

UNIVERSITY OF MANITOBA PROCEDURE

Procedure:	SAFE DISCLOSURE (WHISTLEBLOWER)
Parent Policy:	Safe Disclosure (Whistleblower) Policy
Effective Date:	March 20, 2012
Revised Date:	March 20, 2018
Review Date:	March 20, 2028
Approving Body:	President
Authority:	
Responsible Executive Officer:	President
Delegate:	Vice-President (Administration)
Contact:	Vice-President (Administration)
Application:	Board of Governors members; Senate members; Faculty/ School Councils; Department Councils; Students; External Parties: Contractors, Vendors, Volunteers, Members of the Public; All Employees

Part I Reason for Procedure

- 1.1 This Procedure is intended to detail how the University will manage disclosures under *The Public Interest Disclosure (Whistleblower Protection) Act* and are secondary to the University's Safe Disclosure (Whistleblower) Policy.

Part II Procedural Content

- 2.1 All terms defined in the Act, or the Policy have the same meaning in this Procedure.
- 2.2 "Reprisal" means, in addition to the definition in the Act:
- (a) in the case of students, student discipline, academic penalties, or any measure that adversely affects his or her educational experience;

- (b) in the case of members of governing bodies, removal from the governing body, or any measure that adversely affects the ability of the member to fully participate in the governing body;
- (c) in the case of contractors or vendors, termination of contractual arrangements, withholding payments, or deeming them ineligible for future contract opportunities;
- (d) in the case of volunteers, any measure that adversely affects his or her volunteer experience, or deems them ineligible for future volunteer opportunities;
- (e) in the case of members of the public, any measure which adversely affects his or her ability to engage with the University or become a member of the University community; and
- (f) a threat to take any of the measures referred to above.

Designated Officer

- 2.3 The Designated Officer for the University will be the Vice-President (Administration).
- 2.4 The Designated Officer will take reasonable steps to educate the University community on the Act, the Policy, and this Procedure.

Referral by Designated Officer

- 2.5 If the subject matter of a Disclosure is such that it would be inappropriate for the Designated Officer to manage the matter, for reason of conflict of interest or any other reason, the Designated Officer may:
 - (a) Appoint any other employee of the University to act as an interim Designated Officer for the purposes of managing the particular Disclosure; or
 - (b) Refer the Disclosure to the Manitoba Ombudsman.
- 2.6 If a Disclosure is made which would more appropriately be investigated by another part of the Public Service (as defined in the Act), the Designated Officer may refer the matter to another designated officer in the appropriate office or institution.
- 2.7 Any referrals shall be made with notice to the Person making the Disclosure.

Receipt of Disclosures

- 2.8 A Person may seek advice on making a Disclosure from the Designated Officer. A request for advice must be made in writing.
- 2.9 A Person must make a Disclosure,
- (a) in writing;
 - (b) containing, at a minimum, the information required by the Act; and
 - (c) without containing information prohibited by the Act.
- 2.10 A Disclosure may be made to:
- (a) In the case of an employee, to the Person's supervisor;
 - (b) In the case of a student, to the Department Head, Dean, or Provost; or
 - (c) In the case of any Person (including employees and students), to the Designated Officer.
- 2.11 Where a Disclosure is not received by the Designated Officer, the individual receiving the Disclosure will:
- (a) Attempt to informally resolve the issues of concern in the Disclosure, thereafter, reporting the Disclosure and the resolution to the Designated Officer; and
 - (b) If the Disclosure cannot be informally resolved within 14 days of receipt, forward the Disclosure to the Designated Officer. The Designated Officer will note the time and date of receipt.
- 2.12 In the alternative to making a Disclosure as contemplated in this Procedure, a Person may make a Disclosure to the Manitoba Ombudsman in accordance with the Act. If a Disclosure is made both to the Manitoba Ombudsman and the University, the Designated Officer may choose not to review and investigate the matter under this Procedure, referring it instead to the Manitoba Ombudsman pursuant to subsections 2.5 to 2.7 of this Procedure.

