



**Public Interest
Disclosure
Commissioner**

Speak out. Safely.



2021

Annual Report



Table of Contents

- 1 COMMISSIONER'S MESSAGE**
- 3 LEGISLATIVE REVIEW AND IMPROVEMENTS**
- 9 ABOUT PUBLIC INTEREST DISCLOSURE**
- 13 STATISTICS**
- 13 STAFF AND BUDGET**

How to Reach Us

REGINA OFFICE

500 – 2103 11th Avenue
Regina, Saskatchewan S4P 3Z8

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.ombudsman.sk.ca/pidc



**Public Interest
Disclosure
Commissioner**

Speak out. Safely.

April 2022

The Honourable Randy Weekes
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 2021.

Respectfully submitted,

A handwritten signature in black ink that reads "Mary McFadyen".

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 sector 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 our *2021 Annual Report*, highlighting our progress and activities in carrying out our duties under *The Public Interest Disclosure Act* during the year. The Act provides mechanisms for provincial public sector employees to disclose potential wrongdoings they believe are happening in their workplaces. Disclosures must be kept confidential and employees are protected from reprisals for making them.

The Ombudsman has served as the Public Interest Disclosure Commissioner since February 9, 2012. During that time, we have had many conversations with the public sector employees who have contacted us. They wanted to know, for example, whether the issues they were seeing at work would be considered wrongdoings under the Act, what would happen if they made a disclosure, how we could keep their identity confidential and still investigate their disclosure, how were they protected under the Act, and what would happen if they suffered reprisals (job loss, demotion, change of duties, etc.) for speaking out. Some sought our advice, some made disclosures, and some submitted complaints of reprisal. Some were afraid to reveal their identities and sent us information in unmarked brown paper envelopes.

The number of public sector employees contacting us under the Act has always been low, but has increased somewhat during the last three years. We hope this means that employees are more confident that they can speak out safely. Considering the size of the public sector, however, we think there is room for improvement. Public sector employees should feel confident contacting the designated officer within their workplace or contacting us directly with questions if they think a wrongdoing is happening where they work. These conversations can help them understand what the Act covers and how they are protected if they decide to speak out.

In 2021, 27 public sector employees contacted us to seek advice, make a disclosure of wrongdoing, or make a complaint of reprisal. While most of these were made by employees of institutions that fall under the Act, three were from institutions that do not: two were municipal employees, and one was employed at a publicly-funded health entity.

The Act currently protects employees working in the office of the Executive Council, all ministries, most provincial boards, commissions, agencies, authorities and Crown corporations, the Saskatchewan Health Authority and the Saskatchewan Cancer Agency. Public sector employees have the option of seeking advice and making disclosures of wrongdoing to the designated officer within their workplaces or to the Commissioner, but only the Commissioner can investigate complaints of reprisal. So,

while the Ombudsman is an office of last resort, the Commissioner is not. Public sector employees do not have to use internal mechanisms first before coming to us.

Access to these protections is growing. On May 13, 2021, *The Publicly-funded Health Entity Public Interest Disclosure Act* received royal assent. When it comes into force, it will protect employees of all prescribed publicly-funded health entities who seek advice or make disclosures of wrongdoing or complaints of reprisal. The Public Interest Disclosure Commissioner has the same role under this new Act as under *The Public Interest Disclosure Act*.

As we mark this 10th anniversary, this is a good time to reflect on whether *The Public Interest Disclosure Act* in its present form is accomplishing its purpose. With this in mind, in this annual report we summarize some of the issues we have noticed and the opportunities available to enhance whistleblower protection in Saskatchewan's public sector. We are calling upon the government to review *The Public Interest Disclosure Act* and make amendments to improve it so it will better serve and protect public sector employees in the years to come.

