

**National Research Council of Canada (NRC)
Procedures for Disclosures Pursuant to
the Public Servants Disclosure Protection Act**

Introduction

Canadians have the right to expect NRC employees and all public servants to behave ethically and in accordance with their legal obligations.

To encourage and support these values, NRC is committed to fostering an environment in which employees may honestly and openly raise ethical and legal concerns without fear or threat of reprisal consistent with the *Public Servants Disclosure Protection Act* (PSDPA) which came into force on April 15, 2007.

The goal of the PSDPA is to encourage employees in the federal public sector, including those employed by NRC to come forward if they have reason to believe that serious wrongdoing has taken place or is taking place. The PSDPA protects against reprisal and provides a fair and objective process to respect those accused of wrongdoing.

1. APPLICATION AND DEFINITIONS

The PSDPA applies to the broader federal public sector. Separate agencies such as NRC and parent Crown corporations are therefore covered under the Act.

The Terms “Public Servant” and “Public Sector Employee” used in this document are thus deemed to include NRC employees.

The definition of wrongdoing is not restricted to activities of NRC employees and includes any wrongdoing in or in relation to the organization (for example, by members of the NRC Council or advisory boards, or by guest researchers).

All Canadians, not only NRC employees, have the right to report wrongdoing in or in relation to NRC without fear of reprisal.

1.1 Wrongdoing - Definition

The definition of wrongdoing relates to *serious violations* that go against the public interest or that of the organization.

Under the PSDPA, wrongdoing is further defined as a

- contravention of any law;
- the misuse of public funds or a public asset;
- gross mismanagement in the public sector;
- a serious breach of code of conduct;
- an act or omission that creates a substantial and specific danger to the life, health or

safety of persons, or to the environment; or

- knowingly directing or counseling a person to commit wrongdoing.

1.2 Protected Disclosure – Definition

“Protected disclosure” means a disclosure that is made in good faith and that is made by a public servant :

- In accordance with the *PSDPA*;
- In the course of a parliamentary proceeding;
- In the course of a procedure established under any other Act of Parliament; or
- When lawfully required to do so.

A disclosure made to the public – for example to the media – will not be a protected disclosure unless there is not enough time to make the disclosure using the internal or Public Servant Integrity Commissioner (PSIC) processes and the employee believes that there is a serious breach of federal or provincial laws, or an imminent risk of a substantial and specific danger to the life, health and safety of persons, or to the environment.

1.3 Reprisals under the PSDPA

For NRC employees a “reprisal” is any measure taken against an NRC employee because the employee has made a protected disclosure or has, in good faith, co-operated in an investigation into a possible wrongdoing.

Such reprisal measures would include:

- A disciplinary measure;
- Demotion of the employee;
- Termination of employment;
- Any measure that adversely affects the employment or working conditions of the public servant; or
- A threat to do any of those things or to direct someone else to do them.

For the public, any person who, in good faith, provides information to the PSIC about a possible wrongdoing at NRC is also protected under the Act.

The Act prohibits employers from retaliating against their own employees for having provided information about possible wrongdoing . The Act also prohibits NRC from retaliating against contractors or recipients of grants because that person or their employee has provided information to the PSIC.

Under the Act, a reprisal is not included in the definition of wrongdoing. It is treated as a distinct prohibition.

2.0 ROLES AND RESPONSIBILITIES

2.1 NRC President

The President, as deputy head, must designate a Senior Officer for the purposes of the Act and must establish an internal mechanism to deal with disclosures of possible wrongdoing and takes appropriate measures to correct situations when needed.

The Act includes reporting obligations for the organization with respect to disclosures (See Reports Section in this document for details):

- To make information available to the public in cases where wrongdoing is found as a result of a disclosure.
- Within 60 days of the end of each fiscal year, to submit a report to the Canada Public Service Agency, with respect to any disclosures made in accordance with the Act to supervisors or the designated Senior Officer in the organization.

NRC should have the necessary mechanisms for collecting the statistical information.

2.2 Secretary General (Senior Officer)

The NRC Secretary General has been designated as the Senior Officer at NRC for the purposes of this Act and the term “Senior Officer” is deemed to mean the Secretary General in this document.