Initial Review of Disclosures

- 2.13 The Designated Officer will review all Disclosures (the "Initial Review") within 14 days of receipt.
- 2.14 A Disclosure will be accepted after Initial Review if, in the opinion of the Designated Officer, the Disclosure:
- (a) Was made in good faith, and is not frivolous or vexatious;

- (b) Deals with Wrongdoing to which the Act applies;
 - (c) Indicates reasonable grounds to believe that Wrongdoing has or may occur;
 - (d) Should not be referred to the Manitoba Ombudsman or another part of the Public Service; and
 - (e) Has not already been (or is not in the process of being) investigated under the Act, the Policy, a collective agreement, or any other policy or procedure which would deal comprehensively with the Wrongdoing alleged in the Disclosure.
- 2.15 The Person will be informed in writing as to the results of the Initial Review, including where a Disclosure is rejected, the reasons for such rejection. The Designated Officer may, but is not required to, advise an individual accused of Wrongdoing that a Disclosure was made and rejected on Initial Review.
- 2.16 A Disclosure which is rejected will require no further action by the Designated Officer or the University.

Investigation of Disclosures

- 2.17 The Designated Officer will immediately cause an investigation to be conducted into any Disclosure accepted after Initial Review (the “Investigation”).
- 2.18 The Designated Officer will appoint one or more individuals as Investigator(s) (the “Investigator”) to conduct the Investigation. In appointing an Investigator, the Designated Officer will consider the skills necessary to conduct the particular Investigation, and the potential for any conflict of interest. The Investigation may be conducted by:
- (a) The Designated Officer;
 - (b) An employee of the University; or
 - (c) An external contractor, under appropriate terms and conditions.
- 2.19 The Investigator may conduct the Investigation in any manner he or she deems appropriate to the nature of the particular Disclosure and the seriousness of the issues involved. This may include some or all of:
- (a) Interviewing witnesses in person;
 - (b) Asking questions of witnesses in writing (including by email);
 - (c) Reviewing documents (both paper and electronic);
 - (d) Reviewing photographs, audio, and video recordings;

- (e) Examining physical evidence;
 - (f) Arranging for testing of physical evidence; and/or
 - (g) Accessing electronic systems.
- 2.20 The Investigator may set reasonable timelines for individuals to respond to requests for assistance with the Investigation.
- 2.21 The Investigator will conduct the Investigation in accordance with the principles of procedural fairness and natural justice. In particular, the Investigator will consider that:
- (a) The Person must be provided an opportunity to explain and provide evidence in support of the Disclosure;
 - (b) Those individuals who are alleged to have been involved in Wrongdoing must be informed of the essential nature of the allegations against them, including where necessary, having access to documentary and other evidence, and in some cases (subject to subsections 2.33 to 2.36 of this Procedure) the identity of the Person;
 - (c) Those individuals who are alleged to have been involved in Wrongdoing must be provided an opportunity to respond to the allegations;
 - (d) While strict rules of evidence do not apply, appropriate weight must be given to evidence based on its credibility and reliability; and
 - (e) Witnesses (including those Persons who may have made a Disclosure or may be the subject of a Disclosure) may consult with or respond through an advocate (which may include legal counsel, a union representative, or a Student Advocate, as may be appropriate).
- 2.22 An Investigation must normally be completed within 30 days of the Disclosure being assigned to the Investigator. The Investigator may apply to the Designated Officer for an extension of time of up to 30 days. An Investigator may make multiple applications for extensions, but extensions may be granted at a maximum of 30 days at a time. The Person will be informed in writing of any extensions granted.
- 2.23 If in the course of an Investigation, an Investigator discovers that another Wrongdoing may have been committed, the Investigator may apply to the Designated Officer to expand the scope of the Investigation.
- 2.24 Nothing herein is intended to restrict the Designated Officer and the University from taking immediate steps to contain or prevent Wrongdoing. In such a case, the Investigation will still be completed in accordance with this Procedure.

