.

**Ombudsperson** means the Ombudsperson of British Columbia appointed under the *Ombudsperson Act* (RSBC 1996, c.340). For clarity, this provincial Ombudsperson is distinct from the SFU Ombudsperson.

**Public Policy** means a high-level, strategic policy objective of the public body. These decisions, which may involve the delivery of services or implementation of a public program, typically require the use of expert opinions, consultation with stakeholders, and are often considered by a number of people in senior leadership within an organization.

**Reprisal** means any of the following measures of reprisal against an Employee, or counsel or direct that any of the following measures of reprisal be taken against an Employee, by reason that the Employee has, in good faith, made a request for advice, a Disclosure or a complaint about a reprisal or cooperated with an investigation:

- a. a disciplinary measure;
- b. a demotion;
- c. a termination of employment;
- d. any measure that adversely affects the employee's employment or working conditions; a threat to take any of the measures referred to in paragraphs (a) to (d).

**Supervisor** means an individual who instructs, directs, and controls Employees in the performance of their duties.

**Wrongdoing** means any of the following:

- a. a serious act or omission that, if proven, would constitute an offence under any BC or Canadian law;
- 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 an Employee's duties or functions;
- c. a serious misuse of public funds or public assets;
- d. a gross or systemic mismanagement; and
- e. knowingly directing or counselling a person to commit any of the above.

## **1.0 PURPOSE**

1.1 These procedures establish the processes by which the University will respond to requests for advice, Disclosures of Wrongdoing, and complaints of Reprisal.

## **2.0 DESIGNATED OFFICER**

2.1 For purposes of the policy and these procedures, the “**Designated Officer**” means the Director, Internal Audit. If a request for advice or a Disclosure relates to the Director, Internal Audit or any employees in the Internal Audit department, or the Director, Internal Audit has declared a conflict of interest, then the General Counsel will act as the Designated Officer.

## **3.0 SEEKING ADVICE**

3.1 An Employee considering making a Disclosure may seek advice about the following:

- a. the meaning of Wrongdoing;
- b. what other mechanisms might be appropriate for addressing their concerns;
- c. how their privacy will be managed throughout the Disclosure process;
- d. how to make a Disclosure of Wrongdoing;
- e. how the process established by this procedure will work; or
- f. whether to direct their Disclosure to the Ombudsperson.

3.2 Employees may seek advice about making a Disclosure of Wrongdoing or advice about an alleged Reprisal from:

- a. their union or employee association representative;
- b. a lawyer (at their own expense);
- c. their Supervisor;
- d. the Designated Officer; or
- e. the Ombudsperson via their [Contact Us](#) webpage.

- 3.3 Employees may seek advice anonymously. Employees who seek advice anonymously must identify a reliable means by which the Designated Person may communicate with them (for example, to seek further information or clarification).
- 3.4 A Supervisor or Designated Officer must review and provide appropriate assistance in response to a request for advice. A Supervisor or Designated Officer who receives a request for advice shall seek to respond in writing, normally within 30 days of receiving the request.

#### **4.0 MAKING A DISCLOSURE**

- 4.1 An Employee who in good faith reasonably believes that a Wrongdoing has been committed or is about to be committed may make a Disclosure to any of the following:

- a. their Supervisor;
- b. the applicable Designated Officers; or
- c. the Ombudsperson.

- 4.2 Disclosures must be submitted in writing by Employees through one of the following methods:
  - a. SFU's online reporting platform (available on the SFU website)
  - b. completing the form issued and maintained by the Designated Officer and emailing the form directly to their Supervisor or the applicable Designated Officer; or
  - c. reporting to the Ombudsperson, via their [Contact Us](#) webpage.

- 4.3 Disclosures must include the following information, if known:
  - a. a description of the Wrongdoing;
  - b. the name of the person(s) alleged to have committed the Wrongdoing, or who is about to commit the Wrongdoing;
  - c. the date or expected date of the Wrongdoing;
  - d. whether information or conduct that is being disclosed relates to an obligation under an existing University policy or process, or applicable law, and if so, the name of the University policy, process, or applicable law;
  - e. whether the Wrongdoing has already been reported under the policy or another process, and if so, the name of the person to whom it was reported and the response, if any, that the discloser received.

- 4.4 Disclosures may be made anonymously. Employees making an anonymous Disclosure must, in addition to the content required by Section 4.3, provide:

- a. information that enables the Designated Officer to determine whether the Discloser is an Employee and that the Discloser was an Employee at the time the alleged Wrongdoing occurred;
- b. adequate details about the alleged Wrongdoing or Reprisal, which will inform the Designated Officer's assessment about whether to proceed with investigation; and
- c. a reliable means by which the Designated Person may communicate with them (for example, to seek further information or clarification).

