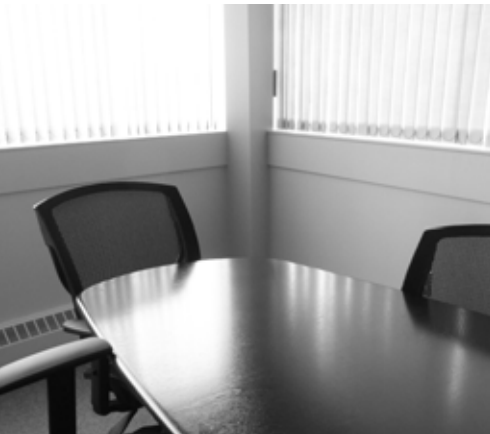




**Public Interest
Disclosure
Commissioner**

Speak out. Safely.



2018

Annual Report



Table of Contents

- 1 COMMISSIONER'S MESSAGE
- 4 PUBLIC EMPLOYEES: YOU ARE PROTECTED
- 5 GOVERNMENT INSTITUTIONS: YOU HAVE A RESPONSIBILITY TO YOUR EMPLOYEES
- 6 ABOUT PUBLIC INTEREST DISCLOSURE
- 11 STATISTICS
- 11 STAFF AND BUDGET

How to Reach Us

REGINA OFFICE

150 – 2401 Saskatchewan Drive
Regina, Saskatchewan S4P 4H8

Phone: 306-787-6211
Toll Free: 1-800-667-9787
Fax: 306-787-9090
ombreg@ombudsman.sk.ca

SASKATOON OFFICE

500 – 350 3rd Avenue North
Saskatoon, Saskatchewan S7K 6G7

Phone: 306-933-5500
Toll Free: 1-800-667-9787
Fax: 306-933-8406
ombsktn@ombudsman.sk.ca

www.saskpidc.ca



**Public Interest
Disclosure
Commissioner**

Speak out. Safely.

April 2019

The Honourable Mark Docherty
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 subsection 23(1) of *The Public Interest Disclosure Act*, it is my duty and privilege to submit to you the annual report of the Public Interest Disclosure Commissioner for 2018.

Respectfully submitted,

Mary McFadyen Q.C.
COMMISSIONER

Vision, Mission, Values and Goals

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 employees about fairness and integrity.
- Have a safe, healthy, respectful and supportive work environment.

Commissioner's Message



Mary McFadyen, Q.C.
Commissioner

I am pleased to present the *2018 Annual Report*, which highlights our progress and activities in carrying out our duties under *The Public Interest Disclosure Act* during the year.

The Public Interest Disclosure Act allows employees of provincial government institutions to disclose what they believe are wrongdoings in their workplaces and protects them from reprisal for speaking out if they do. Public sector employees can make these disclosures to an internal officer designated within their organization or directly to the Commissioner's Office. The Act protects employees working in the office of the Executive Council, all ministries, and many boards, commissions and Crown corporations. It does not protect employees of the Saskatchewan Health Authority, school divisions, universities, or municipalities.

When public sector employees contact the Office of the Public Interest Disclosure Commissioner, our role is to provide them with advice, and to receive and investigate their disclosures of wrongdoings and complaints of reprisal – that is, when they allege they have been retaliated against because they sought advice, made a disclosure, cooperated in an investigation, or declined to participate in a wrongdoing.

The number of public sector employees contacting us for advice or to make disclosures remained very low in 2018 as has been the case since the Office opened in early 2012. Over this time, just 77 people have contacted the Commissioner to inquire about whistleblowing. Of these, only 24 were disclosures of alleged wrongdoing or complaints of reprisal. Further, some of these were made anonymously, so, strictly speaking, they did not meet the standards for protection under the Act.

The number of public sector employees coming forward with disclosures to their internal designated officers is even lower. According to the Public Service Commission's annual reports about the disclosures made to the designated officers of all government institutions, just six public sector employees across all government institutions have come forward with disclosures under the Act since it was proclaimed in force on September 11, 2011. This is troubling.