Confidentiality

- 2.25 The Designated Officer (and/or Investigator) will maintain separate files in regard to each Disclosure or each time advice is sought on a potential Disclosure. Paper files will be secured in a locked location to which only the Designated Officer (and/or Investigator) and his or her confidential assistant have access. Electronic files will be stored in locations with reasonable security, and password access limited to the Designated Officer (and/or Investigator) and his or her confidential assistant.
- 2.26 A persons involved in the Investigation, whether as a witness or retrieving relevant information or documents, must keep confidential:
- (a) the existence and nature of the Investigation; and
 - (b) any information or documentation obtained as a result of the Investigation.
- which information may not be disclosed, except with the consent of the Investigator or Designated Officer.
- 2.27 Notwithstanding subsection 2.26, such information may be disclosed:
- (a) As necessary to obtain confidential professional advice (including advice or representation from a lawyer, union representative, or Student Advocate, as may be appropriate); or
 - (b) By an individual accused of Wrongdoing, only as may be reasonably necessary in order to gather witnesses, documents, or other evidence, provided that all those consulted are advised that they are consequently participating in an Investigation and governed by the rules of confidentiality herein.
- 2.28 The obligation of confidentiality herein is not intended to prevent an individual from using information obtained independent of the Investigation in another forum (including a grievance, appeal hearing, or other administrative process), even if the issues involved are related to the Investigation.
- 2.29 Upon conclusion of an Investigation, information made public (through the annual report or otherwise) may be discussed or disclosed only to the extent that it is publicly available.
- 2.30 The Investigator will advise all persons involved in an Investigation as to their obligations regarding confidentiality, and the protections available to them.
- 2.31 The Designated Officer shall cause the University to include in its annual report the information required by the Act. To the extent possible, confidential information and personal information will be omitted from the annual report.

- 2.32 Nothing herein is intended to prevent the Designated Officer or the Investigator from using the services of a confidential administrative assistant or secretary, or from consulting with and obtaining advice, on a confidential basis, from experts relevant to the issue, including auditors, accountants, and lawyers (whether internal or external to the University).

Protection of Identity

- 2.33 Subject to the other provisions this Procedure, the University will take reasonable steps to protect the Identity of the Person making the Disclosure, the individuals alleged to have engaged in Wrongdoing, and others involved in the Investigation.
- 2.34 Except as determined by the Investigator or the Designated Officer, no person is entitled to information regarding:
- (a) The identity of the Person making the Disclosure, unless the principles of procedural fairness and natural justice, or a collective agreement, require such disclosure;
 - (b) The identity of any other person(s) involved in the Investigation, unless the principles of procedural fairness and natural justice, or a collective agreement, require such disclosure;
 - (c) At the conclusion of the Investigation, the identify of any individual(s) who are concluded to have engaged in Wrongdoing; nor
 - (d) Any discipline taken against individuals who are concluded to have engaged in Wrongdoing.
- 2.35 The University (including the Investigator and the Designated Officer) cannot guarantee complete anonymity to persons participating in an Investigation, and may be required to disclose identifying information:
- (a) In order to comply with the principles of procedural fairness and natural justice, or a collective agreement, in conducting the Investigation;
 - (b) In order to decide upon and implement discipline, mitigation steps, or remedial measures;
 - (c) In order to implement due diligence to prevent similar or related Wrongdoing in the future; or
 - (d) In order to comply with legal, regulatory, or contractual obligations.
- 2.36 In considering the release of identifying information, the University will reflect on the potential for Reprisal and other threats against the subject individual.

