

**Speak Out.
Safely.**

13/14



**Public Interest
Disclosure
Commissioner**

SASKATCHEWAN

Something not looking right at work?

Speak out. Safely.

Ignoring a wrongdoing in your workplace will not make it go away.
Talk to us about your options.

For more information about the definition of a wrongdoing under *The Public Interest Disclosure Act*, how reprisal protection works, or to report (disclose) a wrongdoing, you are welcome to contact either:

- the designated officer at your workplace

- **The Office of the Public Interest Disclosure Commissioner**
Suite 150 – 2401 Saskatchewan Drive
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Toll free: 1.800.667.7180
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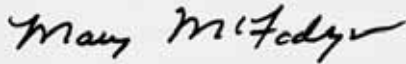
July 2014

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 second annual report of the Public Interest Disclosure Commissioner for the period of April 1, 2013 – March 31, 2014.

Respectfully submitted,

A handwritten signature in black ink, reading "Mary McFadyen", is displayed within a light gray rectangular box.

Mary McFadyen
PUBLIC INTEREST DISCLOSURE COMMISSIONER

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Commissioner's Message

I am honoured to have been appointed the Public Interest Disclosure Commissioner for the Province of Saskatchewan and am pleased to present the *2013-14 Annual Report*. This is the second annual report since *The Public Interest Disclosure Act* came into force in 2011 and it sets out a summary of the work accomplished during this second reporting period.

The Public Interest Disclosure Act sets up a structure under which public servants are able to report allegations of wrongdoing within the public service. Government institutions are each required to appoint a designated officer to receive and act on those allegations. The Act also protects public servants from reprisal from their employer when they disclose wrongdoings.

As Commissioner, I have four distinct roles:

1. To give advice to public servants about all matters falling under the Act.
2. To provide assistance and guidance to government institutions and designated officers in setting up their internal disclosure processes.
3. To receive disclosures directly from public servants.
4. To review cases where a public servant is alleging reprisal resulting from an allegation of wrongdoing.

This past year, the office received 11 inquiries, which included eight requests for advice and three disclosures, two of which were opened as investigations and are ongoing. In contrast, there are over 12,000 public sector employees who work within government institutions that are subject to *The Public Interest Disclosure Act*. This leads me to ask the following questions:

If no one complains, does that mean everything is okay?

It may be that public servants do not have a good understanding of the office's existence or its role. The office has attempted to increase awareness of our mandate throughout the public service and it is important that public servants know what the Act is intended to accomplish. It is also important that I find out what public servants think about the current process. While we have done some public education in the past, I intend to do more to reach out to public servants this year, including meeting with union representatives.



“...the existence of a channel for disclosure is not sufficient. The challenge is to ensure that people know where to report and understand the channels through which a concern can be raised.”

– Transparency International,
*Alternative to Silence: Whistleblower
Protection in 10 European Countries*
Pg. 11

Are public servants reporting their concerns to the designated officers within their government institutions?

Public servants who wish to report a wrongdoing or seek advice may contact their organization's designated officer or the Commissioner. Under the Act, the government must prepare an annual report on all disclosures made to the designated officers and how they were dealt with.

One of my goals this year is to review these organizations' internal processes, to find out how they are assessing the potential wrongdoings disclosed to them and how they are educating staff. I feel that it is part of my responsibility as Public Interest Disclosure Commissioner to ensure that these internal processes are in place and functioning properly – and I intend to report on what I find.

Is The Public Interest Disclosure Act doing what the Legislators intended it to do?

The Public Interest Disclosure Commissioner is an Officer of the Legislative Assembly, and my role is to assist the Legislative Assembly in holding the government accountable and responsive to the public. The Legislative Assembly created a structure under the Act for reporting allegations of wrongdoing and to protect public servants who report such allegations. As Commissioner, I have a role in ensuring that that structure is, in fact, working properly.

Government institutions must provide a safe environment where public servants are not afraid to bring forward concerns, knowing that those concerns will be taken seriously and dealt with confidentially. As well as reaching out directly to public servants this year, we will continue to work with organizations and designated officers to assist them in meeting this goal and improving their performance.

Saskatchewan has a history of an effective and innovative public service, which is now supported by a system that enables its members to speak out about wrongdoings in the workplace. In returning to Saskatchewan, I am proud to have a role in providing this service to public servants and ultimately, to the Saskatchewan public. In the fulfilment of these responsibilities, my staff and I look forward to working with public servants, unions, designated officers and permanent heads.

