Public Interest Disclosure (Whistleblower Protection) Act

Information Session
Session Overview

- Safe Disclosure Policy
- Public Interest Disclosure (Whistleblower Protection) Act (“PIDA”)
- University Public Interest Disclosure Framework
- Reprisals
- Disclosure Process
- Investigations
- Outcomes
- Conflict of Interest
- Confidentiality
- Offences and Penalties
- Resources
Safe Disclosure Policy

• 2009 Safe Disclosure Policy implemented
  – 2013 PIDA introduced therefore required
    existing Policy update to align with Act and
    associated framework developed
  – Revised policy approved in September 2013

• 2013 Code of Conduct Policy Guide introduced
  – Includes a Safe Disclosure section
  – The Guide serves as a summary of key
    policies that govern our behavior and reflect
    our commitment to a culture of integrity
PIDA Purpose

- Proclaimed into force on June 1, 2013
- To promote transparency and public confidence in the administration of the University
- Facilitates the disclosure/reporting and investigation of Wrongdoing in the public sector
- Protects from reprisal those employees who make Disclosures in good faith
PIDA Framework

- University developed framework
- Roles, responsibilities and obligations
- Procedures relating to making, receiving and reviewing Disclosures
- Investigations
- Reporting on investigations, making recommendations and taking corrective action
- Key Principles
Scope and Application

• PIDA applies to public sector entities, including Post-Secondary Academic Institutions

• Framework Scope:
  ➢ Applies to Disclosures made by employees of the University
  ➢ Applies to allegations of wrongdoings
Wrongdoings

- **Illegal Acts**: if the violation is not merely technical or of a minimal nature.
- **Threats to health, safety or the environment**: a risk of serious injury, illness, peril, or loss, to which the exposure of the public is a gross deviation from the standard of care or competence which a reasonable person would observe in the same situation.
- **Gross mismanagement of public funds**: the exercise of management responsibilities in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation. Not necessarily on a quantitative monetary value.
- **Counseling a person to do any of the above**
Reprisals

Any adverse employment action taken against an employee because the employee has, in good faith, sought advice about making a Disclosure, made a Disclosure, cooperated in an investigation under PIDA, declined to participate in a Wrongdoing or done anything in accordance with PIDA.

- Can take many forms – may involve dismissal, reduction in wages, adverse impact on working conditions
- Difference between valid performance management actions and reprisals
- Response to reprisals
Key Roles

1. MacEwan University Chief Officer
   - David Atkinson, President

2. MacEwan University Designated Officer
   - Michelle Plouffe, Vice President and General Counsel

3. Alberta Public Interest Commissioner
   - Peter Hourihan
Internal Procedures

Elements:

• Reporting Allegations of Wrongdoing
• Analysis of Disclosures
• Investigations
• Outcomes and Corrective Actions
• Time Limits
Making a Disclosure

• Report to Designated Officer
• Must be in writing
• Email: safedisclosure@macewan.ca
• Public Interest Disclosure Report Form – Office of General Counsel web page
• Can seek advice before making Disclosure
• PIDA is a two-stage disclosure process – exhaust University’s internal disclosure process first
A Disclosure must include, at a minimum:

- Confirmation of employee status
- Description of alleged wrongdoing
- Names of individuals involved
- Dates
- Information on related disclosures
- Evidence or documentation
Anonymous Disclosures

- Made to either Designated Officer or Public Interest Commissioner
- Anonymity protected throughout process
- Potential issues:
  - Lack of detail to enable investigation
  - Inability to clarify or obtain further information
  - Inability to keep employee informed
Disclosures to Commissioner

- Disclose to Commissioner when:
  - Employee is unsatisfied with the outcome of the internal process
  - Matter has not been resolved within the time periods under the procedures
  - Employee reasonably believes a Reprisal will be taken or has been taken (use the “Complaint of Reprisal Form” on PIC website and in Schedule 3 of the Regulations)
  - Matter involves the Chief Officer or the Designated Officer
  - Wrongdoing involves an imminent risk of danger to a person or to the environment
Receipt and Analysis of Disclosure

- Supervisors/Managers must forward Disclosures from employees to Designated Officer
- Designated Officer determines if form and content of Disclosure meet criteria and scope and if matter should be investigated
- Reporter informed of investigation decision
- Disclosure assessed for level of reprisal risk
Investigation

An investigation will **not** be conducted if:

- Disclosure was made in bad faith
- Disclosure does not deal with a Wrongdoing
- Disclosure is frivolous or vexatious
- Disclosure does not provide sufficient information
- More than two years have passed since the Wrongdoing was discovered
Conduct of Investigations