It would be nice to think that these very low reporting numbers are because there has been very little wrongdoing going on in Saskatchewan's government institutions. Under the Act, wrongdoings are serious: contraventions of legislation; actions or omissions that create substantial and specific danger to life, health, or safety of persons, or to the environment; or gross mismanagement of public funds or assets. There may have been very little actual misconduct that was so serious as to be considered a wrongdoing under the Act.

However, this would not explain why so few public sector employees ever come forward. There are thousands of employees across a broad system, and it is to be expected that some will have concerns about situations that don't seem right to them. They may not be certain about whether these issues meet the criteria for a wrongdoing under the Act, but that is not their role. Their role is to disclose their concerns and the purpose of the Act is to protect them when they do so.

From the review of our own work with public sector employees and designated officers over the years, we think there are at least a few reasons why Saskatchewan's public sector employees might not be using the system designed to protect them:

- We have received several disclosures of wrongdoing anonymously. To us, this suggests that public sector employees do not feel safe coming forward. That there are so few employees who come forward internally to their designated officers also bears this out. Depending on the main role of the designated officer in the institution, a potential discloser may be reluctant to come forward. Designated officers must be chosen for their ability to remain neutral. Disclosers who come forward may also be having other issues at work – for example, performance or disciplinary problems. For this reason, human resources staff and in-house lawyers responsible for advising on HR-related matters may not, in our opinion, make the best designated officers. As designated officers, they are responsible for protecting employees who come forward. As HR or legal advisors, they are responsible for providing advice or making decisions about whether to reprimand or terminate employees. These two roles are not compatible.
- In other cases, because designated officers are senior-level officials, we think some employees do not feel comfortable approaching them. For example, in large institutions, a potential discloser might not feel comfortable approaching a designated officer whom they do not know, who may not work at their location, and who is many steps above them in the organizational hierarchy. Other provinces have addressed this by allowing disclosures to be made to a direct supervisor.
- In other situations, designated officers have expressed the view that if the information disclosed does not, on its face, show that a wrongdoing has occurred, then it is not a disclosure (and not to be reported as one.) So even if an employee comes forward in good faith with information they believe shows a wrong has occurred, if the designated officer does not think it is serious enough to be a wrongdoing, then it is not counted as a disclosure and not dealt with

under the Act. We think this approach undermines the purpose of the Act, which is to protect employees who come forward in good faith. Rejecting disclosures up front like this serves to discourage employees from coming forward. Further, the Act anticipates disclosures can be dismissed if they are frivolous or trivial, but they are still nevertheless disclosures.

Whatever the reasons, very few of Saskatchewan's public sector employees are coming forward to make disclosures of wrongdoing under the protection of *The Public Interest Disclosure Act*. Our Office and every government institution have a lot of work to do to make sure that public sector employees know about the Act and know that they will be protected if they speak out about something that they feel is not right in their workplace.



Public Employees: You Are Protected

By enacting *The Public Interest Disclosure Act*, the Legislative Assembly wanted to protect public servants who report wrongdoing in the workplace. It is in the public interest that public employees feel safe and have an effective, confidential way to come forward when something does not feel right in their workplace.

Reprisals can take many forms, including disciplinary measures such as demotion, termination of employment, or any actions or threats that adversely affect a public employee's working conditions.

If you contact the Commissioner's Office to make a disclosure, we can give you advice about what will happen if you do. We will discuss the details of your disclosure with you to clarify what it is you believe to be a wrongdoing and decide the most appropriate way to deal with your concerns. We investigate disclosures confidentially and in private. This means that we take steps to keep your identity confidential. If you come forward (make a disclosure) to either the Commissioner or to the designated officer within your organization, or if you refuse to participate in what you believe is a wrongdoing, and you suffer a reprisal as a result, we can investigate.

Public employees have the option of seeking advice and making disclosures of wrongdoing to the designated officer within their government institution or to the Commissioner, but only the Commissioner can investigate complaints of reprisal.

The *Public Interest Disclosure Act* contains strong measures to protect you from reprisal. If we find that you have suffered a reprisal, we can make appropriate recommendations to your employer to address it. Anyone who commits a reprisal against a public employee for coming forward under the Act is subject to prosecution and may be fined up to \$10,000 if convicted.

