

Public Interest Disclosure Commissioner Annual Report 2014



**Public Interest
Disclosure
Commissioner**
Speak out. Safely.

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April 2015

The Honourable Dan D'Autremont
Speaker of the Legislative Assembly
Province of Saskatchewan
Room 129 Legislative Building
2405 Legislative Drive
Regina, Saskatchewan S4S 0B3

Dear Mr. Speaker:

In accordance with section 23 of *The Public Interest Disclosure Act*, it is my duty and privilege to submit to you the third annual report of the Public Interest Disclosure Commissioner for 2014.

Respectfully submitted,

Mary McFadyen
COMMISSIONER

Vision, Mission, Values and Goals

Since 2012, Ombudsman Saskatchewan has also served as the Office of the Public Interest Disclosure Commissioner. Our updated vision, mission, values and goals reflect our dual role:

Vision

Our vision is that government is always accountable, acts with integrity, and treats people fairly.

Mission

Our mission is to promote and protect fairness and integrity in the design and delivery of government services.

Values

We will demonstrate in our work and workplace:

- fairness, integrity and accountability
- independence and impartiality
- confidentiality
- respect
- competence and consistency

Goals

Our goals are to:

- Provide effective, timely and appropriate service.
- Assess and respond to issues from a system-wide perspective.
- Undertake work that is important to the people of Saskatchewan.
- Demonstrate value to the people of Saskatchewan by making recommendations that are evidence-based, relevant and achievable.
- Be experts on fairness and integrity.
- Educate the public and public servants about fairness and integrity.
- Have a safe, healthy, respectful and supportive work environment.

Commissioner's Message

Since 2012, the Ombudsman has also served as the Public Interest Disclosure Commissioner. *The Public Interest Disclosure Act* sets up a structure under which public servants are able to disclose allegations of wrongdoing. The Act provides protection for those who bring forward allegations.

The Commissioner's role is to provide advice to public servants about the Act, and to investigate allegations of wrongdoing that come directly to the Commissioner. The Commissioner also has a mandate to investigate complaints of reprisal brought forward by public servants who have previously made an inquiry or disclosure under the Act, or cooperated in an investigation.

This year, we took steps to increase awareness of *The Public Interest Disclosure Act*, and to make sure that public officials and public servants understand the Act. This included ensuring that information about our Office was distributed throughout all government institutions, and reaching out to unions that represent public servants. We believe it is important for public servants to understand that there is a safe way to speak out if they have concerns about wrongdoings in their workplaces.

Under the Act, government institutions must have procedures in place to deal with disclosures of wrongdoing. They must appoint a designated officer to deal with those disclosures, and ensure that information about the Act and their internal disclosure procedures are widely communicated. This year, we undertook a compliance review to determine whether government institutions are meeting these obligations. We asked all government institutions to participate and we received a very positive response. We have reported out on those results in this report.

Our statistics for 2014 reveal that the number of inquiries we received from public servants under the Act is about the same as it has been since 2012. We received eight inquiries and four disclosures. While we haven't seen an increase in the number of inquiries in 2014, we believe there is more awareness about the purpose of the Act, due to the proactive steps we took this year to increase awareness. We had a 24% increase in website activity. To us, this indicates that more people are interested in learning about the public interest disclosure system.

For the year ahead, we will continue our public awareness role, aimed at ensuring that public servants and government institutions understand the reasons for the legislation. It is important that the public and public service are confident that there is a place public servants can go to disclose wrongdoings, with the assurance that they will be addressed impartially and independently.



Mary McFadyen,
Commissioner



About Public Interest Disclosure

The Public Interest Disclosure Act came into effect on September 1, 2011. The purpose of the Act is to promote accountability and integrity within Saskatchewan's public sector. It does so by:

- Establishing a system for public servants to disclose concerns about suspected wrongdoings.
- Protecting public servants who make a disclosure or seek advice under the Act from reprisals.
- Ensuring that disclosures of wrongdoing are investigated in a timely and effective manner.

The Act provides two avenues for public servants who want to seek advice or make a disclosure: either the Public Interest Disclosure Commissioner or a designated officer within their organization.

It is up to the individual public servant to decide whether to seek out the Commissioner or designated officer. No matter which option the public servant chooses, he or she is equally protected from reprisals.

THE ROLE OF THE PUBLIC INTEREST DISCLOSURE COMMISSIONER

The Office of the Public Interest Disclosure Commissioner is established under the Act. The Act allows the provincial Ombudsman to be appointed as the Commissioner. Mary McFadyen was appointed Ombudsman and Public Interest Disclosure Commissioner on April 1, 2014.

The Commissioner is an Officer of the Legislative Assembly and as such is independent from the provincial government and the government institutions subject to the Act. She is free to reach her own conclusions about concerns that come to her Office.

The Commissioner is appointed for a five-year term that can be renewed for an additional five years.