The NRC Senior Officer’s duties will include the handling of disclosures of wrongdoing under the Act. The NRC Senior Officer should:

- Occupy a senior position within the organization;
- Advise on the PSDPA and relevant legal and policy frameworks; and
- Be able to carry out or manage administrative investigations.

The role of the Senior Officer in this context is further defined by the Disclosure Process set out in this document.

2.3 NRC Managers and supervisors

NRC managers and supervisors at all levels should:

- Be aware of their roles and responsibilities under the Act;
- Show visible leadership in fostering an ethical culture or a culture of right-doing through their professional conduct and the integration of NRC values in the daily work environment and through steps to maintain a work environment in which employees feel safe to raise issues and report perceived wrongdoing;
- Inform employees about the PSDPA, their options for making disclosures, the protection the PSDPA provides and ways to obtain more information;

- Receive disclosures of wrongdoing from employees;
- Follow the procedures established at NRC to receive and deal with the disclosure at the supervisors' level;
- Protect the identity of those involved in the disclosure process to the extent possible by keeping disclosure records separate from existing files and by only revealing information about the disclosure and the person who made the disclosure to investigators or to the Senior Officer or as otherwise directed by the Senior Officer;
- Outline to the employee the steps that will be taken in response to a disclosure;
- Protect from reprisal the employee who discloses wrongdoing or who is involved in a disclosure investigation; and
- Collect the information needed to satisfy the requirements on annual reports on internal disclosures.

2.4 NRC Employees

All NRC employees are required to:

- Be familiar with the NRC Code of conduct;
- Be familiar with the main provisions of the Act (mechanisms for disclosure, confidentiality provisions, and reprisal protection measures);
- Know what constitutes wrongdoing under the Act;
- Understand the choices in making a protected disclosure;
- Know what to do in case of possible reprisals; and
- Know where to get information and advice.

3.0 DISCLOSURE PROCESS

3.1 Ambiguous situations

When an employee is unsure whether a situation constitute a serious wrongdoing as defined by the Act, the following questions may assist:

- Does this situation affect the public interest? If so, is disclosure under the Act the only channel for resolution?
- Is this about a human resources issue, such as staffing, a collective agreement matter, or a matter of harassment? If so, talking with the supervisor, the human resources advisor or the bargaining agent may be the most appropriate starting point.

If the employee is unsure, the employee should contact his or her supervisor, the NRC Senior Officer or the Office of the Public Sector Integrity Commissioner.

The Senior Officer must provide advice and recommendations to an employee that considers making a disclosure, upon the employee's request.

3.2 Identity of the discloser

The person who makes a disclosure must identify him or herself. A disclosure may be done verbally or in writing. A verbal disclosure should be made available as a transcript or otherwise in writing as soon as possible and be signed by the person that provided the information.

3.3 Anonymous disclosures

The PSDPA does not prohibit anonymous disclosure (e.g., a “brown envelope” disclosure). But anonymous disclosures are not a disclosure made under the Act. As a result, protections against reprisal and provisions respecting protection of information are not available to those who make an anonymous disclosure.

3.4 Disclosure made through a representative

A disclosure made through a representative (e.g., a union representative or third-party organization) would not provide the direct protections of the Act to the NRC employee who requests that a disclosure be made on his or her behalf. If a representative makes the disclosure, it would be the representative who would be counted as the discloser under the Act.

3.5 Media or other type of Public Disclosure

A disclosure made to the public (for example, via the media) will not be a protected disclosure (will not have the protection offered by the Act) unless there is clearly not enough time to make the disclosure using the process described in the Act, and unless the person making the disclosure believes that there is a serious breach of federal or provincial laws, or an imminent risk of a substantial and specific danger to the life, health and safety of persons, or to the environment.

Employees should also be aware that anyone who chooses to make a disclosure by any other means than what is specified in the Act, as with anonymous disclosures, may not be entitled to the protections of the Act.

3.6 Making a disclosure

An NRC employee may make a disclosure to :

- His or her supervisor;
- The NRC Senior Officer;
- The Public Sector Integrity Commissioner (PSIC).