About Public Interest Disclosure

The Public Interest Disclosure Act (PIDA or the 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 those who come forward to make a disclosure or seek advice under the Act.
- ensuring that reports of wrongdoing are investigated in a timely and effective manner.

The Act is part of a larger system of provisions, protections, and complaint mechanisms, such as those found in *The Saskatchewan Employment Act*. PIDA also complements the role of other oversight agencies such as the Ombudsman and the Provincial Auditor.

PIDA provides two avenues for public servants who wish 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 their designated officer. No matter which option the public servant chooses, they are equally protected from reprisals. They can **Speak Out. Safely.**

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The Role of the Public Interest Disclosure Commissioner

The office of the Public Interest Disclosure Commissioner is established under the Act. The Commissioner is an Officer of the Legislative Assembly and is appointed for a five-year term that can be renewed for an additional five years. The Act also 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 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.

When someone contacts the office about a public interest disclosure matter, our process begins by ensuring that we are the right place for the concern to be addressed. We do that by asking two questions:

Does the matter involve a government institution?

PIDA only applies to the government institutions listed in Part 1 of the Appendix to *The Freedom of Information and Protection of Privacy Regulations*. This includes most provincial government ministries, agencies, boards, commissions, and Crown corporations. PIDA does not apply to private businesses, the Legislative Assembly Service, other offices of the Legislative Assembly, members of executive council, the courts, regional health authorities, school divisions, universities, colleges, cities or municipalities.

Is the person making the inquiry a provincial public servant?

Only public servants can seek advice, make a disclosure of wrongdoing or bring a complaint of reprisal. PIDA does not apply to members of the public or employees or officers of any agency, corporation or institution that is not prescribed in *The Freedom of Information and Protection of Privacy Regulations*.

If the concern does not relate to a government institution or the person making the inquiry is not a public servant, we will, if appropriate, assist the individual in finding the most appropriate way to address their concern.

If the answer to both questions is yes, we assess the information and determine if the concern is about a wrongdoing or reprisal as defined under the Act.

When a disclosure is made to the Commissioner, there are a number of ways in which we can proceed. Depending on the case before us, we may try to resolve the matter informally, refer it back to the government institution to handle, refer to other independent officers such as the Ombudsman or the Provincial Auditor or, if warranted, conduct an investigation.

If public servants choose to raise their concerns within their government institutions, they must go through their designated officers in order to receive the protections of the Act.

The Role of the Designated Officer

PIDA requires every government institution to assign a senior official as its designated officer for the purposes of the Act. Designated officers have an important stewardship role in the PID systems within their government institutions.

Designated officers are often the first point of contact for public servants who want to seek advice or disclose their concerns within the workplace. As such, designated officers have a responsibility to ensure their PID system is known throughout the organization, accessible to those who choose to access it, and effective when dealing with issues raised.

Each government institution must have procedures in place for responding to, managing and investigating the concerns brought forward. These procedures must outline how the institution will:

- receive and review disclosures.
- refer matters, as appropriate, to another government institution.
- review and investigate disclosures in accordance with the principles of procedural fairness and natural justice.
- protect the confidentiality of information collected in relation to disclosures and investigations.
- report the outcome of investigations.
- enforce and follow up on any disciplinary action or corrective action taken or directed pursuant to the Act.

It is up to public servants to decide whether to go to their designated officer or the Commissioner to seek advice and/or make a disclosure. Whatever they choose, it's important for public servants to remember that the Office of the Public Interest Disclosure Commissioner is not an office of last resort. This means that public servants do not have to try all other options before coming to our office; they can, in fact, come to us first. No matter which option they choose, they are equally protected from reprisals.

“Reprisals can and will have a ‘chilling’ effect, not only on the individual but on the organization as a whole – potentially stopping others from coming forward with concerns. Reprisals must be treated with the same seriousness as the wrongdoings from which they originate.”

What is a Reprisal?

One of the primary purposes of PIDA is to protect public servants from reprisals if they seek advice, disclose a wrongdoing, refuse to participate in a suspected wrongdoing, or co-operate in a PID investigation. Many different actions can be reprisals, including:

- 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 action that adversely affects the public servant's employment or working conditions
- threats of any of these actions

Under PIDA, only the Commissioner is authorized to receive and look into complaints of reprisals. We investigate an allegation of reprisal the same way we investigate an allegation of wrongdoing.