Under the Act, the Commissioner has jurisdiction to investigate and take appropriate steps to help resolve matters raised by public servants related to alleged wrongdoings in government institutions.

The Commissioner has sole jurisdiction to investigate complaints of reprisal taken against public servants for actions they took under the Act.

Which Government Institutions Does *The Public Interest Disclosure Act* Apply to?

Government institutions include the office of Executive Council, any department, ministry, secretariat or other similar agency of the executive government of Saskatchewan or any body listed in Part 1 of the Appendix to *The Freedom of Information and Protection of Privacy Regulations*. As a result, most provincial government ministries, agencies, boards, commissions, and Crown corporations are covered by *The Public Interest Disclosure Act*.

The Act does not apply to private businesses, other officers of the Legislative Assembly, members of the Legislative Assembly, the courts, regional health authorities, publicly-funded health agencies, school divisions, universities, colleges, cities or municipalities.

Who is Considered a Public Servant?

Public servants include employees of government institutions. The Act does not apply to members of the public or employees or officers of any agency, corporation or institution of the federal government or of any other provincial government.

WHAT IS A WRONGDOING?

A wrongdoing is any of the following:

- a contravention of a provincial or federal act or regulation
- an act or omission that creates a substantial and specific danger to the life, health or safety of persons* or the environment
- gross mismanagement of public funds or assets
- counseling to commit a wrongdoing

**Other than a danger that is inherent in the performance of a public servant's job.*

Generally, wrongdoings under PIDA do not include personal or private interests such as individual grievances and workplace conflicts. These issues are more appropriately dealt with by existing workplace or public sector policies, codes of conduct and grievance procedures.

WHAT IS A REPRISAL?

Public servants may make a complaint to our Office if they believe they have suffered reprisals for having sought advice about, disclosed or refused to participate in a suspected wrongdoing, or cooperated in an investigation under the Act.

Reprisals include but are not limited to:

- dismissal
- layoff
- suspension
- demotion or transfer
- discontinuation or elimination of a job
- change of a job location
- reduction in wages
- change in hours of work or reprimand
- any other measure that adversely affects the public servant's employment or working conditions
- threats to take any of these measures

THE ROLE OF THE PERMANENT HEAD

Permanent heads include:

- deputy ministers
- the president or other official in charge of a government institution, and who is directly responsible to a minister or the Premier
- chief executive officers of Crown corporations
- the chair of the board of directors of prescribed institutions other than Crown corporations

Sections 5, 6 and 8 the Act assign specific responsibilities to permanent heads.

Section 5

Section 5 requires permanent heads to appoint a senior official to be the designated officer for the purposes of the Act. If the permanent head does not designate a senior official then the permanent head is the designated officer.

Section 6

Section 6 requires every permanent head to establish procedures to manage disclosures by public servants of the government institution, and specifies the features the procedures must include.

Section 8

Section 8 requires permanent heads to ensure that information about the Act and the disclosure procedures of the government institution are widely communicated to the public servants of the government institution.

THE ROLE OF THE DESIGNATED OFFICER

Designated officers are often the first point of contact for public servants who want to disclose their concerns or to seek advice within the workplace.

Designated officers receive and deal with disclosures according to the requirements of the Act (e.g. confidentiality, procedural fairness).



Case Examples

CASE FILES

The Office continued to provide advice to public servants and to receive disclosures of alleged wrongdoing and complaints of reprisal. Investigation work increased in 2014 and several files remain open into 2015. Here is an anonymous example. We have not named the government institution to protect the complainant's identity.

Investigation Into Reprisal Allegation

A public servant believed that a manager at his workplace was approving certain payments inappropriately. He made a disclosure to his designated officer. Several employees were implicated in the alleged wrongdoing.

His workplace conducted an investigation and found that no wrongdoing under the Act had occurred. The applicable files were also reviewed by the Provincial Auditor during the annual audit, by a federal auditor, and by an independent auditor. None of these found any financial improprieties.

The public servant believed he was suffering reprisals for having made the disclosure. He contacted the Commissioner's Office with a complaint of reprisal. We investigated and found the reprisal complaint to be unsubstantiated. Also, given the level of scrutiny that had already been applied to the disclosure, we did not investigate the allegations of wrongdoing. We did, however, provide suggestions for improvement on reporting and record-keeping related to public interest disclosure investigations.

INQUIRIES

There are times when public servants wonder whether a decision or action in their workplace would qualify as a wrongdoing under *The Public Interest Disclosure Act*. Sometimes they may have questions about the process and their options. We welcome these inquiries and encourage public servants to contact us. Even when we decide the matter should not be pursued as a disclosure of wrongdoing or complaint of reprisal, we can often provide information about the Act and discuss potential options.

Here are a few anonymous examples.

Where do These Concerns Fit?