#### **5.0 PUBLIC DISCLOSURES INVOLVING IMMINENT RISK OF DANGER**

5.1 An Employee may make a public disclosure of Wrongdoing under limited, exceptional circumstances as described below.

5.2 Before making a public disclosure, the Employee must:

- a. reasonably believe the alleged Wrongdoing poses an imminent risk of danger to the life, health or safety of persons, or to the environment;
- b. consult the relevant protection officials as follows:
  - i. in respect of a health-related matter, the Provincial Health Officer,
  - ii. in respect of an environmental matter, the agency responsible for the *Emergency Program Act*, or
  - iii. in any other case, an appropriate police force;
- c. receive direction from the applicable protection official about whether to make the disclosure, and if so, on what conditions; and
- d. if the protection official approves the disclosure, follow their instructions. If the direction from the protection official is that the employee should not make the disclosure, then employee must not make the disclosure to the public.

5.3 Additionally, when making a public disclosure, an Employee must not share information that is subject to a restriction under an enactment of BC or Canada. This means Employees must not share information that they are prohibited from sharing under a statutory oath or any federal or provincial statute or other regulation, including solicitor-client privilege, litigation privilege or another ground of common law privilege, or public interest immunity.

5.4 Immediately after making the disclosure, the Employee must:

- a. advise their Supervisor or the applicable Designated Officer about the public disclosure; and
- b. make a Disclosure per Section 4 of these procedures, to their Supervisor, Designated Officer or the Ombudsperson.

## **6.0 RECEIVING DISCLOSURES AND INITIAL ASSESSMENT**

6.1 If an Employee makes a Disclosure to their Supervisor, the Supervisor must forward it to the applicable Designated Officer by email as soon as possible.

6.2 The Designated Officer will confirm receipt of a Disclosure to the Discloser within five (5) business days.

6.3 The Designated Officer will assess the Disclosure to:

- a) confirm that the Discloser is an Employee and that the Discloser was an Employee at the time the alleged Wrongdoing occurred;
- b) determine whether the allegations in the Disclosure would, if substantiated, meet the definition of Wrongdoing;
- c) confirm whether the alleged Wrongdoing occurred in or relating to SFU;
- d) confirm that contents of the Disclosure meet the requirements of this procedure;
- e) evaluate the risk of Reprisal against the Disclosure; and

f) evaluate whether the Disclosure reveals information that gives rise to an imminent risk.

If the Designated Officer reasonably believes that a Disclosure reveals information that gives rise to an imminent risk, they may make a report to an appropriate protection official.

6.4 In performing this assessment, the Designated Officer may seek further information from the Discloser, as needed.

6.5 When initiating an investigation, the Designated Officer will implement measures to safeguard the anonymity of the employee throughout the process and ensure risks of Reprisal are managed to the extent reasonably possible.

## 7.0 DECIDING WHETHER TO INVESTIGATE

7.1 Once the initial assessment of a Disclosure is complete, the Designated Officer must determine whether an investigation is warranted. The Designated Officer will normally make this determination within 30 days of receipt of the Disclosure.

7.2 The Designated Officer must not investigate a Disclosure, or must suspend an in-progress investigation of a Disclosure, if the Designated Officer reasonably determines that the Disclosure:

- a) was not made by an Employee;
- b) contains allegations that, if substantiated, would not meet the definition of Wrongdoing;
- c) alleges Wrongdoing that did not occur at or does not relate to SFU;
- d) relates primarily to:
  - i. a dispute between an Employee and SFU respecting the Employee's employment;
  - ii. a matter relating to law enforcement;
  - iii. a matter relating to the prosecution of an offence; or
  - iv. an adjudicative function of a court, tribunal or other statutory decision maker, including decision, or the processes or deliberations that have led to or may lead to a decision, by the court, tribunal or other statutory decision maker.

7.3 The Designated Officer may refuse to investigate a Disclosure, or suspend an in-progress investigation of a Disclosure, if the Designated Officer reasonably determines that:

- a) the Disclosure does not provide sufficient details or particulars about the Wrongdoing;
- b) the Disclosure is frivolous or vexatious;
- c) the Disclosure was not made in good faith;
- d) an investigation of the Disclosure would serve no useful purpose or could not be reasonably conducted because the length of time that has passed between the date of when the subject matter of the disclosure arose and the date of the Disclosure;
- e) the Disclosure relates solely to a public policy decision;
- f) the Disclosure has been referred to another appropriate authority for investigation;
- g) the Disclosure has already been or is being appropriately investigated by an appropriate authority (including by the University pursuant to another applicable University policy or process);
- h) the Disclosure would more appropriately be addressed under another University policy or process, in which case, the Designated Officer will either refer the Discloser to the

applicable policy or process or notify the Discloser and will forward the Disclosure to the appropriate University office(s) for that policy or process; or

i) PIDA requires or allows the Designated Officer to refuse to investigate or suspend an in-progress investigation.