When a complaint of reprisal comes to us, we first assess whether the action taken against the public servant was taken because the public servant used the processes under the Act. Sometimes disciplinary or other work-related actions are taken against public servants. If such actions are not related to a report of wrongdoing they may not be considered reprisals.

Though the Act does not specifically describe reprisals as wrongdoings, the Commissioner considers reprisals to be a form of wrongdoing. Reprisals can and will have a “chilling” effect, not only on the individual but on the organization as a whole – potentially stopping others from coming forward with concerns. Reprisals must be treated with the same seriousness as the wrongdoings from which they originate.

What is a Wrongdoing?

Within any workplace there are situations that some may consider to be wrong but which are not wrongdoings as defined under PIDA.

Under PIDA, a wrongdoing is any of the following:

- a contravention of provincial or federal legislation.
- 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.

What is not a Wrongdoing?

PIDA is intended to address concerns and issues related to the public interest. It is not intended to address personal or private interests such as individual grievances and workplace conflicts, which are more appropriately dealt with by existing workplace or public sector mechanisms such as Public Service Commission policies, codes of conduct and grievance procedures. There may, however, be situations when individual grievances suggest that the issues are symptomatic of a larger problem within the organization and further investigation under PIDA may be appropriate.

An Overview of The Public Interest Disclosure Act

When a public servant	A public servant is an employee or officer of a government institution. Government institutions include all provincial government ministries, agencies, boards, commissions, and Crown corporations.
makes an appropriate disclosure	The discloser honestly and reasonably believes the information may show a wrongdoing or a potential wrongdoing.
of a wrongdoing	A wrongdoing may include an unlawful act, a substantive and specific danger to persons or the environment, gross mismanagement of public funds or assets, official misconduct, improper administration, waste of public funds or assets, counseling to commit a wrongdoing, or reprisals.
to the appropriate entity	These are the designated officers of the government institution involved or the PID Commissioner.
they receive protection.	For making the disclosure, the discloser is protected from reprisals, exposure of their identity, and civil, criminal or administrative liability.

Adapted from: Crime and Misconduct Commission, Queensland Ombudsman, and Public Service Commission (2011). *Has one of your staff blown the whistle?*

Case Examples

The number of case files handled by our office this past year is consistent with the previous year. Public interest disclosure is still a relatively new concept in Saskatchewan's public service. We believe that increased efforts to educate and raise awareness among public servants will provide better knowledge of PIDA and its protections.

Providing education about PIDA is an important part of the work our office does to help build an open and supportive environment in which public servants can safely raise their concerns. We are committed to being a resource for public servants, designated officers and the general public about the Act, how it works and about public interest disclosure in general. The following case examples are presented as part of our educational efforts.

Case 1: Exception Consultation - Saskatchewan Grain Car Corporation

The Saskatchewan Grain Car Corporation contacted the office to determine whether it should be excepted from sections 5 and 6 of the Act. These sections of the Act require government institutions to appoint a designated officer and create policies and procedures for managing disclosures. PIDA requires government institutions to consult with the Commissioner if the permanent head believes that, because of its size, it is not practical to apply sections 5 and 6 of the Act to the government institution.

Given the small size of the Saskatchewan Grain Car Corporation, we agreed that it would be impractical to apply sections 5 and 6 of the Act. Once the permanent head of a government institution decides not to apply sections 5 and 6, any inquiries and disclosures concerning it are then handled by the Commissioner's office.

Case 2: Were Those Purchases Wrongdoings?

A public servant contacted us to discuss what he considered to be a wrongdoing. He was concerned that purchases made by his branch were not in keeping with the *Financial Administration Manual*. The public servant was concerned that if the *Financial Administration Manual* was breached, then a wrongdoing may have occurred and by staying silent he would have been considered a party to the wrongdoing.

We assessed the public servant's concern based on the information he provided. We found that the circumstances had not in fact violated the *Financial Administration Manual* and that no wrongdoing had occurred. The public servant was satisfied with this response.

Case 3: In Search of Best Practices

Consultations About Establishing Policies

We were contacted separately by officials from the Saskatchewan Assessment Management Agency and the Mamawetan Churchill River Health Authority. Neither organization is currently under the jurisdiction of the Act (as described on page 4), but both wanted to develop internal policies that would facilitate the reporting of suspected wrongdoings and support their employees throughout the disclosure process.

We discussed best practices in public interest disclosure with both organizations and provided examples of policies that they could adapt for their purposes. They took the information we provided and began to work on the development of safe disclosure policies for their employees. We acknowledge both organizations for voluntarily taking this important step.

