



## **PUBLIC INTEREST DISCLOSURE - WHISTLEBLOWER PROTECTION POLICY & PROCEDURE**

**Effective: October, 2011**

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### **1. PREAMBLE**

On April 2, 2007, legislation entitled *The Public Interest Disclosure (Whistleblower Protection) Act* was proclaimed. The purpose of this Act is to provide a clear process for the disclosure and investigation of significant and serious matters in public service that are potentially unlawful, dangerous to the public, or injurious to the public interest. The Act also provides protection from reprisal for an employee or third party observer who makes a good faith disclosure of a situation they reasonably believe shows Wrongdoing has been or is about to be committed.

### **2. POLICY**

It is the policy of Assiniboine Community College that a Employee who becomes aware of Wrongdoing as defined by the Public Interest Disclosure Act is encouraged to make disclosure of such information. There will be no reprisal against a Employee who has made such a disclosure in good faith.

This Policy deals with disclosures of Wrongdoing made by employees and is not intended to deal with routine operational or human resource issues.

### **3. DEFINITIONS**

3.1 **The Act** – The Public Interest Disclosure (Whistleblower Protection) Act.

3.2 **College Public Interest Disclosure Officer** – the Act requires every chief executive to designate a senior official for the purpose of this Act, responsible for the handling and managing of disclosures and investigations. The Assiniboine Community College Public Interest Disclosure Officer is the Director of Finance.

3.3 **Employee** – An employee or officer of the College who makes a disclosure.

3.4 **Reprisal** – Reprisal is any of the following measures taken against an employee, or any third party, because of having, in good faith, sought advice about making a disclosure, made a disclosure, or co-operated in an investigation:

- a. a disciplinary measure
- b. a demotion
- c. termination of employment
- d. any measure that adversely affects his or her employment or working conditions
- e. a threat to take any of the measures referred to in clauses (a) to (d).

3.5 **Wrongdoing** – The Act defines Wrongdoing in or relating to the public service as:

- a. an act or omission constituting an offence under an Act of the Legislature or the Parliament of Canada, or a regulation made under an Act;
- b. an act or omission that creates a substantial and specific danger to the life, health or safety of Employees, or the environment, other than a danger that is inherent in the performance of the duties or functions of an employee;
- c. gross mismanagement, including of public funds or a public asset; or
- d. knowingly directing or counselling a Employee to commit a Wrongdoing described in clauses (a) to (c).

#### 4. PROCEDURES Making a Disclosure

4.1 A disclosure of Wrongdoing must be made in writing and include the following information:

- a. a description of the Wrongdoing;
  - b. the name of the Employee(s) alleged to have committed or is about to commit the Wrongdoing;
  - c. the date of the Wrongdoing;
  - d. whether the Wrongdoing has already been disclosed and a response received;
- and
- e. the signature of the discloser and the date the disclosure is submitted.

4.2 The written disclosure can be made to any of:

- a. in the case of an employee:
  - i. the employee's supervisor;
  - ii. the College Public interest Disclosure Officer; or
  - iii. the office of the Manitoba Ombudsman.
- b. in the case of a student:
  - i. the office of the Manitoba Ombudsman
- c. in the case of any other party:
  - i. the office of the Manitoba Ombudsman

4.3 Upon receipt, each disclosure will be marked to show the date of receipt.

- 4.4 Each disclosure must be maintained in a separate file.
- 4.5 Disclosures and related correspondence must be kept and handled in paper form only. Information received by electronic mail must be printed and the electronic mail deleted. The electronic mail must not be forwarded or responded to by using the “reply” option.
- 4.6 Disclosure files will be treated as strictly confidential, maintained in secure manner and location, and protected from unauthorized access.
- 4.7 Care must be taken at all times to protect the identity of the disclosing Employee, any witnesses, and the alleged wrongdoer.
- 4.8 All written information obtained as a result of the receipt of the disclosure, review of the disclosure, or the investigation of the alleged Wrongdoing must be included in the disclosure file. All pertinent information obtained verbally must be documented in writing in the disclosure file and dated and signed by the Employee receiving the information.
- 4.9 Anonymous disclosures are not allowed under The Public Interest Disclosure Act.

## **5. RESPONSIBILITIES OF THE SUPERVISOR**

- 5.1 A supervisor who receives a disclosure from an Employee will arrange to have a private discussion with the Employee as soon as possible upon receipt of the disclosure but not to exceed ten working days of receiving the disclosure.
- 5.2 The supervisor will advise the Employee that all information regarding their identity as a discloser will be protected to the fullest extent possible.
- 5.3 The supervisor will advise the Employee that they have a responsibility to protect information related to the disclosure and will make every attempt to protect the identity of those individuals involved in the alleged Wrongdoing to the fullest extent possible.
- 5.4 The supervisor will then notify the College Public Interest Disclosure Officer and transfer the disclosure in a confidential manner for further review and handling.

## **6. RESPONSIBILITIES OF THE COLLEGE PUBLIC INTEREST DISCLOSURE OFFICER**

6.1 The College Public Interest Disclosure Officer who receives a disclosure from an Employee will arrange to have a private discussion with the Employee as soon as possible upon receipt of the disclosure but not to exceed ten working days of receiving the disclosure.