ii) The Discloser always has the right to directly make a disclosure to the Office of the BC Ombudsperson at any time

7.4 Additionally, the Designated Officer may postpone or suspend an investigation if the Designated Officer:

- a) reports to a law enforcement agency an alleged offence they have reason to believe has been committed in relation to the Disclosure;
- b) considers that the Investigation may compromise another investigation being undertaken at the University or elsewhere; or
- c) the alleged Wrongdoing is also being investigated for the prosecution of an offence.

7.5 The Designated Officer must notify the Discloser in writing whether an investigation will proceed, and if so, who will undertake it. If the Designated Officer has declined to investigate or has stopped or suspended an investigation, they will provide notice with written reasons and confirm whether the Disclosure will be referred to another authority as described in these procedures, unless the Designated Officer reasonably believes that such notice would compromise another investigation.

7.6 The Designated Officer will provide notice of any decision to investigate to: the President (or, if the President is alleged to be responsible for the alleged Wrongdoing, the Chair of the Board of Governors) and the respondent(s). Notice may be delayed until an appropriate time if the Designated Officer believes that notification may compromise the investigation or expose the Discloser to Reprisal, provided that respondents will in all cases receive notice of the allegations prior to being interviewed.

## 8.0 INVESTIGATION

8.1 All investigations carried out under these procedures must:

- a) be undertaken promptly and diligently, and be as thorough as necessary, given the circumstances;
- b) be objective, conducted in accordance with the principles of procedural fairness, and impartial to both the Discloser and the respondent(s) when evaluating the alleged Wrongdoing;
- c) comply with all relevant provisions in any applicable collective agreement, including academic freedom, notice, timelines, and other process requirements; and members of unions and employee associations have all rights to representation that their collective agreements confer;
- d) be sensitive to the interests of all parties involved and maintain confidentiality to the extent possible under the circumstances.

8.2 Subject to Section 8.1 of these procedures, where multiple Disclosures contain significant factual overlap, the Designated Officer may decide that the Disclosures will be investigated together.

8.3 Investigations will normally be completed and a draft report prepared within four (4) months from the decision to investigate. The Designated Officer may amend this timeline (by extension or shortening) depending upon the nature and complexity of the allegations in the Disclosure.

8.4 Everyone involved in an investigation must treat all related information as confidential and protect any personal information collected, used or shared as part of a request for advice, Disclosure, complaint about Reprisal or Investigation to the extent possible under applicable legislation, policy and collective agreements.

## **9.0 INVESTIGATION REPORTS**

9.1 Upon conclusion of an investigation, the Designated Officer will prepare an investigation report, which will include findings of Wrongdoing, reasons to support the findings, and any recommendations to address the findings, as applicable.

9.2 The investigation report will be provided to the President, unless they are implicated in founded Wrongdoing. If the President is implicated in founded wrongdoing, the report will be provided to the Chair of the Board of Governors.

9.3 Subject to the University's obligations under FIPPA, the Designated Officer will provide a summary of the investigation report to the Discloser. Where practicable, the Designated Officer will also provide a summary of the investigation report to any person alleged or found to be responsible for Wrongdoing.

## **10. REFERRAL TO OMBUDSPERSON**

10.1 Where the Designated Officer determines that the Disclosure is eligible for investigation, the Designated Officer will consider whether the Disclosure, in whole or in part, would be more appropriately investigated by the Ombudsperson and, subject to Section 10.2 below, may refer a Disclosure to the Ombudsperson. In assessing whether to refer a Disclosure to the Ombudsperson, the Designated Officer will consider:

- a) the level and position of the alleged wrongdoer(s);
- b) potential conflicts of interest or perceptions of conflict;
- c) the likelihood of voluntary compliance of witnesses;
- d) whether the Disclosure involves sensitive political or social issues;
- e) implications to the public interest;
- f) the risk of Reprisal to the Discloser and other participants in the investigation; and
- g) any other relevant factors that arise on the facts of the case;

10.2 The Designated Officer will always refer Disclosures involving the President to the Ombudsperson.

10.3 The Designated Officer will inform the Discloser in writing of a referral to the Ombudsperson.

## 11.0 REPRISAL

11.1 The Ombudsperson is responsible for investigating complaints of Reprisal. An Employee who believes that Reprisal has taken place against them may contact the [Ombudsperson](#) to make a complaint.

11.2 -Reprisal complaints made to a Supervisor or the Designated Officer will be forwarded to and investigated by the office of the Ombudsperson.