Objectives:
• compile information relating to the Disclosure as quickly as possible
• consider the information collected and draw conclusions objectively and impartially
• maintain confidentiality wherever possible
• maintain procedural fairness in the treatment of all involved parties
• make recommendations concerning corrective action
Recommendations and Corrective Action

Recommendations:
- Made within final investigation report
- Approved by Chief Officer and Designated Officer

Corrective Actions:
- Must be completed within 90 business days
- Designated Officer will monitor compliance with corrective actions
- If insufficient actions taken, matter escalated to Chief Officer
Outcomes

May include:
• an explanation and/or apology
• admission of fault
• change in decision or change to policy, procedure, practice or relevant law
• correction of misleading records
• financial compensation, including a refund of fees
• remission of a penalty
• disciplinary action
Time Limits

- Disclosure received by Designated Officer
  - 15 Business Days
  - Assessment of Disclosure and determination as to investigation
  - 10 Business Days
  - Accountable department assigned
  - 110 BUSINESS DAYS

- Investigation completed and Final Report received by Designated Officer
- CORRECTIVE ACTION
  - 90 Business Days
  - Initiate Corrective Measures
  - 10 Business Days
  - CORRECTIVE ACTION completed
- Review by Designated Officer of corrective actions and/or disciplinary action (if any)

- 6 MONTHS

- Recommendations for Corrective Action received and approved by Chief Officer and Designated Officer
- Investigation conducted and fact report submitted to Designated Officer
- Investigation team assembled

- 5 Business Days

- Disclosure entry closed

- Receipt of Disclosure acknowledged by Designated Officer
Roles and Responsibilities Summary

1. Supervisors
2. Employee making an allegation of wrongdoing
3. Employee who is the subject of a Disclosure
4. Accountable Department / Program Lead
5. Investigation Team
Supervisors

Key responsibilities:

• Maintaining employee awareness of PIDA and the University’s procedures relating to PIDA
• Receiving information relating to possible Wrongdoing from Employees and treating such information as a Disclosure under the Act
• Reporting any Disclosure received to the Designated Officer
• Participates as needed in investigations into Disclosures
• Assisting Accountable Department to make recommendations and implement corrective actions
• Supporting Employees throughout the investigative process
Employee Making Allegation

Key responsibilities:
• Contacts the Designated Officer for advice before making a Disclosure
• Completes the Public Interest Disclosure Report Form and forwards it to the Designated Officer
• Assists in maintaining confidentiality
• Contacts the Designated Officer for information relating to the process and/or status of the Disclosure
• Contacts Supervisor/Manager for support as required
Key responsibilities:

- Cooperates with the investigation and ensures all relevant information is provided in response to the allegation
- Assists in maintaining confidentiality
- Contacts Supervisor/Manager for support as required
Accountable 
Department / Program Lead

Key responsibilities:
• Advise Designated Officer
• Appoint investigation team and assign responsibilities
• Oversee investigation
• Report on investigation and recommendations
• Implement corrective actions
Investigation Team

Are appointed on a case by case basis depending upon the nature of the Disclosure

Key responsibilities:

• Take direction from Accountable Department/Program Lead
• Conduct investigations in accordance with the University’s procedures
• Identify and coordinate key individuals from Accountable Department and assign tasks as required
• Prepare final investigation report including recommendations and submit to Accountable Department/Program Lead
Conflict of Interest

• Conflicts will be avoided throughout the process
• Handling and management of Disclosures
• Appointment of investigation team
• Conduct of investigations
Confidentiality

- Confidentiality of information and persons is protected
- A minimum number of people to handle Disclosures
- Reporting employees must maintain confidentiality of alleged wrongdoing outside of process
- Participants in investigation must not disclose:
  - identity of other participants
  - evidence/information collected
  - results of investigation
- Information management
- When confidentiality cannot be maintained
Offences/Penalties

• Offences include:
  ➢ Reprisals taken in response to making a disclosure
  ➢ Making false statements
  ➢ Obstructing an investigation
  ➢ Destroying records
  ➢ Counseling a person to do any of the above

• Penalties as a result of prosecution range from $25,000 - $100,000

• Disciplinary action
Public Reporting

• Disclosure information within University’s annual report
• Report to Audit Committee of the Board of Governors
Resources

• PIDA and Regulation on Alberta Queen’s Printer Website: www.qp.alberta.ca
• MacEwan University Public Interest Disclosure (Whistleblower Protection) Framework
• Public Interest Disclosure Report Form
• MacEwan University Policy D7020 - Safe Disclosure
• Public Interest Commissioner (PIC) Website: www.pic.alberta.ca
Questions?