Requests for Review

Under the Act, government institutions are required to develop policies and procedures for the management of disclosures. Government institutions may ask the Commissioner to review these policies to ensure that they comply with the Act. These policy consultations are meant to ensure that best practices are being met in Saskatchewan's PID scheme; they do not provide legal advice and they do not limit the future actions or comments of the Commissioner. We encourage government institutions to contact us if they are interested in having their PID policies reviewed to make sure they are keeping up with best practices in the field.

Case 4: Speaking Out in the Health Sector

Over the last year, we continued to receive inquiries from individuals who are not considered public servants under the Act about organizations not covered under the Act. For example, we received inquiries from health sector employees who were concerned about possible wrongdoings in their workplaces. In those cases we provided referrals to other appropriate oversight authorities or processes that could assist the individuals in resolving their concerns.

The Commissioner's jurisdiction in the health sector includes only the Ministry of Health and eHealth Saskatchewan. The fact that other health sector employees continue to contact our office suggests that there may be a need to establish a way for them to **Speak Out. Safely.**

Conclusion: Looking Forward

The Evolution of Public Interest Disclosure Across Canada

Public interest disclosure in the Saskatchewan public service remains a relatively new territory; our office is only now entering its third full year of existence. We continue to build our knowledge about public interest disclosure from our own experiences and from those of our colleagues.

We have built strong and supportive relationships with provincial and federal oversight offices. This past year we were pleased to host a meeting of our colleagues from the provincial public interest disclosure oversight offices in Alberta, Manitoba, Ontario, Nova Scotia, New Brunswick, Newfoundland and Labrador and our federal counterparts with the Office of the Public Sector Integrity Commissioner. We also invited guests from provincial oversight offices in British Columbia and Quebec. This annual meeting provides valuable information about developments in the PID field and enhances our knowledge and expertise.

We continue to monitor the development of PID legislation in other jurisdictions. Each new piece of PID legislation builds upon, and sometimes improves upon, the legislation that has gone before it. For example, *The Alberta Public Interest Disclosure (Whistleblower Protection) Act*, which was enacted after Saskatchewan's legislation, extended its coverage beyond the provincial public service to include academic institutions, school boards, charter schools, and public sector health organizations.

We will continue to monitor the development of new PID legislation and ensure that our Act continues to effectively support accountability and integrity in the public service by protecting public servants who use it to raise concerns about potential wrongdoings.

Issues Arising From Inquiries

Through our case work and our consultations over the last year, we have identified two issues that will require further discussion with government, and more specifically, with designated officers in the listed government institutions. These issues do not reflect deficits within the legislation, but speak to the need to provide consistent and ongoing support to designated officers when dealing with disclosures in their institutions.

When is a Disclosure a Disclosure?

The question of what constitutes a disclosure has been raised in many of our discussions with designated officers. For example, a public servant may approach a designated officer with a concern about a workplace issue. Both the public servant and the designated officer may be uncertain about whether the issue would be considered a wrongdoing under the Act.

Section 11 of the Act states only that disclosures must be made “in writing and in the prescribed form.” While public servants need to know that forms are available, they - and their designated officers - also need to know that a completed form is not essential for a designated officer to take action. What is most important is that a public servant provides sufficient information, regardless of form or format, that could show that a wrongdoing or reprisal has been or is about to be committed.

The Commissioner does not require public servants to use the prescribed form in order to make a disclosure to or seek advice from our office. In our opinion, insisting that a disclosure be made on the prescribed form or refusing to accept a disclosure that is not made on the prescribed form, fails to meet the spirit and intent of the Act.

Duty to Assist

The role of a designated officer is to receive, manage and, if appropriate, investigate disclosures of alleged wrongdoing. Part of the role is also to support public servants who come forward under the Act.

This has caused us to consider whether designated officers have a “duty to assist” public servants and what that might include.

Other provincial legislation, such as *The Health Information Protection Act* (HIPA), contains a duty to assist (see section 35). According to HIPA, trustees under that Act have a duty to openly, accurately and completely respond to written requests for access to personal health information.

PIDA is relatively new and many public servants may not yet know about the Act and how it affects them. In some circumstances, this will require designated officers to take positive, proactive steps to either engage the Act or provide advice and education to public servants about the Act. Acting in this way is crucial for designated officers in their capacity as PID access points and PID experts within their institutions.

Expansion Into the Health Sector

In our first annual report we noted that, despite our limited jurisdiction in the health sector, a significant number of inquiries to our office came from that sector. We have continued to monitor these inquiries. While there were fewer this past year, we continue to field inquiries from health sector employees who are concerned about issues in their workplaces.

