



POLICY: TO FACILITATE THE DISCLOSURE OF WRONGDOINGS

CODE: DG-26.1

Origin: Director General

Authority: Resolution # 19-04-24-10.2

References: Refer to the Legal Framework

NOTE: The masculine gender, when used in this document, refers to both women and men. No discrimination is intended.

1. POLICY STATEMENT

Disclosure of Wrongdoings is fundamental to ensuring the integrity of the public administration.

The goal of this Policy is to establish a mechanism which will facilitate the Disclosure of Wrongdoings within the English Montreal School Board (EMSB) through the application of the *Act to Facilitate the Disclosure of Wrongdoings Relating to Public Bodies* (LQ 2016, c. 34), hereinafter called « the Act ».

For personnel of public bodies, the Act establishes a parallel system of Disclosure within their organizations and with the Public Protector to allow a Discloser to choose which path to use to disclose information he has about a Wrongdoing.

Third parties may also make a Disclosure directly to the Public Protector. In all cases, the Act sets an overall plan to protect Disclosers and those who are involved in an audit or investigation, against Reprisals.

2. FIELD OF APPLICATION

This Policy applies to the Disclosure of any and every serious Wrongdoing committed or about to be committed with regard to the EMSB.

3. LEGAL FRAMEWORK

- *Act to Facilitate the Disclosure of Wrongdoings Relating to Public Bodies* (RLRQ, c. D-11.1)
- *Anti-Corruption Act* (RLRQ, c. L-6.1)
- *Act Respecting Labour Standards* (RLRQ, c. N-1.1)
- *Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information* (RLRQ, c. A-2.1)

- All EMSB by-laws and Policies and more specifically:
 - The Code of Ethics and Professional Conduct of Members of the Council of Commissioners of the EMSB (By-law #3)
 - The Code of Ethics (HR-11)
- All applicable collective agreements and local management policies

4. DEFINITIONS

Designated Officer means an individual designated by the Council of Commissioners of the EMSB to be responsible for receiving and dealing with Disclosures of Wrongdoings and for implementing the present Policy within the EMSB.

The Designated Officer shall not be a present or past member of the Council of Commissioners or Employee of the EMSB.

Discloser means an individual who makes a Disclosure under this Policy. This person is commonly referred to as a “whistleblower”.

Employee means any individual who is employed by the EMSB and receives a salary but for greater certainty, does not include self-employed individuals or individuals working for outside corporations or suppliers of the EMSB.

For purposes of this Policy, are also considered as an Employee, an individual who participates in the mission of the EMSB by holding office, performing a function, job or other task, whether they are remunerated or not.

Public Protector (Protecteur du citoyen) is the individual designated by the National Assembly by virtue of the *Public Protector Act* (chapter P-32). This person is also referred to as the Quebec Ombudsman.

Reprisal means any of the following measures taken against a person, who, in good faith, disclosed a Wrongdoing or has, in good faith, cooperated in an investigation carried out under this Policy:

- a) any disciplinary measure;
- b) any measure that adversely affects the employment or working conditions of the Employee;
- c) a threat to take any of the measures referred to in paragraphs (a) or (b).

Also considered a Reprisal is threatening a person so that he will abstain from making a Disclosure or from cooperating in an audit or investigation.

Subject means the person(s) whom the Discloser believes has committed or is about to commit a Wrongdoing that is covered by this Policy.

Wrongdoing: For the purposes of the present Policy means any act or omission committed by an Employee of the EMSB in the exercise of his functions or by any person, partnership, group or other entity in the preparation or performance of a contract, including a grant of financial assistance, that has been entered into or is about to be entered into with the EMSB.

It shall include:

- A contravention of Quebec statutes, federal statutes applicable in Quebec or regulations pursuant to the application of such laws;
- A serious breach of ethical and professional standards;
- Misuse of EMSB funds or property, including that which it manages or holds for others;
- Gross mismanagement within the EMSB including an abuse of power;
- An action or omission that seriously undermines or has the potential of seriously undermining the health or safety of a person or the environment;
- Ordering or encouraging a person to commit a Wrongdoing as described above.

5. ROLES AND RESPONSIBILITIES OF THE DESIGNATED OFFICER

The individual designated as Designated Officer by the Council of Commissioners of the EMSB is the Officer responsible for dealing with such Disclosures. The Designated Officer is bound to confidentiality in exercising the functions of office.

Except for the appointment of the Designated Officer, the Council of Commissioners of the EMSB delegates the duties to be performed by the highest ranking administrative official in the EMSB in virtue of the Present Policy to the Director General.

