



# **Complaints, Investigations, and Enforcement Policy**

Office of the Chief Electoral Officer

Elections Ontario

February 1, 2024

## Document History

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Revision Number	Revision Date	Effective Date	Description of Changes	Approved By
3.0	January 2023	February 2024	Updated to include Whistleblower provisions, and refreshed format.	Greg Essensa, CEO
2.0	October 2021	October 2021	New procedure, Requirements consolidated, Added complaints about other aspect of services	Greg Essensa, CEO
1.0		February 2019	Original	Greg Essensa, CEO

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## Section 1: Introduction and Scope

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This policy applies to complaints from EO's stakeholders including Ontario's electors, the Government of Ontario, political parties, advocacy organizations, and third-party affiliates. This policy only addresses complaints pertaining to perceived violations of the *Election Act* and the *Election Finances Act*.

A complaint is a written expression where a stakeholder believes that the *Election Act* or the *Election Finances Act* may have been violated.

This policy also covers the additional measures that Elections Ontario takes to maintain the confidentiality of whistleblowers.

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## Section 2: Principles

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### Accountability

Elections Ontario has a duty to serve the interests of the people of Ontario, including the enforcement of infractions of the *Election Act* and the *Election Finances Act*.

### Confidentiality

Elections Ontario shall ensure that sensitive and private information of the complainants is protected, unless disclosure of such information is required by law.

### Procedural Fairness

Elections Ontario is committed to following fairness when conducting investigations. EO shall ensure that complaints are processed without undue delays, follow a clear process outlined in this policy, and are subject to fair and impartial decision-making.

### Transparency

Elections Ontario shall ensure its policies, processes and practices related to complaints, including investigations and any enforcement actions that may ensue, are accessible and easy to understand by individuals impacted or likely to be impacted by this policy.

## Section 3: Definitions

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The following definitions are referred to throughout this policy:

### Closure

A complaint is considered closed if the complainant withdraws the complaint of their own volition, refuses to cooperate with Elections Ontario in investigating the matter, if the complaint relates to a matter that is not prohibited by either the *Election Act* or the *Election Finances Act*, or if there is insufficient evidence to substantiate a violation of either Act.

### Complainant

A person who makes a formal complaint to Elections Ontario.

### Complaint

A complaint is a formal written allegation of a perceived violation of the *Election Act* or the *Election Finances Act*.

### Enforcement

The Chief Electoral Officer's issuance of an administrative monetary penalty and/or referral to the Attorney General for an apparent infraction of the *Election Act* or the *Election Finances Act*.

### Investigation

An investigation is a fact-finding process involving the gathering and examination of information to derive conclusions based on the available evidence. In the context of this policy, the investigation phase begins when a complaint is screened by the Manager, Compliance Enforcement of Elections Ontario.

### Investigator

The Manager, Compliance Enforcement, and any delegates of the Manager, Compliance Enforcement, are responsible for investigating a complaint concerning a perceived violation of the *Election Act* or the *Election Finances Act*.

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## Whistleblower

A person who voluntarily provides information to Elections Ontario, with an expectation of anonymity, about a real or perceived past, present, or future violation of the *Election Act* or *Election Finances Act*. A Whistleblower must be a current or former employee or member of the entity that is the subject of the whistleblowing complaint.

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## Section 4: Mandatory Requirements

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### 4.1 General Requirements for Complaints and Submissions

Complaints must be submitted in writing and must include:

- a description of the matter from the complainant's perspective, including events, dates, circumstances, actions, or inactions that the complainant believes may constitute an offence; and
- copies of any documents and evidence (including emails, transcribed voice recordings, photos, screenshots etc.)

4.1.1 A complainant experiencing challenges submitting the complaint themselves due to mobility, health issues, age, familiarity with technology, or any other reason may file their complaint using a representative.

- If a person with a disability is unable to access a representative, Elections Ontario will work with that person to identify an appropriate means to convey their complaint and information/document.

4.1.2 A complainant's refusal to substantiate a complaint may be considered as grounds for dismissing the complaint.

### 4.2 Screening

4.2.1 Complaints will be reviewed to determine if the complaint constitutes a perceived infraction of the *Election Act* or *Election Finances Act*.

4.2.2 All complaints submitted to Elections Ontario will be screened prior to escalation. Screening entails:

- The complaint is collected by the Manager, Compliance Enforcement, and assigned for review.
- A member of the Compliance team will review the complaint to determine whether the complaint shall be investigated.

4.2.3 Complaints submitted to Elections Ontario must be dismissed if the subject matter of the complaint does not constitute a violation of the *Election Act* or the *Election Finances Act*, or if the complaint relates to a matter outside of Elections Ontario's jurisdiction.

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4.2.4 If a determination is made to dismiss a complaint for any of the above reasons, the complainant shall be notified of the closure with Election Ontario's rationale for the decision.