We continue to believe that it is important for government to consider expanding the protections of PIDA to more employees in the health sector. In the next year, we will continue to monitor this area and will engage the Ministry of Health and other health sector stakeholders to explore the possibility of expansion of PIDA to the health sector.

Compliance Reviews

PIDA requires that every permanent head of a government institution establish procedures to receive, manage and investigate disclosures of wrongdoings. Part of our role is to not only provide support and education about PIDA, but also to provide our best advice to government institutions about receiving, managing and investigating disclosures.

One way to do this is to undertake reviews of the PID policies, procedures and programs of government institutions, to ensure their compliance with the Act, and to identify areas for improvement and opportunities for education. As part of our case work, we looked at the way the applicable government institutions implemented the provisions of the Act in the workplace. We have found these government institutions to be open to an independent review of their PID procedures and have been supportive of suggested changes. In the next year we will expand our compliance review work. We will continue to carry out these reviews as part of our investigative process. In addition, we will undertake reviews more generally, focusing on whether or not government institutions have developed and implemented procedures to receive, manage and investigate concerns of suspected wrongdoing.

Awareness & Education

We believe that a significant part of our quality assurance program involves the efforts of our office to provide education about and raise awareness of PIDA. It is our goal to increase our efforts in this area in the next year. To meet that goal we will:

- consult with government institutions as to how to best reach the public servants they employ.
- consult with designated officers as to how to best support them in their duties.
- increase training opportunities for designated officers and public servants.
- engage unions to help reach the public servants they represent.
- provide general educational sessions to the public.
- develop online forms for the OPIDC website.
- distribute OPIDC posters (shown on the inside covers of this report).

In carrying out these activities, we will continue to take a lead role in supporting the creation of a PID-supportive culture in the Saskatchewan public service.

The Numbers

Statistics for the office of the Public Interest Disclosure Commissioner are based on fiscal year reporting, which is from April 1 of one calendar year to March 31 of the next; the statistics for this annual report reflect the time period of April 1, 2013 to March 31, 2014.

PIDA Inquiries and Disclosures

When a public servant makes a disclosure, the first step is to conduct an assessment to determine whether the allegations would fit the definition of a wrongdoing under the Act. If they would, we proceed to the investigation stage. In 2013-14, we received three disclosures. One was carried over into 2014-15 while still in the assessment stage. The other two proceeded to the investigation stage and are ongoing.

Files Carried Over From 2012-13	0
Files Opened in 2013-14	11
Inquiries Recieved	8
Disclosures Received	3
Files Closed in 2013-14	8
Advice Provided	8
Case Assessments	0
Files Carried Over Into 2014-15	3
Case Assessments	1
Investigations	2

PIDA Exception Consultations

Under PIDA, government institutions are required to appoint a designated officer. The only exception is if the permanent head determines that due to the size of the institution, it is not practical to do so. In this case, the permanent head must consult with the Commissioner about an exception from sections 5 and 6 of the Act.

Exception Consultations	1
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Special Reports

Our office did not issue any special reports this past year.

Finances

The Public Interest Disclosure Commissioner's office operates as part of the Ombudsman's office. 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 Ombudsman/Commissioner. The Ombudsman's Estimates and Financial Statements encompass all financial aspects associated with the Ombudsman's role, including Public Interest Disclosure Commissioner. The Ombudsman's Audited Financial Statements are available at http://www.ombudsman.sk.ca/documents_and_files/audited-financial-statements.

APPENDIX A

Organizations Excepted from Appointing a Designated Officer

Under PIDA, applicable organizations are required to appoint a designated officer. The only exception is if the permanent head determines that the size of the organization makes it impractical to do so. In this case, the permanent head will consult with the Commissioner about an exception from sections 5 and 6 of the Act.

Following is a list of all the excepted organizations as of March 31, 2014.

Multitype Library Board
Saskatchewan Grain Car Corporation

IGNORING A WRONGDOING IN THE WORKPLACE WILL NOT MAKE IT DISAPPEAR

We can only hear you...if you speak out.

Talk to us about your options.

For more information about the definition of a wrongdoing under *The Public Interest Disclosure Act*, how reprisal protection works, or to report (disclose) a wrongdoing, you are welcome to contact either:

- the designated officer at your workplace

- **The Office of the Public Interest Disclosure Commissioner**
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S A S K A T C H E W A N