Legislative Review and Improvements

The Public Interest Disclosure Act is meant to provide an effective framework and approach for facilitating disclosures of wrongdoing by public sector employees and ensuring those who report wrongdoings are not subjected to reprisals. Speaking to the Standing Committee on Crown and Central Agencies about Bill No. 147 - *The Public Interest Disclosure Act* on May 10, 2011, the Honourable June Draude said:

At a high level, this Bill is intended to ... enhance confidence in government institutions and in the public service. It will facilitate disclosure and investigation of alleged wrongdoings, and it will protect whistle-blowers in the public service workplace. The proposed new public interest disclosure Act will also protect employees from reprisal if they report wrongdoing by government institutions.

There is no question that the public interest is served when government institutions and government-funded organizations uncover and properly address wrongdoings at the earliest possible point. The only way they can do this is if their employees feel safe to come forward when they think something is not right.

In the 10+ years since the Act came into force, from September 1, 2011 to December 31, 2021, 139 provincial public sector employees have contacted the Commissioner's Office. The Saskatchewan Public Service Commission has reported that only 10 out of the now 67,000+ employees working at all of Saskatchewan's provincial government institutions have come forward internally to make disclosures.

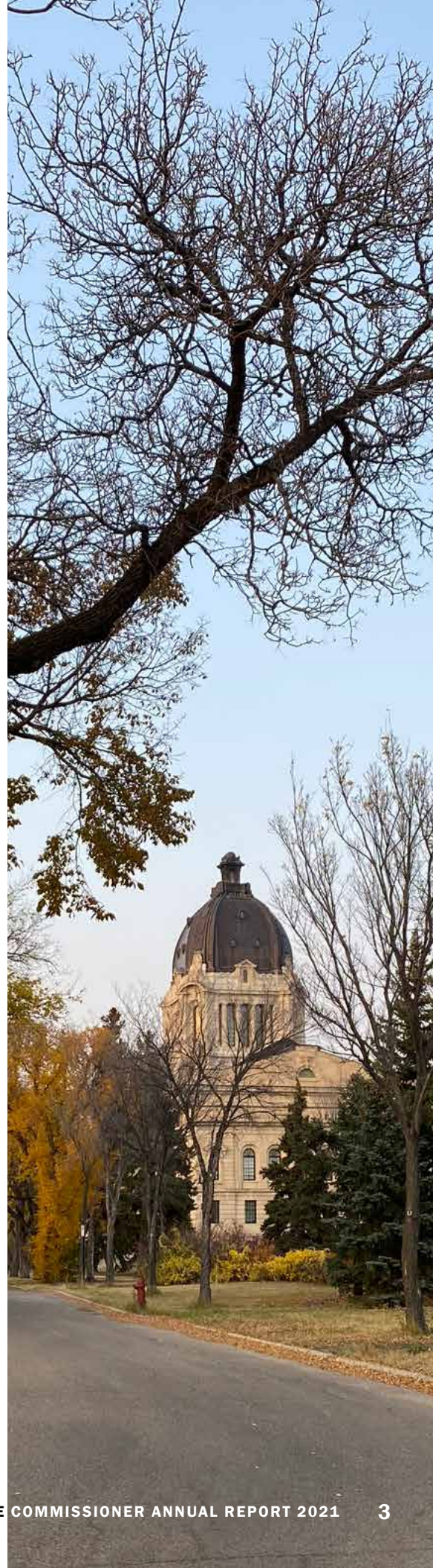
As we noted in our *2018 Annual Report*, this is troubling. While there may have been very little actual misconduct over the years that was so serious as to be considered wrongdoings under the Act, this does not explain why so few public sector employees are coming forward. Among the many thousands of employees working for Saskatchewan's government institutions, it should be expected that some of them would have concerns from time to time about situations that don't seem right to them.

The Act is simply not facilitating disclosures as the Minister hoped it would.

Since Saskatchewan's Act came into force in 2011, several other Canadian provinces and territories have implemented whistleblower protections for their public sector employees based on learnings from other jurisdictions, and others have taken steps to improve their existing legislation. It is time for Saskatchewan to do the same.