An employee of a ministry was concerned about some changes the ministry made to make to a particular service. The changes would affect staffing and result in costs that the employee felt were unnecessary.

The employee contacted the Commissioner's Office to discuss the matter and potentially make a disclosure. We found that the changes made to the service were well within the decision-making authority of the deputy minister. We decided there was no role for our Office. We did identify that some of the person's concerns could be raised with the person's union.

Question About a Health Region

A health region employee contacted our Office to inquire about an issue. We were not able to consider the matter because regional health authorities are not "government institutions" under the Act and, therefore, not within our mandate. We referred the person to the CEO of the health region.



Compliance, Exceptions and Awareness

COMPLIANCE REVIEW

During 2014, the Office undertook a compliance review to ensure that all permanent heads of government institutions are meeting their responsibilities under *The Public Interest Disclosure Act*.

Between October 6, 2014, and November 14, 2014, we asked all government institutions that are subject to the Act to submit information about their compliance with sections 5, 6 and 8, which require permanent heads to appoint a senior official to be the designated officer, establish procedures to receive, manage and investigate disclosures, and to ensure that information about the Act and the disclosure procedures within their government institutions are widely communicated.

We are pleased to report that we had a very positive response. Sixty-seven of 77 government institutions provided us with the information we requested. Six of the respondents asked to consult with the Commissioner under subsection 7(2) of the Act – about whether, based on their small size, it would be appropriate for them to not establish procedures and not appoint a designated officer.

We found that most government institutions are now meeting the basic requirements of the Act. Further, some have procedures that go beyond the basics, so we commend them for that. We will be following up with institutions that are not meeting the requirements of the Act or that we think could improve their procedures.

EXCEPTION CONSULTATIONS

Section 7 of the Act allows a government institution to be excepted from sections 5 and 6 of the Act if the permanent head believes that, because of its size, it is not practical to apply those sections of the Act to the government institution.

Section 7 requires government institutions to consult with the Commissioner before making this decision. As a result of the compliance review we received a number of consultation requests. These were still underway at the end of 2014.

Government institutions that are excepted under section 7 are not required to appoint a designated officer or establish procedures to manage disclosures under the Act. All disclosures and inquiries from employees at these institutions must be directed to the Commissioner. Excepted institutions are still required to comply with the rest of the Act, including section 8, by widely communicating to employees about the Act.

Government institutions that have been excepted are listed on our website under **<http://www.saskpidc.ca/info/excepted-organizations.html>**.

AWARENESS AND EDUCATION

In 2014, we took several steps to increase awareness and education related to PIDA. We distributed information electronically and by paper to government institutions and encouraged them to share our information with their staff. We provided posters to help institutions and designated officers educate staff about the protections under the Act. An online form will soon be available on our website to provide another option for public servants who are thinking about making a disclosure.

Now that the compliance review is complete, we will resume our plans to consult with government institutions on two points: how to best reach the public servants they employ, and how to best support designated officers in their duties.

In 2015, we will continue to build awareness of our Office by working with unions and by making more presentations to the public and public servants.

Statistics

Statistics for the Office of the Public Interest Disclosure Commissioner are based on the calendar year. This represents a change from our previous reporting, which was based on the fiscal year. Reporting on the calendar year enables us to coordinate publication of the Commissioner's and the Ombudsman's annual reports for greater efficiency and easier public access.

PIDA INQUIRIES AND DISCLOSURES

When a public servant makes a disclosure, the first step is to conduct an assessment to determine whether the allegations fit the definition of a wrongdoing under the Act. If they do, we proceed to the investigation stage. In 2014, we carried over two investigations from 2013. One of those investigations was concluded in 2014, and the other one was still ongoing. Four disclosures were received in 2014, all of which were still under assessment at the end of 2014.

	2014	2013	2012
INQUIRIES			
Inquiries Within Jurisdiction	5	10	4
Inquiries Outside Jurisdiction	3	4	3
DISCLOSURES / COMPLAINTS OF REPRISAL	4	2	0
TOTALS	12	16	7

Budget and Staff



FINANCES

The Office of the Public Interest Disclosure Commissioner operates as part of Ombudsman Saskatchewan. The Ombudsman receives funding to investigate public interest disclosures, including providing advice to and receiving disclosures from public servants about alleged wrongdoings in their government organizations, and about alleged reprisals against public servants for seeking advice from or making disclosures to the Commissioner. The Ombudsman's estimates and financial statements encompass all financial aspects associated with the Ombudsman's role, including the Public Interest Disclosure Commissioner. The Ombudsman's Audited Financial Statements are available at http://www.ombudsman.sk.ca/documents_and_files/audited-financial-statements.

STAFF

As a combined Office, Ombudsman Saskatchewan and the Office of the Public Interest Disclosure Commissioner share staff. The staff list for 2014 is in the Ombudsman section of this report.