

TITLE

SAFE DISCLOSURE/WHISTLEBLOWER: DISCLOSURE DECISION APPEALSSCOPE

Provincial

DOCUMENT

1101-01

APPROVAL LEVEL

Alberta Health Services Official Administrator

SPONSOR

Ethics & Compliance

INITIAL EFFECTIVE DATE

June 29, 2015

CATEGORY

Ethical Conduct

REVISED

Not applicable

PARENT DOCUMENT TYPE & TITLE

Level 1 Policy: Safe Disclosure/Whistleblower Policy

NOTE: The first appearance of terms in bold in the body of this document (except titles) are defined terms – please refer to the Definitions section.

If you have any questions or comments regarding the information in this procedure, please contact the Policy & Forms Department at policy@albertahealthservices.ca. The Policy & Forms website is the official source of current approved policies, procedures, and directives.

OBJECTIVES

- To provide a consistent, fair, and timely process for submitting and handling appeals of decisions or recommendations made by Alberta Health Services' ("AHS") Chief Ethics and Compliance Officer ("ECO") in respect of a disclosure made under the AHS Safe Disclosure/Whistleblower policy (#1101).

APPLICABILITY

This procedure applies to an appeal of a decision made as a result of a disclosure made under the Safe Disclosure/Whistleblower policy (#1101), except as set out in section 1 below. This procedure does not apply to disclosures made under the *Public Interest Disclosure (Whistleblower Protection) Act* (Alberta) ("PIDA").

This procedure applies to all **AHS personnel**.

The AHS Safe Disclosure/Whistleblower: Disclosure Decision Appeals procedure (#1101-01) shall be used in conjunction with the AHS Medical Staff Bylaws and Rules, the AHS Midwifery Staff Bylaws and Rules, and any relevant collective agreement, where necessary.

PROCEDURE

1. Scope of Application

1.1 AHS personnel or a member of the public (herein after referred to as the “**appellant**”) may request an appeal of a decision of the ECO that is related to a disclosure made under the AHS Safe Disclosure/Whistleblower policy (#1101), except when:

- the disclosure falls under the PIDA;
- the reason for requesting the appeal does not fall within the mandate or authority of the ECO and/or relates to an entity other than AHS including its subsidiaries;
- there is another process defined in AHS Bylaws or another AHS policy or procedure regarding the management of complaints or disclosures and that process has not been followed;
- there are no allegations of **improper activity**;
- the appellant does not have sufficient interest in the subject matter of the appeal;
- the disclosure has been assessed as frivolous or vexatious as per section 9 of the AHS Safe Disclosure/Whistleblower policy (#1101); and/or
- the appellant has initiated legal action or other proceedings under another review process.

1.2 An appellant who is not satisfied with the outcomes of another appeal process (defined in AHS Bylaws or another AHS policy or procedure regarding the management of complaints or disclosures) may not seek a subsequent appeal under this procedure.

2. Appeal Requests

2.1 A request to appeal must be submitted to AHS’ **governing body** in writing, within 90 calendar days of the decision being issued by the ECO.

2.2 The request to appeal must include:

- a) appellant name and contact information;
- b) specific reference to the original disclosure and decision;
- c) reason for the request to appeal the decision; and
- d) any additional information that may be relevant to the appeal.

2.3 A request to appeal may not be made anonymously; however, the appellant may request that their identity be kept as confidential as possible while maintaining a fair and transparent appeal process.

2.4 Once a request to appeal is submitted, AHS shall retain all records pertaining to the appeal, including those related to the original disclosure and any related

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investigation. All records are managed in accordance with relevant AHS records management policies and procedures.

3. Processing the Appeal

- 3.1 The head of AHS' governing body (e.g., Official Administrator or Board Chair), in consultation with the head of AHS' Internal Audit department and any other members of management deemed relevant, will review the request for appeal to determine if the appeal will proceed.
- 3.2 Within ten (10) business days of receipt of a request for appeal, the AHS governing body head will inform, in writing, the appellant that either:
 - a) an appeal will proceed and:
 - (i) a review panel is convened to hear the appeal;
 - (ii) additional information as part of the appeal process may be required; and
 - (iii) written notification of the outcome of the appeal will be issued; or
 - b) an appeal will not proceed for the reasons indicated (see section 1) and the request is dismissed. The decision to dismiss is final and not subject to further appeal within AHS.