Therefore, in commemoration of the 10th anniversary of the Office of the Public Interest Disclosure Commissioner, I call on the government to conduct a legislative review of *The Public Interest Disclosure Act*, to update and improve it so that it will meet its purpose of improving public confidence in Saskatchewan's public institutions.

Public sector employees need to be confident in the system, so they are not afraid to come forward if they see a wrongdoing or are being pressured to participate in a wrongdoing. Below are some of the key improvements I recommend.



Who Should be Protected Under the Act?

The Public Interest Disclosure Act currently covers employees in provincial government institutions (ministries and a prescribed list of Crown corporations, boards, commissions and agencies) plus, since December 2019, employees of the Saskatchewan Health Authority and the Saskatchewan Cancer Agency.

MUNICIPAL SECTOR

In November 2015, *The Ombudsman Act, 2012* was amended to allow the Ombudsman to take complaints about municipalities. Since then, several municipal employees have contacted us to ask if they would be protected if they came forward to us with disclosures of wrongdoing in their workplaces, but they are not protected under *The Public Interest Disclosure Act*.

As Ombudsman, my Office can take complaints about administrative decision-making processes within municipalities. The Ombudsman's role is to promote and protect administrative fairness in the design and delivery of government services to citizens of Saskatchewan. *The Ombudsman Act, 2012* does not protect whistleblowers or promote whistleblowing.

Recognizing this, since 2015 the Minister of Government Relations committed to establishing whistleblower protection for municipal employees. When consulted, we suggested that the easiest way to do this would be to include municipalities under *The Public Interest Disclosure Act*. This would provide municipal employees with the same protections as provincial public sector employees and give the Commissioner the same role and authority over the municipal sector. This was not done.

Instead, on June 3, 2020, changes were made to *The Cities Act*, *The Municipalities Act* and *The Northern Municipalities Act, 2010* prohibiting reprisal against municipal employees who report wrongdoings to any of a list of officials, including the "Ombudsman, pursuant to and in accordance with *The Ombudsman Act, 2012*". Unfortunately, this is a mischaracterization of *The Ombudsman Act, 2012*. The Ombudsman has no authority to take disclosures of wrongdoing or give advice to public sector employees about whistleblowing. If the purpose of *The Ombudsman Act, 2012* was to provide whistleblower protection, there would be no need for *The Public Interest Disclosure Act*. Also, while these municipal Acts now make it an offence to take a reprisal against a municipal employee who makes a disclosure, unlike under *The Public Interest Disclosure Act*, they do not provide any way for disclosures of wrongdoing to be made, either internally within municipalities or externally to the Commissioner, or for complaints of reprisals to be made and possibly investigated. As a result of this mischaracterization of *The Ombudsman Act, 2012* in these municipal Acts,

municipal employees still have no real protection against reprisals if they report a wrongdoing. If employees are not effectively protected when they come forward, they just will not come forward. If employees don't come forward, issues don't get dealt with and public confidence in the municipal sector doesn't improve.

Recommendation 1

I recommend that municipal sector employees be given the same protections as provincial public sector employees by bringing them under *The Public Interest Disclosure Act*. Systems should be established for them to make disclosures of wrongdoing internally within their municipalities, if this is feasible, and they should also be able to make disclosures of wrongdoing and complaints of reprisal to my Office as the Public Interest Disclosure Commissioner.

HEALTH SECTOR

In late 2013, the Ministry of Health advised my Office that it had asked the Public Service Commission (whose Minister is responsible for *The Public Interest Disclosure Act*) to expand the Act to include employees of what were then the regional health authorities and the Saskatchewan Cancer Agency. Upon realizing that the Act was tailored for public sector employees working for the executive government (Executive Council, all ministries, most provincial boards, commissions, agencies, authorities and Crown corporations) and would need to be amended to accommodate health sector employees, the Ministry was not sure what steps it would take next.