A disclosure can be made in accordance with the Act even if the discloser does not specify at the time of the initial disclosure that they are doing so under the Act, and even if the supervisor or the Senior Officer receiving the disclosure does not specify that the Act applies to the disclosure.

The NRC will treat any disclosure made by a public servant as having been made under the Act, provided the disclosure is made to the public servant's supervisor, the Senior Officer, or the PSIC and provided that in making a disclosure of wrongdoing, public sector employees provide no more information than is necessary to make the disclosure while covering the following:

1. the nature of the wrongdoing;
2. name of the person(s) alleged to have committed the alleged wrongdoing;
3. date and description of the alleged wrongdoing, and any other relevant information;
4. their name, telephone number and address in order that the Senior Officer or the Commissioner's office may contact them for more information

Employees must also follow established organizational procedures or practices for the secure handling, storage, transportation and transmission of information or documents.

For guidance in handling of Sensitive Information and information on the special provisions and restrictions related to sensitive and special operating information see the annexes to this document.

Once a disclosure has been made, the person who has made the disclosure shares in the responsibility to maintain confidentiality with respect to the disclosure and may limit or eliminate the reprisal protections available to the person who made the disclosure.

3.7 Disclosures made to a supervisor

A supervisor may look into the matter raised by a disclosure or refer the disclosure to the NRC's Senior Officer.

The supervisor (or Senior Officer) may decide that:

- the disclosure should be dealt with under another process, such as the grievance process or through other recourse mechanisms.
- The disclosure does not suggest a possible serious wrongdoing but concerns cases that are minor in nature and fall within the supervisor's authority and responsibility to address as manager of the work unit.

If in doubt, the Supervisor can seek advice from NRC's Senior Officer.

Nevertheless, NRC supervisors should note that if the public servant who originally provided the information later files a complaint alleging subsequent reprisal, the initial provision of information to the supervisor may be interpreted as a disclosure made under the Act.

If the supervisor believes the employee's information concerns a potential wrongdoing as defined under the Act, the supervisor should treat it as a disclosure and refer the file to the Senior Officer.

3.8 Disclosure to the Senior Officer

An employee can make a disclosure directly to NRC's Senior Officer. The Senior Officer

- will protect the identity of the employee and that of others involved in the disclosure process, subject to certain reasonable limits;
- will review the disclosure to determine if there are sufficient grounds to investigate;
- will inform the employee in writing if there will be no further action;
- will ensure that disclosures will be investigated by a neutral and professional investigator, respecting the rights of all those involved;
- will ensure that cases concerning criminal activity will be referred to the appropriate law enforcement authority; and
- will maintain good lines of communication with the discloser and offer support if necessary.

If an employee makes a disclosure to NRC Senior Officer, the Senior Officer cannot refer the disclosure to the PSIC as the decision to refer the matter to the PSIC is the employee's choice.

Once an investigation is complete, the Senior Officer will review the results of the investigation, and provide the findings and make any appropriate recommendations to the President of NRC.

The Senior Officer will provide written information to the discloser regarding the outcome of the disclosure investigation.

3.9 Disclosures made to the Public Sector Integrity Commissioner (PSIC)

An NRC employee is free to go directly to the PSIC to make a disclosure or to seek advice. There is no requirement that an employee make a disclosure first within the organization.

An NRC employee who has made a disclosure within NRC and who does not believe it was adequately dealt with, may make a subsequent disclosure to the PSIC on the matter. This must be done at the employee's initiative.

The fully independent PSIC is an Agent of Parliament with all the powers of investigation under Part II of the *Inquiries Act*.

The PSIC has the authority to investigate, report his or her findings, make recommendations on corrective measures to the President of NRC and review reports on measures taken in response to his/her recommendations.

The PSIC will protect information related to identity to the discloser and that of others involved, subject to applicable laws and certain legal principles.

The PSIC has the right to refuse to deal with a disclosure or to start an investigation, and to stop an investigation, if he or she believes that, for example, the matter should be dealt with

under another process, such as the grievance process; the matter is not serious enough or that the disclosure was not made in good faith.

The PSIC will inform the President of NRC when starting an investigation in relation to NRC. The PSIC may also notify others about the investigation, including those whose action or conduct has been called into question.