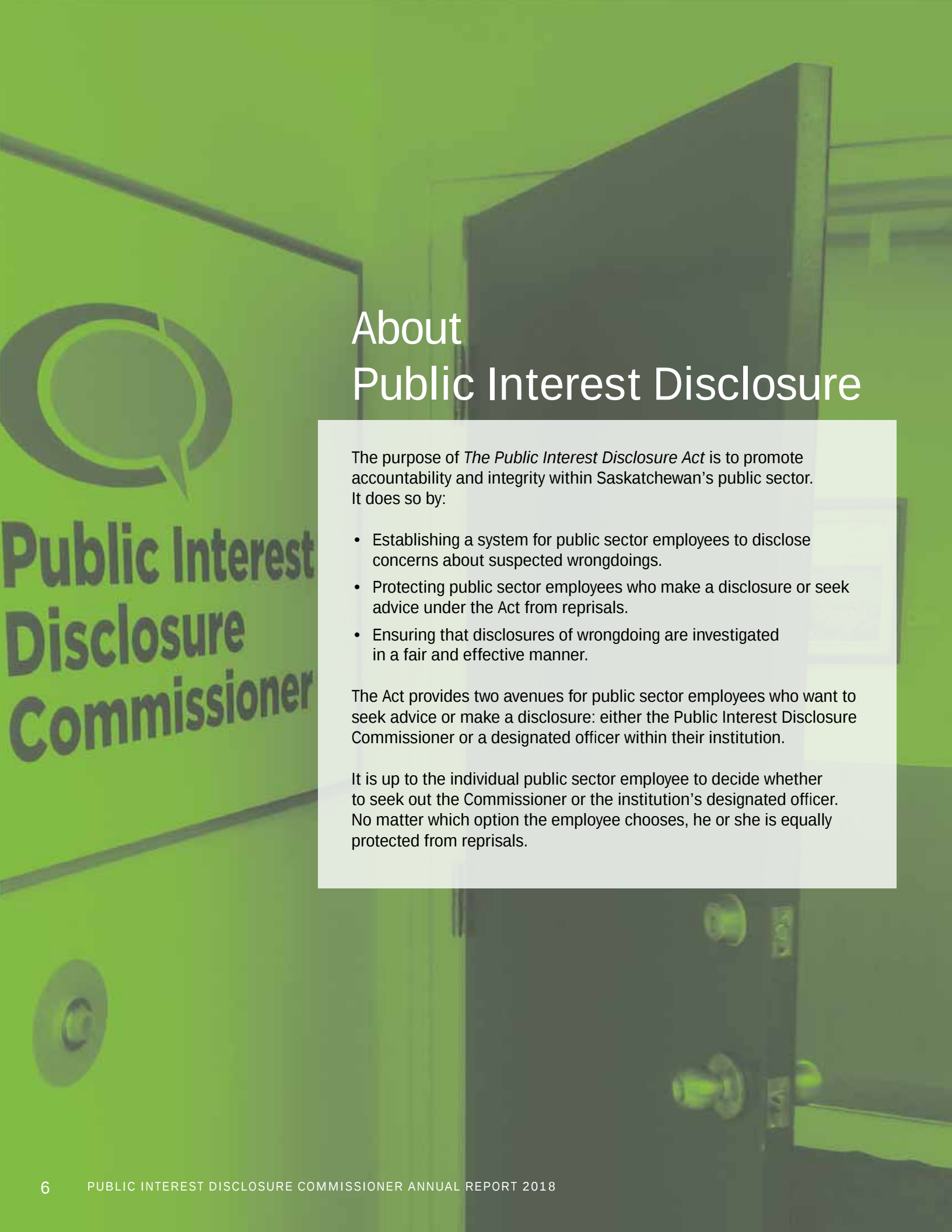
Remember, if you come forward, your confidentiality is protected.

Government Institutions: You Have a Responsibility to Your Employees

For the whistleblower protection system under the Act to be effective, every government institution must foster and support a culture that encourages employees to report situations they believe may be unlawful, dangerous or harmful, and protects them from reprisal when they do. This is critical to ensuring the highest possible standards of honesty, openness, and accountability.