Six years later, on November 25, 2019, the Minister of Health reiterated to the Legislative Assembly that *The Public Interest Disclosure Act* “is not a perfect fit for Saskatchewan health care authority employees.... so we have an even better fit, [the Ministry of Justice is] working on drafting legislation that we will be proposing in the House to cover all health care employees, in the spring.”

In the meantime, *The Public Interest Disclosure Amendment Regulations, 2019* were passed to bring the Saskatchewan Health Authority and the Saskatchewan Cancer Agency under *The Public Interest Disclosure Act*.

In March 2020, the Ministry of Health invited me to review and comment on a draft of *The Publicly-funded Health Entity Public Interest Disclosure Act*. In my view, this Act makes no significant improvements over the current Act. I advised the government that the best way to protect Saskatchewan's health sector employees and provide them with an effective process for making disclosures would be to take the time to enhance and expand *The Public Interest Disclosure Act*. I said this would

also provide the opportunity to improve Saskatchewan’s whistleblower system for all public sector employees. Again, this was not done. Instead, *The Publicly-funded Health Entity Public Interest Disclosure Act*, which is essentially a carbon copy of *The Public Interest Disclosure Act* with no meaningful improvements, received Royal assent on May 13, 2021. It was not yet in force at the date of writing this report.

Recommendation 2

I recommend that *The Public Interest Disclosure Act* be amended and modified so that it effectively protects public health sector employees and service providers from reprisal when they come forward to make disclosures of wrongdoing.

Internal Disclosures to Designated Officers

Under the current Act, public sector employees have two options for seeking advice and making disclosures. They can come directly to my Office or they can do this internally within their workplaces. However, employees can only seek advice and make disclosures of wrongdoing internally to a “designated officer,” who must be “a senior official of the government institution.”

This has proven ineffective. Requiring employees to seek advice and make disclosures only to a senior official within their organization discourages them from coming forward, which is the exact opposite of what the Act is intended to do. This is further compounded when the designated officer’s home position – such as an in-house legal counsel, risk manager, or human resources executive – includes advising management on handling legal risks or human resources issues, essentially to “protect” the organization.

Almost every employee who has contacted my Office to seek advice, or to make a disclosure or a complaint of reprisal has also been involved in some sort of dispute or disciplinary issue with their employer’s human resources department. Making employees seek advice and report wrongdoings only to high-ranking officials whom most employees will have never met and whose responsibilities may include disciplining employees or giving advice to the employer about labour-related issues, does not promote whistleblowing. Anyone chosen to act as a designated officer must be neutral and, importantly, be seen to be neutral by employees.

The simplest way to begin to remedy this problem, as has been done in several jurisdictions across Canada, is to expand the types of officials from whom employees can seek advice and to whom they can make disclosures.

Some jurisdictions allow employees to seek advice from their union representatives, and to make disclosures of wrongdoing to their supervisors, rather than only to a senior official they have never met and do not trust. In some jurisdictions, if they reasonably believe there is an imminent risk of substantial and specific danger to the life, health or safety of persons or to the environment, employees can make disclosures to the public and they are protected from reprisal.

The way designated officers are selected in Saskatchewan has created another unintended issue. Most individuals currently appointed as designated officers have little to no experience or training in doing investigations or giving advice to employees about disclosing wrongdoing. Since disclosures to designated officers are so low as to be essentially non-existent, they are not getting any practical experience either.

To address this, the Act could be changed to allow for a third party (such as an official employed by a ministry, a parent company or a third-party service provider) to perform the role of designated officer. In the municipal sector, this would allow small communities to pool their resources and engage one qualified person or organization to act as their designated officer. It would allow Ministries to centralize the role of designated officer, appointing one officer to manage all disclosures, which would help ensure the designated officer was more independent, trained, and had the time and resources to effectively respond.

Recommendation 3

I recommend that the Act be amended to expand the definition of who can perform the role of designated officer and to provide for other officials from whom employees can seek advice and to whom they can make disclosures.