4. Appeal Management

- 4.1 The head of AHS' Internal Audit department (or designate) is the designated lead for all appeal reviews under this procedure (hereinafter referred to as the "review lead"). In the event that the review lead has had prior involvement in the original disclosure review and/or investigation or there exists a real or perceived conflict of interest, the AHS governing body will appoint a member of senior management to assume the responsibilities of review lead under this procedure.
- 4.2 Upon notification by the governing body that an appeal will proceed, the review lead shall:
 - a) notify the Executive Leadership Team that an appeal has been filed;
 - b) notify the ECO that the appeal will proceed (if not already notified);
 - c) in consultation with the Executive Leadership Team, appoint members to a review panel (the "panel") and designate a panel chair to hear the appeal.
- 4.3 No member of the panel may have had prior involvement in the original disclosure or investigation which is the subject of an appeal and must not have a real or perceived conflict of interest.
- 4.4 The panel is not bound by the legal proceeding rules of evidence or civil procedure, but may consider written and oral presentations as deemed necessary.

- 4.5 The panel may request assistance from other areas/departments within AHS, including, but not limited to, Internal Audit, Human Resources, Medical Affairs, Legal & Privacy, Information Technology, and/or operational areas, as required to enable the panel to fulfill its mandate to review and investigate the appeal.
- 4.6 The panel may request additional information from the appellant, or request the appellant to appear personally before the panel. The appellant is not entitled to request to appear before or make direct appeals to the panel.
- 4.7 The panel will make reasonable effort to complete its review in a timely manner that is consistent with taking steps to ensure the review incorporates due diligence and fair, transparent processes to bring the review to a complete conclusion.
- 4.8 At the conclusion of an appeal review, the panel will prepare a summary of findings, including any recommendations as appropriate, and submit to the Executive Leadership Team and the AHS governing body.
- 4.9 A recommendation to dismiss the appeal may be made where it is found that:
- a) the appellant does not have sufficient interest in the subject matter of the appeal;
 - b) the appeal is not substantiated or otherwise does not fall within the scope of applicability (see section 1); or
 - c) the appellant has initiated legal action or other proceedings under another review process.
- 4.10 The governing body will review the summary of findings and any recommendations, and issue a written decision to the appellant. The decision of the governing body is final and not subject to further appeal within AHS.

DEFINITIONS

AHS personnel means anyone who provides care or services or who acts on behalf of AHS, which may include governing body members, AHS employees, AHS Medical Staff members (physicians, dentists, oral and maxillofacial surgeons and podiatrists), AHS Midwifery Staff members, other allied health professional with an AHS appointment and privileges, students, volunteers, researchers working with AHS or studying AHS staff or patients.

Appellant means AHS personnel or a member of the public who wishes to appeal a decision made by the Chief Ethics and Compliance Officer that is related to the original disclosure made by the appellant under the AHS Safe Disclosure/Whistleblower policy (#1101).

Governing body means the governance body of AHS appointed by the Minister of Health in accordance with the applicable statute(s), and which may be a Board or an Official Administrator.

Improper activity means any alleged material, unethical, illegal and other improper activity including without limitation, disclosure of wrongdoing under PIDA, fraud, theft, violations of laws, violations of the AHS Code of Conduct, principles, policies or bylaws (including the Conflict of Interest Bylaw), and negligence of duty.

REFERENCES

- AHS Just Culture Guiding Principles
- Alberta Health Services Bylaws, Policies, and Procedures
 - Ethics Framework
 - Code of Conduct
 - Conflict of Interest Bylaw
 - Medical Staff Bylaws
 - Medical Staff Rules
 - Midwifery Staff Bylaws
 - Midwifery Staff Rules
 - Fraud, Theft, or Misappropriation policy (#1164)
 - Investigations policy (#1163)
 - Investigations Pertaining to the Public Interest Disclosure (Whistleblower Protection) Act (“PIDA”) procedure (#1163-01)
 - Records Management policy (#1133)
 - Records Retention Schedule (#1133-01)
 - Records Destruction procedure (#1133-02)
 - Safe Disclosure/Whistleblower policy (#1101)
 - Workplace Violence: Prevention and Response policy (#1115)
- *Criminal Code* (Canada) and associated regulations
- *Freedom of Information and Protection of Privacy Act* (Alberta) and associated regulations
- *Health Information Act* (Alberta) and associated regulations
- *Public Interest Disclosure (Whistleblower Protection) Act* (Alberta) and associated regulations

VERSION HISTORY

Date	Action Taken
June 29, 2015	Initial approval/ effective
June 2018	Scheduled for Review