The PSIC does not have to hold hearings but if it appears likely that his/her recommendations may adversely affect an individual or NRC, that individual or the President of NRC will be given the opportunity to answer any allegation.

The PSIC will write a public report regarding an investigation that leads to a finding of wrongdoing and may request that the President of NRC notify him or her within a specified time of action taken or proposed to implement the report's recommendation or why no action has or will be taken. The PSIC may also report on an investigation to the NRC Council.

3.10 Legal Advice

A person involved in a disclosure process may have a limited free access to legal counsel for advice. This service is administered by the Public Sector Integrity Commissioner (PSIC). Certain conditions must be met.

A person considering making a disclosure within NRC can also obtain free legal advice by presenting a request to the PSIC provided the required conditions are met.

Persons who think they are targeted, or who are targeted by a disclosure, an investigation or a complaint related to reprisals, may also get some legal advice about their responsibilities, obligations and rights in the process through the PSIC.

Non NRC employees who believe they have suffered retaliation after providing information to the PSIC may apply to the PSIC to obtain free legal advice if they meet the criteria under the PSDPA.

3.11 Reprisal complaints

NRC will protect the persons who have made a disclosure in good faith from reprisal. Tools to protect the persons making disclosures against reprisal include measures to safeguard their identity to the extent possible under the PSDPA.

If an employee has a concern about possible reprisal, the employee should contact the Senior Officer immediately for advice on measures that can be taken to address the situation in a timely way.

As described above, a reprisal can involve several measures such as demotion, termination of employment, actions that adversely affect employment or working conditions, or a threat to do any of those things or to direct someone to do them.

If it becomes known in the workplace that an employee has made a disclosure, it is possible,

with the employee's consent, to temporarily re-assign the employee to protect the employee from potential reprisal. The subject of the disclosure may also be temporarily re-assigned.

If an employee feels a reprisal has been taken, he should contact the PSIC. The PSIC is the only route under the PSDPA for making reprisal complaints. Alternatively, the employee can choose to deal with the matter through the grievance process or through another recourse process, if applicable.

All formal reprisal complaints must be made directly to the PSIC within 60 days of the public servant becoming aware that a reprisal may have occurred.

If the PSIC accepts to deal with the complaint (PSIC can refuse in certain situations), the PSIC will conduct an investigation. The PSIC may also appoint a conciliator to attempt to bring about a settlement.

If no settlement is reached and if the reprisal investigation warrants it, the PSIC may refer the matter to the Public Servants Disclosure Protection Tribunal.

The Tribunal, which is composed of Federal Court or provincial superior court judges, will determine if a reprisal occurred, and if so, it can order a range of remedial action, including: reinstatement and compensation, as well as disciplinary action for those who have taken a reprisal.

Non public servants who believe they have suffered retaliation after providing information to the PSIC about possible wrongdoing in the federal public sector may have their complaints dealt with through existing recourse mechanisms applicable to their situation (grievance or other labor relations processes that ordinarily apply to them.) Non public servants may apply to the PSIC to obtain free legal advice if they meet the criteria under the PSDAP.

4.0 ACCESS TO INFORMATION AND PRIVACY CONSIDERATIONS

Encouraging disclosures and protecting reputations:

- Protection of disclosure records, including the identity of the discloser and witnesses, is critical to ensuring that public servants and all persons involved in a disclosure process feel protected in reporting possible wrongdoing.
- The *Access to Information Act (ATIA)*, the *Privacy Act (PA)* and the *Personal Information Protection and Electronic Documents Act (PIPEDA)* have been modified to offer broad protection for records containing information obtained and created in relation to a disclosure or a disclosure investigation.
- To the extent possible, the PSDPA also protects the reputations of persons alleged to have done wrong, but who are cleared of any wrongdoing.

Supervisors, the NRC Senior Officer and NRC President should consult at an early stage after the receipt of a disclosure with the organization's experts responsible for the collection, retention and protection of information to ensure that organizational policies, procedures and guidelines are also followed, and to support an effective disclosure regime.

All records gathered related to a disclosure of wrongdoing or an investigation should ultimately be given to and kept under the control of the Senior Officer. This will help to ensure accuracy in reporting and to lessen the risk of release of information contrary to ATIA, PA and PIPEDA provisions related to the PSDPA.