The roles and responsibilities of the Designated Officer in the context of the present Policy are namely to:

- ensure the application and distribution of the present Policy;
- take the necessary steps to facilitate the filing of a Disclosure of Wrongdoing while ensuring the confidentiality of communications;
- receive Disclosures from Disclosers;
- investigate, after such Disclosure, whether a Wrongdoing was committed or is about to be committed;
- ensure the confidentiality of the identity of the Discloser and the information itself;
- determine the preferred methods for filing a Disclosure and communicating with him confidentially and shall so inform Employees;
- send to the Public Protector the Disclosures on which the latter is likely to follow up, in accordance with article 8.3 of the present Policy;
- report the findings to the Director General, when applicable.

5.1 Powers and Immunity of the Designated Officer

No judicial proceedings may be brought against a Designated Officer for any act done in good faith in the exercise of the functions of office.

Except on a question of jurisdiction, no application for judicial review under the Code of Civil Procedure (chapter C-25.01) may be brought nor any injunction granted against a Designated Officer in the exercise of the functions of office.

6. DISCLOSURE OF WRONGDOINGS

6.1 Disclosing to the Designated Officer

Employees may, at any time, disclose to the Designated Officer any Wrongdoing committed or about to be committed with regards to the EMSB. The procedure to follow for such Disclosure is outlined in this Policy.

Contact Information for Disclosures to the Designated Officer:

Secretary General
English Montreal School Board - CONFIDENTIAL
To the attention of the Designated Officer
6000 Fielding Avenue, Montreal, Quebec H3X 1T4
Telephone: 514-483-7200, ext. 7264
Fax: 514-483-7324
[Email: designatedofficer@emsb.qc.ca](mailto:designatedofficer@emsb.qc.ca)
Secure forms on the website: www.emsb.qc.ca

The Secretary General will then transmit the Disclosure to the Designated Officer appointed by the Council of Commissioners of the EMSB.

6.2 Disclosing to the Public Protector

Any person, at any time, may disclose to the Public Protector any Wrongdoing committed or about to be committed with regard to the EMSB.

An Employee may, if he prefers, convey a Disclosure to the Designated Officer within the EMSB or to the Public Protector, at his discretion.

Contact Information for Disclosures to the Public Protector:

Protecteur du citoyen
Direction des enquêtes sur les divulgations en matière d'intégrité publique
800, place D'Youville, 18^e étage, Québec (Québec) G1R 3P4
Telephone: 1 844-580-7993 (toll free in Quebec)
Fax: 1 844-375-5758 (toll free in Quebec)
Secure forms on the website: www.divulgation.protecteurducitoyen.qc.ca

6.3 Disclosure of Confidential Information

As part of a Disclosure or involvement in an audit conducted as a result of a Disclosure of Wrongdoing, a person may transmit information to the Designated Officer or the Public Protector:

- Despite the provisions regarding the communication of information found in the *Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information* (RLRQ, chapter A-2.1);

- Despite any other restriction regarding communication provided for in a statute and all binding obligations of confidentiality and loyalty with respect to an employer or where applicable, to a client. This suggests the possibility that professional secrecy may be lifted, with the exception of lawyer-client and notary-client.

7. FILING A DISCLOSURE WITH THE DESIGNATED OFFICER

7.1 Content of a Disclosure to the Designated Officer

A Disclosure made to the Designated Officer should be made using the “Appendix A” of the present Policy (www.emsb.qc.ca/designatedofficer). A Disclosure to the Designated Officer should contain the following information:

- **About the Discloser:**
 - Contact information for communicating with him confidentially in writing;
- **About the participants in the alleged Wrongdoing:**
 - Full name;
 - Professional title or position held;
 - Department in which the person holds the position;
 - Contact information;
- **About the alleged Wrongdoing:**
 - Description of the facts, event or action;
 - What makes it a Wrongdoing;
 - Location and date it took place;
 - Repetitive nature of the Wrongdoing, if applicable;
 - Other persons involved in or witnesses to the Wrongdoing;
 - Name and given name, title or position, contact information;
 - Any documents or evidence regarding the Wrongdoing;
 - Possible consequences of the Wrongdoing on the EMSB, on the health and safety of people or on the environment;
 - The information needed to prevent the Wrongdoing if it has not already been committed;
- Information about whether other steps have been taken with management, the union or other EMSB staff members;
- Mention of fear or threat of Reprisals.

When needed, the Designated Officer will conduct appropriate verifications to complete missing information.