Requirement to Give Notice of Disclosure

Currently, the Commissioner is required to give the head of a government institution a 'notice of disclosure' when an employee makes a disclosure to the Commissioner. The notice does not name the employee, but is intended to let the head of the institution know that a disclosure was made. The primary purpose of the Act is to protect public employees who come forward. The number one way to do this is to protect their identity: to not divulge their name or any information that could identify them. In many cases, my Office determines that a disclosure is not sufficient to warrant investigation or any further action. In these cases, there is no reason for me to inform the government institution that my Office received a disclosure. The Commissioner should not have to communicate with a public entity about any disclosure unless the Commissioner determines steps should be taken to resolve it or it should be investigated.

Recommendation 4

I recommend removal of the requirement that the Commissioner give notice to the institution's permanent head that a disclosure of wrongdoing has been received.

Form of Disclosures and Complaints of Reprisal

Currently, the Act requires that a disclosure of wrongdoing or a complaint of reprisal must be in writing and made on the forms set out in the Regulations.

Employees should be able to make disclosures of wrongdoing and complaints of reprisal in any written form (email, letter, etc.) as long as they include essential information such as a description of the wrongdoing and the name(s) of the individual(s) alleged to have committed the wrongdoing. Other details such as dates and other evidence can be requested or obtained later.

Recommendation 5

I recommend that the Act and the Regulations be amended to repeal the requirement for employees to make disclosures of wrongdoing and complaints of reprisal on prescribed forms.

Conclusion

The Public Interest Disclosure Act was created to facilitate the disclosure, investigation and management of significant and serious matters in or relating to government institutions. To accomplish this, public sector employees must have confidence to bring matters forward, knowing that they will be protected from reprisals and that their concerns will be properly handled. We still receive anonymous disclosures. This shows that more needs to be done to help public sector employees feel that they truly can speak out safely.

It is time to update Saskatchewan's whistleblower protections so they are consistent across the entire public sector, including the health and municipal sectors. The recommendations I have made here are based on my Office's observations over the last 10 years. They are just a few of the topics that should be addressed in a full review of *The Public Interest Disclosure Act*.

About

Public Interest Disclosure

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

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

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

It is up to the individual 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.

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 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 provincial 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, the Saskatchewan Health Authority, the Saskatchewan Cancer Agency, 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, school divisions, universities, colleges or municipalities. It also does not apply to the federal government, other provincial governments, the courts, or private businesses.

Other than the Saskatchewan Health Authority and the Saskatchewan Cancer Agency, the Act does not apply to publicly-funded health entities. However, similar protections will be provided to their employees once *The Publicly-funded Health Entity Public Interest Disclosure Act* is in force.

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 a public asset
- 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 most often 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
- CEOs of Crown corporations
- the chairperson of a prescribed government institution
- CEOs of the Saskatchewan Health Authority and the Saskatchewan Cancer Agency

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.

To date, the government institutions whose permanent heads have decided not to have a designated officer or procedures to manage disclosures are listed below and on our website.

- Athletics Commission Saskatchewan
- Law Reform Commission of Saskatchewan
- Liquor Board Superannuation Commission
- Multitype Library Board Saskatchewan
- Public Employees Pension Board
- Public Service Superannuation Board
- Saskatchewan Pension Annuity Fund Board
- Saskatchewan Police Commission

Statistics

Inquiries and Disclosures

	2021	2020	2019
FILES RECEIVED			
INQUIRIES			
Within Jurisdiction	21	20	13
Outside Jurisdiction	3	10	4
TOTAL INQUIRIES	24	30	17
DISCLOSURES / COMPLAINTS OF REPRISAL	6	11	8
TOTAL	30	41	25

When a public sector employee makes a disclosure under *The Public Interest Disclosure Act*, the first step is to assess whether the information they disclosed is about one of the wrongdoings under the Act. If it is, we then determine the most appropriate course of action. For example, 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 2021 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 on our website.