5.0 INTERNAL INVESTIGATION

An investigation is a systematic process of gathering evidence in order to prove or disprove the validity of a set of allegations. An internal administrative investigation of wrongdoing is a distinct and independent process from a criminal investigation. An investigator is required to obtain and evaluate information regarding the circumstances and facts surrounding an allegation or set of allegations in a fair and impartial manner. Based on a balance of probabilities or a preponderance of the evidence, the investigator will determine if the allegations are founded, unfounded or partially founded.

The internal investigation must be timely, objective, in accordance with fairness and due process, systematic, orderly, planned, discrete, maintain confidentiality and protect sensitive information and, must result in timely corrective action.

5.1 Role of the NRC Senior Officer

In the majority of cases, the Senior Officer has three main responsibilities with respect to investigations:

- Receiving, screening, and preliminary analysis of disclosures of wrongdoing allegations;
- Selecting, mandating and managing the investigation team; and
- Reviewing the report of the investigators' findings, and making recommendations to the President of NRC.

Rarely will the Senior Officer conduct or lead the investigation him or herself, but personnel working for the Senior Officer may conduct the investigation directly on his or her behalf.

Annex 1 presents the investigation process, stage by stage.

5.2 Sanctions for someone who is found to have committed a wrongdoing

Specific sanctions will depend on the type and seriousness of the wrongdoing. In addition to seeking any sanctions that may be required by law, the President of NRC has authority to apply administrative and disciplinary penalties. The range of options for sanctions includes the return of all monies, financial penalties, reprimands, suspensions, demotions and termination of employment.

6.0 REPORTS

6.1 Public Reporting

The PSDPA includes the provision for public reporting. If a disclosure to a supervisor or the senior officer leads to a finding of wrongdoing, the NRC President must promptly:

- Provide public access to information that describes the wrongdoing;
- Indicate any recommendations that result from the finding of wrongdoing; and
- Report on any corrective action taken as a result of the wrongdoing.

Reporting this information is in addition to the annual requirement to report to the Canada Public Service Agency (CPSA) on activity under the Act, as described below.

In describing the wrongdoing, the Act allows that, if not otherwise restricted by any other statute, the President of NRC may include information that might identify the person who committed the wrongdoing, only if required to describe the wrongdoing adequately. In those cases where it is not necessary to identify the wrongdoer, caution must be taken not to identify them inadvertently through other facts provided, such as by publication of their job title.

The Act does not specify the means of “public access” that President of NRC must offer regarding a finding of wrongdoing, but the text of the Act suggests that the information should be made available in a form that a member of the public could find it if making reasonable efforts. Making the information available only on request, via the provisions of the *Access to Information Act*, would not suffice, since it requires a formal request for the information to be released.

Moreover, the Act specifies that information must be made available promptly. Reporting any finding of wrongdoing should be proactive, for example by:

- Publishing the information on a web site; or
- Including the information in another document produced by the organization provided that the other document satisfies the requirement to report promptly.

Another consideration for NRC President is the Act’s provision that any wrongdoing found “as a result of a disclosure” must also be reported publicly.

This means that any wrongdoing not described in the initial disclosure, but uncovered through the investigation, must also be reported.

6.2 Requirements for CPSA

Within 60 days of the end of each fiscal year, the NRC President must submit a report to CPSA with respect to all disclosures made to supervisors or Senior Officers in their organization. The following information should be included:

- The number of enquiries received related to the Act;
- The number of disclosures received under the Act and whether they were acted upon;
- The number of investigations commenced;
- Whether any systemic problems were found that lead to wrongdoing.