7.2 Anonymous Disclosure

A Discloser to the Designated Officer must identify himself and indicate the manner in which he learned about the information being disclosed.

A person wishing to disclose anonymously must do so to the Public Protector in accordance with article 6.2 of the present Policy.

If the Designated Officer receives an anonymous Disclosure, he shall transfer it to the Public Protector unless it is found to be not admissible in accordance with article 8.2 of the present Policy.

8. PROCESSING DISCLOSURES

8.1 Time Delays

Actions to be Taken by the Designated Officer	Time Delays
First contact with the Discloser	Two (2) working days of receiving a Disclosure
Written Acknowledgement of Receipt	<p>Five (5) working days following the first contact with the Discloser</p> <p>The Designated Officer will not acknowledge receipt if he does not have the information needed to communicate confidentially with the Discloser.</p>
Determining the Admissibility of a Disclosure	<p>Within fifteen (15) working days of receiving the Disclosure, the Designated Officer will decide whether the Disclosure is admissible in accordance with article 8.2 of the present Policy.</p> <p>The Designated Officer may always terminate the processing or review of a Disclosure if subsequent verifications reveal that it is not admissible.</p>
Verification and Decision to Investigate	<p>On receipt of an admissible Disclosure of Wrongdoing, the Designated Officer verifies whether a Wrongdoing has been committed or is about to be committed with regard to the EMSB.</p> <p>The decision to investigate the Disclosure should be taken within sixty (60) days from the day the Disclosure was deemed receivable by the Designated Officer.</p>
Investigation	The Designated Officer will investigate in accordance with the present Policy.

	<p>If the investigation process extends beyond sixty (60) days after receipt of the Disclosure, the Designated Officer will inform the Discloser, if he is known.</p> <p>Thereafter, the Designated Officer will inform the Discloser, if he is known, on the progress every ninety (90) days until the investigation is done. These notices are given in writing.</p>
Conclusion of the Investigation	Six (6) months from the decision of the Designated Officer to investigate the Disclosure

8.2 Disclosure is Not Admissible

At any time, the Designated Officer must put an end to the processing of a Disclosure if the alleged Wrongdoing is the subject of court proceedings or relates to a decision rendered by a court.

In addition, the Designated Officer puts an end to the examination of a Disclosure if he is of the opinion, in particular:

- that the subject-matter of the Disclosure does not fall within his mandate, for example, labour relation issues;
- that the subject-matter of the Disclosure does not constitute a Wrongdoing by virtue of the present Policy;
- that the Disclosure is made for personal reasons and is not in the public interest. For example, it deals with a working condition of the Discloser;
- that the subject-matter of the Disclosure questions the merits of the policies and program objectives of the Government, the EMSB or another public body;
- that the Disclosure is abusive and/or frivolous;
- that the Disclosure is made out of bad faith with the intent to harm and/or to attempt to harm the image, reputation of the EMSB or one of its employees, commissioners.

Unless in the presence of exceptional circumstances, the Designated Officer may also end the examination of a Disclosure if it occurred more than one year ago.

When putting an end to the processing or examination of a Disclosure, the Designated Officer sends a notice, with reasons, to the Discloser, if this person is known.

If the alleged acts of Wrongdoing can be handled under another regulatory or administrative process of the EMSB, the Designated Officer will so indicate in his notice.

8.3 Transferring the Disclosure to the Public Protector

The Designated Officer forwards the Disclosure to the Public Protector if, in his opinion, the Public Protector, given the circumstances, is better suited to deal with it.

If the Designated Officer believes that his investigation into a Wrongdoing is being impeded, he may transfer the file to the Public Protector. If need be, he may or may not put an end to the processing of the Disclosure in accordance with the conditions agreed upon with the Public Protector.

The Public Protector may be better suited to follow up on a Disclosure of Wrongdoing if an in-depth investigation is required or if a subpoena is needed to compel a person to provide information or produce documents.

The Designated Officer will contact the *Direction des enquêtes en matière d'intégrité publique* to discuss the terms of the transfer to the Public Protector.

The Designated Officer will inform the person disclosing the Wrongdoing of the transfer.

8.4 Forwarding Information to a Body Responsible for the Prevention, Detection or Repression of Crime or Statutory Offences

If the Designated Officer considers that information disclosed to him may be disclosed under section 26 of the Anti-Corruption Act, he forwards the information, as soon as possible, to the Anti-Corruption Commissioner.

The Designated Officer also forwards the information necessary to prosecute an offence under an Act, to a body responsible for the prevention, detection or repression of crime or statutory offences, including a police force or a professional order.