The permanent head of each government institution must:

- Designate a senior official under the Act to provide advice to employees who are thinking about making a disclosure, and for receiving and dealing with disclosures.
- Establish a fair and effective internal process for employees to disclose alleged wrongdoings and for the wrongdoings to be investigated, including protecting the confidentiality of everyone involved, reporting on the outcome of investigations, and enforcing and following up on disciplinary/corrective actions.
- Ensure that information about the Act and the institution's procedures are widely communicated to employees.
- Report on the disclosures received, including on any investigations.



About Public Interest Disclosure

The purpose of *The Public Interest Disclosure Act* is to promote accountability and integrity within Saskatchewan's public sector. It does so by:

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

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

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

“The
Commissioner
has sole
jurisdiction
to investigate
complaints
of reprisal
taken against
public sector
employees...”

Roles and Definitions

THE ROLE OF THE PUBLIC INTEREST DISCLOSURE COMMISSIONER

The Office of the Public Interest Disclosure Commissioner is established under *The Public Interest Disclosure Act*. The Act allows the provincial Ombudsman to be appointed as the Commissioner.

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.

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

The Commissioner has sole jurisdiction to investigate complaints of reprisal taken against public sector employees who made disclosures or took other actions protected under the Act.

WHO IS CONSIDERED A PUBLIC SECTOR EMPLOYEE?

The Act defines a “public servant” as an employee of any provincial government institution that falls under the Act. The Act protects public sector employees, but does not apply to members of the public.

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*. All provincial government ministries and many agencies, boards, commissions, and Crown corporations are covered by *The Public Interest Disclosure Act*.

The Act does not apply to members of the Legislative Assembly, other officers of the Legislative Assembly, the Saskatchewan Health Authority, publicly-funded health agencies, school divisions, universities, colleges, or municipalities. It also does not apply to the federal government, other provincial governments, the courts, or private businesses.

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
- counselling to commit a wrongdoing

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

Generally, wrongdoings under the Act do not include issues related to 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 sector employees may make a complaint to our Office if they believe they have suffered a reprisal for having sought advice about, disclosed or refused to participate in a suspected wrongdoing, or for having co-operated in an investigation under the Act.

Reprisals include:

- 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
- reprimand
- any other measure that adversely affects the employee'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, who is directly responsible to a minister or the Premier
- chief executive officers of Crown corporations
- the chairperson of a prescribed government institution

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

Section 5: Appoint a Designated Officer

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: Establish Procedures to Manage Disclosures

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

Section 8: Communicate Widely with Public Sector Employees

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 sector employees of the government institution.

THE ROLE OF THE DESIGNATED OFFICER

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

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

EXCEPTION CONSULTATIONS

Section 7 of the Act allows the permanent head of a government institution to not appoint a designated officer and not establish procedures to manage disclosures, if the permanent head believes that it is not practical because of the size of the government institution.

Section 7 requires permanent heads to consult with the Commissioner before making this decision.

All disclosures and inquiries from employees of these institutions must be directed to the Commissioner. These government institutions are still required to comply with the rest of the Act, including section 8, by widely communicating information about the Act to their employees.

Government institutions whose permanent heads have decided not to have a designated officer or procedures to manage disclosures are listed on our website: www.saskpidc.ca.

Statistics

Inquiries and Disclosures

	2018	2017	2016
FILES RECEIVED			
INQUIRIES			
Within Jurisdiction	2	5	5
Outside Jurisdiction	1	5	3
TOTAL INQUIRIES	3	10	8
DISCLOSURES / COMPLAINTS OF REPRISAL	3	4	4
TOTAL	6	14	12

When a public sector employee makes a disclosure under *The Public Interest Disclosure Act*, the first step is to assess whether the allegations fit a definition of wrongdoing under the Act. If they do, we then determine the most appropriate course of action: we might see if there are steps we can take to help resolve the matter within the government institution; we might refer the matter to the government institution to deal with under its internal disclosure procedures; or we might conduct an investigation.

Staff and Budget

Staff

As a combined Office, Ombudsman Saskatchewan and the Office of the Public Interest Disclosure Commissioner share staff. The staff list for 2018 is in the Ombudsman section of this report.

Budget

The Office of the Public Interest Disclosure Commissioner operates as part of Ombudsman Saskatchewan. The Ombudsman receives funding to carry out the Commissioner's mandate under *The Public Interest Disclosure Act*. 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 www.ombudsman.sk.ca.