Contact Information

NRC Senior Officer
Secretary General
613-998-4579
disclosure@nrc.gc.ca

Public Sector Integrity Canada
60 Queen Street, 7th Floor
Ottawa ON K1P 5Y7
<http://www.psic-ispcc.gc.ca/index.php?lang=en>
Telephone 613-941-6400
Toll Free 1-866-941-6400
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Acronyms

ATIA	Access to Information Act
CPSA	Canada Public Service Agency
NRC	National Research Council
PA	Privacy Act
PIPEDA	Personal Information Protection and Electronic Documents Act
PSDPA	Public Servants Disclosure Protection Act
PSIC	Public Servant Integrity Commissioner

References

Public Servants Disclosure Protection Act
<http://laws.justice.gc.ca/en/showtdm/cs/P-31.9>

The Office of Public Service Values and Ethics has published various information documents on this topic:

http://www.psagency-agencefp.gc.ca/veo-bve/psdpa-lpfdar/index_e.asp

Security of Information Act
<http://laws.justice.gc.ca/en/showtdm/cs/O-5>

Privacy Act
<http://laws.justice.gc.ca/en/showtdm/cs/P-21>

Annex 1

Authorizations and restrictions to the type of information public servants may provide to disclose a wrongful act

When making a disclosure

The PSDPA contains several provisions that permit or restrict the kind of information that public sector employees can provide when making a disclosure of wrongdoing.

Generally, a public servant may disclose any information to the Public Sector Integrity Commissioner (PSIC) that the public servant believes could show wrongdoing has been committed or is about to be committed, or that could show that the public servant has been asked to commit a wrongdoing **with the following exceptions:**

- In making a disclosure of wrongdoing, public sector employees must provide no more information than is necessary to make the disclosure;
- Employees must follow established organizational procedures or practices for the secure handling, storage, transportation and transmission of information or documents;
- Employees can disclose information that is otherwise restricted under other Acts of Parliament except those set out in schedule 3 of the PSDPA, which could be highly injurious if the information is released. This includes information gathered under the *Canadian Security Intelligence Service Act*, section 18; the *DNA Identification Act*, section 6; the *Sex Offender Information Registration Act*, section 16; the *Witness Protection Program Act*, section 11; and the *Youth Criminal Justice Act* section 129;
- Cabinet confidences and any solicitor-client privileges cannot be disclosed;
- Employees cannot disclose information that is special operational information within the meaning of subsection 8(1) of the *Security of Information Act* (Annex A);
- Persons employed in the Office of the Auditor General of Canada, the Office of the Commissioner of Official Languages, the Office of the Information Commissioner of Canada, or the Office of the Privacy Commissioner of Canada as named in schedule 2 of the PSDPA may disclose information only if the wrongdoing to which the information relates involves the portion of the public sector in which he or she is employed;
- There is special provision within the Act to allow the dissemination of news and information by the Canadian Broadcasting Corporation.

Public Disclosures

- All existing provisions created by or under any other Act of Parliament that restrict the release or disclosure of information continue to apply in the case of public disclosures made under the PSDPA.

Annex 2

Definitions of “Special Operational Information” and “Persons Permanently Bound to Secrecy” from the *Security of Information Act*, Section 8(1)

A "person permanently bound to secrecy" means

- a. a current or former member or employee of a department, division, branch or office of the federal public administration, or any of its parts, set out in the relevant schedule to the PSDPA; or
- b. a person who has been personally served with a notice issued under subsection 10(1) in respect of the person or who has been informed, in accordance with regulations made under subsection 11(2), of the issuance of such a notice in respect of the person.

"special operational information" means information that the Government of Canada is taking measures to safeguard that reveals, or from which may be inferred:

- a. the identity of a person, agency, group, body or entity that was or is intended to be, has been approached to be, or has offered or agreed to be, a confidential source of information, intelligence or assistance to the Government of Canada;
- b. the nature or content of plans of the Government of Canada for military operations in respect of a potential, imminent or present armed conflict;
- c. the means that the Government of Canada used, uses or intends to use, or is capable of using, to covertly collect or obtain, or to decipher, assess, analyse, process, handle, report, communicate or otherwise deal with information or intelligence, including any vulnerabilities or limitations of those means;
- d. whether a place, person, agency, group, body or entity was, is or is intended to be the object of a covert investigation, or a covert collection of information or intelligence, by the Government of Canada;
- e. the identity of any person who is, has been or is intended to be covertly engaged in an information- or intelligence-collection activity or program of the Government of Canada that is covert in nature;
- f. the means that the Government of Canada used, uses or intends to use, or is capable of using, to protect or exploit any information or intelligence referred to in any of paragraphs (a) to (e), including, but not limited to, encryption and cryptographic systems, and any vulnerabilities or limitations of those means; or
- g. information or intelligence similar in nature to information or intelligence referred to in any of paragraphs (a) to (f) that is in relation to, or received from, a foreign entity or terrorist group.