The Designated Officer may or may not put an end to the examination or processing of the Disclosure, according to the conditions agreed upon with the body to which he forwarded the information.

If the Designated Officer considers it appropriate, he notifies the Discloser that the information has been forwarded.

8.5 Reporting to the Director General

The Designated Officer keeps the Director General of the EMSB informed of the steps taken, unless, in the Designated Officer's opinion, the Disclosure is likely to implicate the Director General.

The Designated Officer must take the measures necessary to ensure that any information communicated to him, including the identity of the Discloser, remains confidential.

8.6 Rights of a Person Affected by a Disclosure of Wrongdoing

The Designated Officer must protect the rights of the Subject while the investigation is underway and give him the opportunity to present his version of the facts.

The Designated Officer must provide the Subject the necessary information informing him of the nature of the allegations against him and the opportunity to respond to them.

However, the identity of the Discloser or persons cooperating in an audit and investigation must not be revealed nor any information that could identify them.

The Subject may be accompanied by someone of his choice during any meeting or discussion with the Designated Officer, as the case may be.

8.7 End of an Investigation

When the Designated Officer finds that a Wrongdoing has been committed or is about to be committed, he shall report this to the Director General who will take the necessary corrective measures, where applicable.

The Designated Officer informs the Discloser that the processing of his Disclosure is terminated and, if considered appropriate, may inform the Discloser of any follow-up given to the Disclosure.

9. MEASURES TO PROTECT THE IDENTITY OF THE PERSON DISCLOSING A WRONGDOING AND CONFIDENTIALITY OF THE DISCLOSURE

In the exercise of the functions of office, the Designated Officer must take all necessary measures to ensure that the identity of the person who makes a Disclosure or cooperates in an audit or investigation conducted on the basis of a Disclosure remains confidential subject to article 9.3 of the present Policy.

To that end, the Designated Officer is responsible for taking the measures necessary to ensure:

- that access to all documents relating to a Disclosure of Wrongdoing or to verifications, in whatever form they may be, be limited to the Designated Officer and the associates he retains, if applicable. Physical documents must be kept under lock and key and not left in full view. Electronic documents are maintained in directories accessible only to authorized persons;
- that all discussions between the Designated Officer and Disclosers, persons cooperating in the investigation and Subjects take place in a private location where they cannot be overheard by third parties;
- that discussions between the Designated Officer and Disclosers, persons cooperating in the investigation and Subjects be protected by signing confidentiality agreements;
- that the method of transferring documents containing information relating to a Disclosure or to verifications take into account the high level of confidentiality of the said documents;
- that all documents relating to a Disclosure of Wrongdoing or verifications be destroyed by confidential redaction according to the calendar of conservation of the EMSB.

The files of the Designated Officer are confidential. No one has the right to access or alter any information he receives despite articles 9, 83 and 89 of the *Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information*.

9.1 Confidentiality Obligations of Employees

The Director General and anyone whom the Designated Officer retains to process Disclosures of Wrongdoing are held to the same confidentiality obligations and must exercise the same degree of discretion as the Designated Officer.

The purpose is to protect the confidentiality of information that could be received regarding the Policy for Disclosure, processing of the Disclosures received, and especially the identity of the persons involved in the process.

10. PROTECTION AGAINST REPRISALS

10.1 Prohibition Against Reprisals

The Act prohibits a Reprisal to be taken against a person on the grounds that the person has, in good faith, made a Disclosure or cooperated in an audit or investigation conducted on the basis of a Disclosure.

10.2 Protection with Regards to Reprisals

Any person who believes a Reprisal has been taken against him may file a complaint with the Public Protector who will see to the appropriate follow up.

The Designated Officer will refer a person who believes he has been a victim of Reprisals to the Public Protector.

If the Reprisal measures affect a person's employment or working conditions, the Designated Officer will instead refer him to the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST).

10.3 Recourse Against a Prohibited Employment Practice

Reprisals in the workplace or the threat of such Reprisals constitute a prohibited practice under article 122 of the *Act Respecting Labour Standards*.

An Employee subject to the *Act Respecting Labour Standards* who believes he is a victim of a prohibited practice as stated under article 122 of that Act must exercise his right to recourse with CNESST within 45 days of the practice about which he is complaining.

10.4 Information to Persons Disclosing a Wrongdoing and to Co-Workers

The Designated Officer must inform the Discloser and all co-workers cooperating in the verification that they are protected in the event that Reprisals be taken against them. He must also inform them of the time limit to exercise their recourse.