6.2 The College Public Interest Disclosure Officer will advise the Employee that all information regarding their identity as a discloser will be protected to the fullest extent possible.

6.3 The College Public Interest Disclosure Officer will advise the Employee that they have a responsibility to protect information related to the disclosure and will make every attempt to protect the identity of those individuals involved in the alleged Wrongdoing to the fullest extent possible.

6.4 When a disclosure is received, the College Public Interest Disclosure Officer will review the disclosure to ensure the criteria outlined in 4.1 is included and will determine if the disclosure meets the following criteria:

a. The disclosure was made in good faith;

b. The disclosure falls within the definitions of Wrongdoing covered by the Act;

c. The Employee has reasonable belief that the information could show that a Wrongdoing has been or is about to be committed.

6.5 If the College Public Interest Disclosure Officer determines that there is a real and/or perceived conflict of interest in handling the disclosure, the disclosure will be forwarded to the President accordingly.

6.6 A disclosure must be reviewed promptly to determine if the matter disclosed represents a Wrongdoing as defined in the Act and to determine the appropriate action to be taken. Every effort will be made to complete the review and investigation if required, in a timely manner but within 60 working days from the initial receipt of disclosure. In instances where additional information is required this timeframe may be exceeded.

6.7 Investigations must be managed by the College Public Interest Disclosure Officer and if required, may be delegated according to the nature of the Wrongdoing (i.e., Police Services). The President can also delegate responsibility where required.

6.8 Investigations will be conducted promptly and in a confidential manner, with due regard for the protection of the identity of all individuals involved. The investigation will adhere to all principles of procedural fairness and natural justice.

6.9 The College Public Interest Disclosure Officer will document the outcome of the investigation in the disclosure file. If the investigation results in a finding of Wrongdoing, the disclosure file will include any recommendations of corrective actions to be taken. If the investigation results in a finding that no Wrongdoing has occurred, the file will include reasons why no corrective action was recommended or taken.

6.10 An employee who commits Wrongdoing is subject to appropriate disciplinary action.

## **7. ADVISING OF OUTCOME OF AN INVESTIGATION**

7.1 The College Public Interest Disclosure Officer will inform the disclosing Employee, the alleged wrongdoer and the President of the outcome within sixty days of the completion of an investigation. The Public Interest Disclosure Officer must include a note in the disclosure file, signed and dated, confirming this communication has occurred.

7.2 If the College Public Interest Disclosure Officer finds an investigation is not warranted, the reason for this determination and any action that has been taken is to be documented in writing in the disclosure file. The disclosing Employee and the President will be advised promptly that the review of the disclosure has been concluded.

## **8. WITHDRAWAL OF A DISCLOSURE**

8.1 If, after submitting a disclosure, the disclosing Employee wishes to withdraw the disclosure, the College Public Interest Disclosure Officer will determine whether further investigation of the alleged Wrongdoing is warranted and will advise the disclosing Employee to that effect.

8.2 In the event that a disclosure is withdrawn, the College Public Interest Disclosure Officer must determine whether any action regarding the subject matter of the disclosure needs to be taken. This action is independent of the disclosure process, and is to be determined on a case-by-case basis.

## **9. PROTECTION FROM REPRISAL**

9.1 There will be no Reprisal against an Employee if the Employee has, in good faith:

- A. sought advice about making a disclosure from his or her supervisor, the Public Interest Disclosure Officer, or the provincial Ombudsman;
- B. made a disclosure; or
- C. co-operated in an investigation under this Act.

9.2 If an Employee believes that there has been a reprisal due to his or her disclosure of Wrongdoing, he/she may seek redress by filing a written complaint to the Manitoba Labor Board.

## **10. FALSE STATEMENTS AND INTERFERENCE**

10.1 If a disclosure is deemed to have been false or misleading, an Employee may be subject to disciplinary action.

10.2 No employee shall willfully obstruct an investigation or the activities of any of the College Public Interest Disclosure Officer or any other person in carrying out their obligations under this policy and the act.

10.3 No person shall, knowing that a document or thing is likely to be relevant to an investigation, destroy, mutilate or alter the document or thing, falsify the document, conceal the document or thing, or direct, counsel or cause in any manner someone else to do any of the aforementioned activities.

10.4 Anyone who fails to abide by this policy may be subject to disciplinary action and/or prosecution under the act.

## **11. RESPONSIBILITIES**

11.1 Under the Act – the President as Chief Executive Officer has responsibility:

- To establish procedures to manage disclosures by employees
- To designate a senior official to be the designated officer
- To ensure that information about the Act and the disclosure procedures is widely communicated to employees of the organization
- To prepare a yearly report on any disclosures of Wrongdoing that have been made to a supervisor or designated officer

11.2 The College has the responsibility to oversee all aspects of the disclosure, investigation and reporting process of the Public Interest Disclosure Act.

11.3 The College Public Interest Disclosure Officer has responsibility to receive and deal with disclosures by employees of the organization including the handling and managing of investigations.

11.4 The **Supervisor of an Employee who makes a disclosure** has the responsibility to accept the disclosure and follow the procedures of this Policy to transfer the disclosure and disclosure file to the College Public Interest Disclosure Officer.