Annex 3

The Investigation Process: General Stages of the Investigation

1. Initiation Stage (Receipt, screening, and preliminary analysis of disclosures of wrongdoing allegations)

1.1 Receiving and screening the disclosure: The Senior Officer must ensure that the allegation or set of allegations received from the discloser is clear enough to prepare terms of reference or a mandate for the investigators to conduct a preliminary analysis of the situation.

1.2 Preliminary Analysis: Once the allegation or set of allegations has been clearly articulated, the Senior Officer will:

- Conduct or see that a preliminary assessment is conducted as to the validity and credibility of the information provided;
- Ascertain possible sources of information that would provide sufficient evidence to prove or disprove the allegations;
- Identify critical issues that may require immediate attention, such as on-going concerns, urgent safety or security matters, or potentially criminal acts; and
- Identify other subject matters that should be addressed by another process or authorities.

1.3 The outcomes of the initiation stage

- A decision is made to proceed or not to proceed to a formal investigation, with substantiated rationale for either decision.

1.4 Terms of Reference (Mandate) for the Investigation

- If the investigation is to proceed, terms of reference or mandate for the investigator(s) must be prepared. The terms of reference will include the scope of the investigation and the investigators' responsibilities for informing witnesses of their rights and obligations.
- The terms of reference will also include a preliminary list of the witnesses that may be interviewed and the data or documentary evidence needed. Authorizations that may be required from various sources to conduct the investigation should be identified, as evidence may be under the control of other sections or there may be a need to inform senior personnel that access to documentation or personnel may be required.
- The terms of reference will also include an analysis of the resources needed to conduct the investigation, both human and financial. This analysis should take into account the skill sets needed, the linguistic competencies, the departmental resources to be consulted (legal, HR, finance, etc, if required) and the estimated budget for the investigation.

2. Execution Stage (Selecting, mandating and managing the investigation team)

2.1 Selecting the team: The Senior Officer may choose to use internal specialist resources,

such as security, IT security, internal audit or financial analysts, *only* if there is no potential for conflict of interest in the matter to be investigated, and if confidentiality can be assured. It may be necessary to contract the investigation out to a reputable consulting firm with background in such areas as forensic accounting or security. The Senior Officer should ensure that the contract addresses such issues as security and clearances, custody of working papers, and standards to be used for the investigation.

2.2 Investigation Planning: Too often, insufficient attention is given to investigation planning. The investigation team should provide the Senior Officer with a more detailed investigation plan, which refines and elaborates on the preliminary estimates provided in the investigation mandate. The investigators should determine what evidence, if any, is missing and where it can be obtained, and which additional witnesses may be needed to corroborate the information and additional facts.

In addition, the investigators should include a list of potential witnesses and what questions they should be asked, and in which order the witnesses are to be interviewed. Budgeting sufficient time for interviews and document review is key. The investigation plan should include regular status reports from the investigators to the Senior Officer, and a provision for having any changes to scope, terms of reference or budget approved by the Senior Officer.

2.3 On-site investigation: Notes should faithfully reflect the testimony of those interviewed, and signed and dated by the interviewee. Interviewees may not keep a copy of their interview notes, as the information created in the process belongs to the investigation. Should the person being interviewed ask to record the interview, they should be informed that in so doing they are creating information that belongs to the investigation and they will not be allowed to retain it. Telephone interviews are to be avoided as a rule and only employed in extenuating circumstances. The purpose of documentary evidence should be clearly noted, the location or person from which it was obtained also identified, and dated.

See [Annex 4](#) for tips to avoid common investigation pitfalls.

3. Reporting Stage (Findings of the Investigation)

3.1 Investigators' Report : The report is a narrative prepared by the investigation team that provides the Senior Officer with all the information required to make a final determination with respect to corrective action if required. It should be logical, clear and concise without personal opinions or extraneous comment. All relevant facts and analysis should be included. The Senior Officer is responsible for reviewing the report to ensure it is complete, that it is logical and grammatical, that all questions are answered, and that all conclusions are substantiated. See [Annex 5](#) for a sample outline of an investigation report.