### 4.3 Investigations

4.3.1 The nature and scope of an investigation shall be determined by the Manager, Compliance Enforcement, as delegated by the Chief Electoral Officer.

4.3.2 When investigating a complaint, the investigator must determine if the complaint constitutes an apparent violation of the *Election Act* or the *Election Finances Act*.

4.3.3 The subject of the complaint will be notified of the complaint, and generally the identity of the complainant, unless the complaint originates from a Whistleblower.

4.3.4 Investigators shall follow good record keeping practices where possible to capture key decisions and actions, as well as the rationale.

4.3.5 When the Manager, Compliance Enforcement decides not to investigate a complaint, the complainant shall be advised, and may be referred to another regulatory or legal authority, where appropriate.

### 4.4 Confidentiality and Public Acknowledgement

4.4.1 Complaints are confidential and Elections Ontario's staff shall protect the complainant's privacy, where possible. The details of the complaint may not be disclosed to anyone other than the complainant and the parties named in the complaint, except where disclosure is necessary for the purposes of investigating the matter.

4.4.2 Where a complaint is received, the Chief Electoral Officer may not publicly acknowledge the fact of a complaint to anyone other than the complainant or the person or entity named in the complaint, until:

- I. The investigation into the complaint has been concluded and a determination has been made that there is no apparent contravention to report to the Attorney General; or
- II. The Chief Electoral Officer chooses to issue an administrative

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penalty;

- III. The subject matter has been reported to the Attorney General as an apparent infraction.

4.4.3 Where a complaint has been investigated, or the Chief Electoral officer has, at their own discretion, conducted an investigation as to whether or not the person or entity has failed to comply with the *Election Act* or the *Election Finances Act*, the Chief Electoral Officer may not publicly acknowledge the fact of a complaint to anyone other than the complainant or the person or entity named in the complaint, until:

- I. The investigation into the complaint has been concluded and a determination has been made that there is no apparent contravention to report to the Attorney General; or
- II. The Chief Electoral Officer chooses to issue an administrative penalty; or
- III. The subject matter has been reported to the Attorney General as an apparent infraction.

4.4.4 If the Attorney General refers the matter to the police and the police request consent from the Chief Electoral Officer to initiate a prosecution, the Chief Electoral Officer may publicly acknowledge whether or not consent to initiate the prosecution has been granted.

- The Chief Electoral Officer may also decide to report on requests for consent to prosecution in their report(s) tabled with the Legislative Assembly.

## 4.5 Post-investigation activities

4.5.1 At the conclusion of the investigation process, if the investigator discovers apparent infractions of the *Election Act* and/or the *Election Finances Act*, the investigator shall prepare a decision note for the Chief Electoral Officer detailing the apparent infractions and containing a recommendation for next steps.

4.5.2 Where the Chief Electoral Officer is of the opinion that there is an apparent contravention of the *Election Act* or the *Election Finances Act*, the Chief Electoral Officer shall report that fact to the Attorney

General and may, at the sole discretion of the Chief Electoral Officer, notify the subject of the complaint of that referral.

4.5.3 Once an investigation has concluded with or without referral to the Attorney General, the CEO may decide to share information about the investigation in the next annual report, or other report that is tabled with the Legislative Assembly; this may include information about:

- The investigation and the resources employed to conduct the investigation.
- The subject matter of the investigation and the relevant section(s) of the *Election Act* or the *Election Finances Act* pertaining to the investigation.
- What person or entity the investigation concerns.

#### 4.6 Consent to prosecution

4.6.1 Where the Chief Electoral Officer is asked to consent to a prosecution of a contravention of the *Election Act* or the *Election Finances Act*, the request shall:

- I. be made in writing,
- II. be signed by an individual,
- III. include contact information for that individual,
- IV. provide a written explanation as to why the individual believes the *Election Act* or *Election Finances Act* has been contravened, and
- V. provide a copy of the sworn information under the *Provincial Offences Act* that the individual certifies will be put before the justice of the peace hearing the prosecution.

4.6.2 Following the review of a written request from the police to consent to prosecution, the Chief Electoral Officer shall:

- I. provide consent in writing,
- II. advise in writing that consent is not granted, or
- III. request further explanation and evidence in respect of the alleged contravention of the *Election Act* or *Election Finances Act*.

## Section 5: Whistleblower Complaints

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### 5.1 Defining Whistleblowing

5.1.1 A Whistleblower is a person who voluntarily provides information, in the form of a complaint, to Elections Ontario about perceived past, present, or future violations of the *Election Act* or *Election Finances Act*.

- Whistleblowers have an expectation of anonymity as part of their submission.

5.1.2 Whistleblowers must be a current or former member, employee, stakeholder, affiliate, etc., of the subject of the complaint.