Protection from Reprisal

- 2.37 A Person making a Disclosure, a witness, or any other person cooperating with an Investigation is entitled to be protected from Reprisal, as defined in the Act, the Policy, and this Procedure.
- 2.38 In addition to the processes outlined in the Act, an individual may complain about an alleged Reprisal to the Designated Officer. The Designated Officer will consider the allegation, and if in his or her opinion the allegation is substantiated, take reasonable steps to remedy the Reprisal.
- 2.39 If an individual is not satisfied with the Designated Officer's response or ability to remedy an alleged Reprisal, the individual may challenge the Reprisal as follows:
- (a) In the case of employees in a certified bargaining unit, through the grievance procedures of the relevant collective agreement; or
 - (b) in the case of students, through the appeal process provided for in the Student Discipline By-law, the Academic Appeal procedures, or any other applicable discipline or academic appeal route.
- 2.40 It is not a Reprisal for the University to implement discipline or take other measures against an Employee or other person, if:
- (a) The person has engaged in conduct which may constitute an offence under the Act;
 - (b) The person has materially breached the Policy or Procedure; or
 - (c) The person is otherwise deserving of discipline.
- 2.41 Even where a Person indicates that he or she wishes to withdraw a Disclosure (including for fear of Reprisal or being identified), the Designated Officer may determine that the issue is important enough that an Investigation must continue.

Reports on Investigations

- 2.42 Prior to concluding the Investigation, the Investigator will issue a Report (the "Report") to the Designated Officer.
- 2.43 The Report will contain, at a minimum, the following:
- (a) A summary of the Disclosure and the alleged Wrongdoing;
 - (b) A summary of the process used in the Investigation;
 - (c) A summary of the key evidence obtained through the Investigation;

- (d) A conclusion as to whether Wrongdoing has been or is likely to be committed, including identifying which individuals were/are involved in the Wrongdoing;
 - (e) A summary of the reasons for the conclusion; and
 - (f) Recommendations regarding discipline, mitigation steps, or remedial measures.
- 2.44 The Designated Officer may request the Investigator to prepare two or more different versions of the Report for the purposes of protecting confidentiality and protecting the identity of persons involved in the Investigation in accordance with this Procedure.
- 2.45 The Designated Officer will provide an appropriate version of the Report, within 30 days of the conclusion of the Investigation, to:
- (a) The Person making the Disclosure;
 - (b) All persons which the Report concludes engaged in Wrongdoing; and
 - (c) All such other persons at the Designated Officer believes necessary to decide upon and implement discipline, mitigation steps, or remedial measures;
 - (d) All such persons as the Designated Officer believes necessary to implement due diligence to prevent similar or related Wrongdoing in the future; and
 - (e) In order to comply with legal, regulatory, or contractual obligations.

Other Provisions

- 2.46 All other processes and procedures not otherwise addressed in this Procedure shall be undertaken in accordance with the Act.
- 2.47 Where the Designated Officer decides to conduct an Investigation him/herself, the Designated Officer may still make the discretionary decisions outlined in this Procedure, including the granting of extensions or expanding the scope of the Investigation.
- 2.48 Nothing herein is intended to prevent or discourage a Person from making a Disclosure to the Manitoba Ombudsman, as described in the Act.

Part III Accountability

- 3.1 The Office of Legal Counsel is responsible for advising the President that a formal review of this Procedure is required.
- 3.2 The Vice-President (Administration) is responsible for the implementation, administration, and review of this Procedure.
- 3.3 Board of Governors members, Senate members, Faculty/School Councils, Students, External Contractors, Vendors, Volunteers and Employees are responsible for complying with this Procedure.

Part IV Review

- 4.1 Governing Document reviews shall be conducted every ten (10) years. The next scheduled review date for this Procedure is March 20, 2028.
- 4.2 In the interim, this Procedure may be revised or repealed if:
 - (a) the President for Approving Body deems it necessary or desirable to do so;
 - (b) the Procedure is no longer legislatively or statutorily compliant;
 - (c) the Procedure is now in conflict with another Governing Document; and/or
 - (d) the Parent Policy is revised or repealed.

Part V Effect on Previous Statements

- 5.1 This Procedure supersedes all of the following:
 - (a) all previous Board/Senate Procedures, and resolutions on the subject matter contained herein;
 - (b) all previous Administration Procedures, and resolutions on the subject matter contained herein; and
 - (c) all previous Faculty/School Council Procedures stemming from the Faculty/School Council Bylaw and academic and admission Regulations and any resolutions on the subject matter contained herein.

Part VI
Cross References

6.1 This Procedure should be cross referenced to the following relevant Governing Documents, legislation, and/or forms:

- (a) [Safe Disclosure \(Whistleblower\) Policy](#)