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**11.3 Reprisal is unacceptable and prohibited conduct that, if found to have occurred, may result in a range of corrective measures and disciplinary sanctions including, where appropriate, dismissal or permanent suspension.**

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## 12.0 REPORT TO LAW ENFORCEMENT

12.1 The Designated Officer may report an alleged offence relating to a request for advice, a Disclosure, or a Reprisal complaint to a law enforcement agency if they reasonably believe that an offence may have been committed. The offence may be reported regardless of whether the Disclosure is determined to meet the threshold for Wrongdoing or whether the Designated Officer decides to investigate the Disclosure. In assessing whether to make a report, the Designated Officer will consider the seriousness of the allegations and whether the alleged offence may be a criminal offence.

12.2 The victim of any alleged offence will be consulted prior to a report being made, unless consultation poses health and/or safety concerns. Designated Officers may also wish to consider concerns about reporting to law enforcement in cases where persons involved belong to communities or groups that have historically been overpoliced.

12.3 The Designated Officer will not report an offence without first consulting the President, unless the President is implicated in the alleged offence.

12.4 The Designated Officer will provide no more information to law enforcement than is necessary to make the report.

## 13.0 ANNUAL REPORTING

13.1 The President, or their delegate, is required to publish a report on the University's activities under PIDA annually. This report will contain the following information:

- a. the number of Disclosures received, including referrals of Disclosures;
- b. the number of investigations commenced as a result of a Disclosure;
- c. in the case of an investigation that results in a finding of Wrongdoing,
  - i. a description of the Wrongdoing;
  - ii. any recommendations, including those made by the Ombudsperson; and
  - iii. any corrective action taken in relation to the wrongdoing or the reasons why no corrective action was taken; and
- d. any other information prescribed by PIDA.

13.2 The report will not publicly identify anyone who has participated in the Disclosure process, including employees who have asked for advice but not made a Disclosure.

13.3 SFU will publish the reports on their external website.

#### **14.0 ACCESS TO INFORMATION, CONFIDENTIALITY, AND PROTECTION OF PRIVACY**

14.1 The information and records made and received to administer the policy and these procedures are subject to the access to information and protection of privacy provisions of FIPPA and the University's Information Policy series. To the extent possible, the information and records will be treated in a confidential manner, in compliance with FIPPA and with applicable University policies.

14.2 Disclosures, investigation thereof, requests for advice, and complaints of Reprisal made under the policy and addressed under these procedures may involve the collection, use, and disclosure of sensitive personal information. Individuals (including Disclosers and individuals alleged to have committed Wrongdoing) involved in any Disclosure, investigation thereof, complaints of Reprisal, or requests for advice must not disclose this information to any other person, except to a Supervisor, support person, and/or representative of their constituency organization, or as required by applicable law. Confidentiality is required so that Disclosers and those requesting advice feel free to come forward. Confidentiality is also required so that the reputations and interests of those alleged to have committed Wrongdoing are protected. However, either party may discuss the case in confidence with their Supervisor, support person, and/or representative of their constituency organization.

14.3 Subject to any limits or disclosure requirements imposed by law or by the policy or these procedures, any and all information, oral and written, created, gathered, received or compiled through the application of these procedures is to be treated as confidential by both all parties, their representatives, support persons, witnesses, and the officials designated by the policy or these procedures.

14.4 The Designated Officer will explain these confidentiality requirements to the Discloser, individuals seeking advice, or individuals making complaints of Reprisal.

#### **15.0 RELATED LEGAL, POLICY AUTHORITIES AND AGREEMENTS**

15.1 The legal and other University Policy authorities and agreements that may bear on the administration of this policy and may be consulted as needed include but are not limited to:

- 15.1.1 *University Act* (RSBC, 1996, c.468)
- 15.1.2 *Freedom of Information and Protection of Privacy Act* (RSBC 1996, c. 165)
- 15.1.3 *15.1.3 Public Interest Disclosure Act* (SBC 2018, c. 22)
- 15.1.4 *15.1.4 Workers Compensation Act* (SBC 2019, c.165)
- 15.1.5 Occupational Health & Safety and WorkSafe BC regulations, policies, and guidelines
- 15.1.6 Protected Disclosure of Wrongdoing (GP41)
- 15.1.7 Conflict of Interest and Conflict of Commitment (GP 37)
- 15.1.8 Bullying and Harassment (GP 47)
- 15.1.9 Human Rights (GP 18)
- 15.1.10 Sexualized Violence (GP 44)

- 15.1.11 University Health and Safety (GP 17)
- 15.1.12 Code of Faculty Ethics and Responsibilities (A 30.01)
- 15.1.13 Collective agreements and human resources employment policies