- Current employees of Elections Ontario do not qualify as Whistleblowers under this policy and are instead subject to the Conduct and Accountability Key Directive.

### 5.2 Whistleblower Protections

5.2.1 Elections Ontario will endeavour to safeguard the confidentiality of a Whistleblower only during the process in which the complaint and investigation is undertaken by Elections Ontario. If the complaint is referred to the Attorney General, there is no guarantee of anonymity.

5.2.2 The information collected from a Whistleblower, or information about the Whistleblower, will only be shared with parties relevant to the investigation, as determined by the Manager, Compliance Enforcement.

5.2.3 If a Whistleblower claims that they have experienced reprisal, the investigator will advise the complainant to report this to the Ministry of the Attorney General or other appropriate authority.

5.2.4 The Manager, Compliance Enforcement recommends to the Chief Electoral Officer which cases are suitable for consideration for referral to the Attorney General. Following referral, all assurances of anonymity for the Whistleblower are withdrawn as all the details of the investigation must be shared with the Office of the Attorney General.

### 5.3 Anonymity

- 5.3.1 The investigator assigned to a Whistleblowing complaint must advise the complainant of the risk that they may be identified.
- 5.3.2 Elections Ontario cannot guarantee the anonymity of the Whistleblower at any point during the investigation.
- 5.3.3 Elections Ontario cannot ensure that the Whistleblower will not experience retaliation from the organization on which they are whistleblowing.

### 5.4 Whistleblowing Complaint

- A whistleblowing complaint must pertain to a violation as defined in section 4.2.3 of this policy.
- A complaint may arrive through any channel, whether it be by email, in-person, instant messaging, social media, or other form of telecommunication.
- The complaint must not address violations by Elections Ontario staff.

### 5.5 Process

- 5.5.1 Whistleblower complaints must follow the process outlined in Section 4: Mandatory Requirements.

### 5.6 Whistleblowing Investigation

- 5.6.1 Investigators must engage in a fact-finding investigation to ascertain if there is evidence to support a claim of a violation.
- 5.6.2 Investigators must take reasonable precautions to maintain the anonymity of the whistleblower during their investigation.
- 5.6.3 Investigators are not required to disclose to the subject of the whistleblowing complaint that there is an active complaint or investigation.
- 5.6.4 If the Chief Electoral Officer determines that there is sufficient evidence for a referral of an apparent infraction to the Attorney General, the Manager, Compliance Enforcement must notify the whistleblower, and advise them that this may lead to their identification.

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- 5.6.5 Investigators must alert the Whistleblower if they come into possession of information that the Whistleblower's anonymity has been compromised.

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**Effective Date:** 02/01/2024

**Revision #:** 3.0

**Status:** Approved

**Print Date:** 2/7/2024

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## Section 6: Roles & Responsibilities

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### 6.1 Chief Electoral Officer

The CEO is responsible for:

- a. Providing strategic direction on the Complaints, Investigations, and Enforcement Policy;
- b. Deciding appropriate remedies for complaints that are escalated to the CEO;
- c. Applying enforcement actions (e.g., Administrative Monetary Penalties) and referring apparent infractions of the *Election Act* or the *Election Finances Act* to the Attorney General; and
- d. Providing direction and concurrence on investigation plans and concurrence with decisions to close complaints.

### 6.2 Manager, Compliance Enforcement

Manager, Compliance Enforcement is responsible for:

- a. Determining whether the complaint received is an apparent infraction of the *Election Act* or *Election Finances Act*, and whether matters subject to the complaint fall within the jurisdiction of Elections Ontario.
- b. Directing the formal investigation of complaints by overseeing the collection and organization of evidence.
- c. Conducting formal investigations into complaints involving infractions of the *Election Act* or *Election Finances Act*.
- d. Reporting apparent infractions of the *Election Act* or *Election Finances Act* to the CEO and providing recommendations for next steps.
- e. Providing advice to the CEO regarding all enforcement options that arise from complaints and investigations.

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## Section 7: Additional References

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The following table identifies EO policies and documents that expand upon this policy.

Document Name	Author(s)
1. <i>Election Act</i>	Legislative Assembly of Ontario
2. <i>Election Finances Act</i>	Legislative Assembly of Ontario
3. Records Retention Schedule	Elections Ontario

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## Section 8: Approval

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The following table shows the authorization, amendment, and review dates for this policy.

Complaints, Investigations, and Enforcement Policy	
Authorization	 Chief Electoral Officer Date: February 1, 2024
Effective Date	February 1, 2024
Date Last Amended	October 1, 2021
Date of Next Review (Once per election cycle)	Post 2026 General Election
Contact Information	Corporate Affairs Policy team <a href="mailto:CorporateAffairs@elections.on.ca">CorporateAffairs@elections.on.ca</a>

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