3.2 Senior Officer's Report and Making Recommendations to the NRC President. Based on the investigation report, the Senior Officer will prepare a separate report that clearly sets out his or her analysis as to whether the facts collected during the investigation substantiate a founded allegation of wrongdoing that meets the requirements of section 8 of the Act. The Senior Officer will then make recommendations, if any, to the NRC President to undertake the necessary corrective action. Even if the allegations are not established or if they do not constitute wrongdoing, some corrective actions, including improvements to the systems and possibly discipline, may still be required.

Annex 4

Investigation Checklist

In the Initial Stages

- Ensure the discloser provides a thorough complaint or otherwise request clarification on the allegations.
- Examine the discloser's motives to guard against rare but possible frivolous or vexatious complaints.
- When selecting your investigator(s) guard against bias or an appearance of bias in the composition of the investigating team (for example, former supervisors of one of the parties, or acquaintances, etc).
- Make sure to select not only properly trained investigators skilled in the art of investigations but also determine need for expertise in specific areas (financial, contracting, or operations, etc).

During the Investigation and Report

- Avoid drawing premature conclusions at any stage of the investigation or when assessing a disclosure.
- Request that the investigators conduct face to face interviews with witnesses.
- Ensure that investigators take statements in writing and have witnesses sign them (or in the alternative record statements).
- Ensure that investigators follow up on all leads in the interviews and go back for supplementary interviews if necessary.
- Ensure that investigators keep good records of the investigation.
- Make sure that all allegations included in the disclosure and all matters included in the disclosure are investigated.
- Ensure that the respondents are aware of the allegations against them; but avoid disclosing information that could compromise evidence or witnesses.
- Provide the respondents with an opportunity to advance his or her side of the story before the investigation is completed.
- Act promptly at all phases of the investigation, but an investigation conducted too hastily is as flawed as one that is not conducted in time. Take the time necessary to be thorough. An investigation can be labour intensive.
- Keep a healthy emotional distance from all parties in the investigation.
- Ensure that the report of findings deals with facts, with no extraneous or irrelevant information, and is written in a non-emotional, detached, and non-sensational style. Be wary of too many unsupported modifiers. Make sure that the investigators do not interject bias in the report by adding irrelevant or unsupported information.

Annex 5

Sample Outline of a Report of Findings by the Investigator to the Senior Officer

Background: Brief summary of the events that gave rise to the investigation.

Example: On (date), XX (name and title) met with XX (Senior Officer)/spoke to XX (name, title, office) on the phone and alleged that (name, title, and office of respondent) had... A preliminary inquiry conducted by (name, title, office) has determined that... In light of the foregoing, (name and title) has asked XX (name and title) to conduct an investigation.

Purpose of the investigation:

Example: Ascertain the accuracy of the allegation that... or: Determine the circumstances surrounding (description of event).

Persons interviewed : Alphabetical list of names (title and office, or home address for members of the public) of the persons interviewed.

Investigation : Testimony and evidence gathered presented in the *chronological* order in which they were obtained.

Example : When interviewed on (date) in the presence of (name of observer), XX (name, title, and office of the person interviewed) stated that:

- he/she saw...
- he/she observed that...
- (one paragraph on each main point raised).

Analysis : Critical analysis including juxtaposition of facts, testimony, and evidence, with a view to identifying flaws or weaknesses, crucial points, gaps in logic, and contradictions. All relevant information should be analysed and, as required, specific references to the documents included in the investigation file will be quoted. The ideal analysis of the facts and evidence in an investigative report should bring the reader to the same logical conclusion as that reached by the investigator.

Observation : (as required) Description of non-compliance with guidelines (state which ones); identification of shortcomings in procedures; the need to review, adjust, or develop a policy, or directive, etc.

Conclusion : Brief statement directly related to the purpose of the investigation. It is crucial that there be a conclusion for each allegation or each incident stated in the purpose.

Example: Through the information obtained during the investigation, it was demonstrated that the allegation to the effect that (name, title) is believed to have (repeat allegation) was founded (or unfounded); or: The witness testified to having....