11. REPORT FROM THE DESIGNATED OFFICER

On September 15, at the latest, the Designated Officer must send to the Director General a report stating the following:

1. the number of disclosures received by him;
2. the number of disclosures he has decided to put an end to, as per section 8.2 of the present Policy;
3. the number of well-founded disclosures;
4. the number of disclosures broken down according to the categories of Wrongdoings enumerated in the present Policy (see the Definition of Wrongdoings);
5. the number of disclosures he transferred to the Public Protector;
6. the number of times he forwarded the information disclosed to him to the Anti-Corruption Commissioner.

The EMSB must include this information in its annual report.

12. FINAL PROVISIONS

12.1 Interpretation Compatible with the Act

The aim of the present Policy is to implement the applicable provisions of the *Act to Facilitate the Disclosure of Wrongdoings Relating to Public Bodies* in the EMSB and must be interpreted accordingly.

In case of a contradiction between the present Policy and the Act, the latter will prevail.

12.2 Coming into Force and Review Process

This Policy comes into force on the date of its adoption by the Council of Commissioners of the EMSB and will be reviewed every 5 years or when required.

12.3 Informing Employees

No later than (60) sixty days after its adoption by the Council of Commissioners, all Employees shall be notified, electronically and/or by a general circular from the Director General, of the existence of this Policy and its location on the EMSB's website.

Additionally, a copy of the Policy is to be posted in each school, centre and department of the EMSB.

APPENDIX A: DISCLOSURE FORM

According to the Procedure to Facilitate the Disclosure of Wrongdoings

To be completed and printed, providing all information available to the person disclosing a wrongdoing. Send to the Designated Officer in a sealed envelope that states "Confidential" by mail or internal mail to the Secretary General, English Montreal School Board, to the attention of the Designated Officer, 6000 Fielding Avenue, Montreal, Quebec H3X 1T4, by fax: 514-483-7324 or by email: designatedofficer@emsb.qc.ca.

IDENTIFICATION		
Name	Given name	
Are you a member of the staff of the school board? <input type="checkbox"/> yes <input type="checkbox"/> no If not, kindly contact the Public Protector directly.		
For the purposes of this Policy, Employee means any individual who is employed by the EMSB and receives a salary but for greater certainty, does not include self-employed individuals or individuals working for outside corporations or suppliers of the EMSB. Is also considered as an Employee, an individual who participates in the mission of the EMSB by holding office, performing a function, job or other task, whether they are remunerated or not.		
CONTACT INFORMATION FOR CONFIDENTIAL COMMUNICATION		
Indicate at least one (1) method to contact you confidentially. Failing to do so, your disclosure will be considered anonymous and redirected to the Public Protector.		
Telephone	Permission to leave a message? <input type="checkbox"/> yes <input type="checkbox"/> no	
Email		
Postal address		
PARTICIPANTS IN THE WRONGDOING		
Name	Given name	Title
Contact information		<input type="checkbox"/> School board employee
Name	Given name	Title
Contact information		<input type="checkbox"/> School board employee
Name	Given name	Title
Contact information		<input type="checkbox"/> School board employee
DESCRIPTION OF THE FACTS		
Describe the facts: _____		
How is this a wrongdoing: _____		

DESCRIPTION OF THE FACTS (cont'd)		
Possible consequences for the school board, health or safety of persons or the environment: _____		
If the wrongdoing has not yet occurred, is it still possible to prevent it? _____		
DATE(S) AND LOCATION		
<input type="checkbox"/> On (insert date): _____		
<input type="checkbox"/> From: _____ to: _____		
<input type="checkbox"/> Repetitive nature. Specify: _____		
Location: _____		
OTHER PEOPLE INVOLVED AND WITNESSES		
Name	Given name	Title
Contact information		<input type="checkbox"/> School board employee
Role (witness, participant, etc.)		
Name	Given name	Title
Contact information		<input type="checkbox"/> School board employee
Role (witness, participant, etc.)		
Name	Given name	Title
Contact information		<input type="checkbox"/> School board employee
Role (witness, participant, etc.)		
OTHER INFORMATION		
Evidence or documents in your possession, if applicable: _____		
Steps taken (management, union, staff member): _____		
Fear or threats of reprisal: _____		
Any information useful to processing the disclosure of wrongdoing: _____		

The information contained herein will only be available to the school board's Designated Officer responsible for dealing with wrongdoings and his/her associates, where applicable. The information will be retained as confidential and may only be used and communicated according to the *Procedure to Facilitate the Disclosure of Wrongdoings*.