



Yukon Public Interest Disclosure Commissioner  
Diane McLeod-McKay



The Honorable Nils Clarke  
Speaker, Yukon Legislative Assembly

Dear Mr. Speaker:  
As required by section 43 of the *Public Interest Disclosure of Wrongdoing Act*, I am pleased to submit the Annual Report of the Public Interest Disclosure Commissioner for the calendar year 2016.

In keeping with past practice, I am also pleased to share this with the Yukon public.

Kind regards,

Diane McLeod-McKay,  
Yukon Public Interest Disclosure Commissioner

## Knowledge of PIDWA is key to successful whistleblowing

I am very pleased to present my second Annual Report for the Office of the Public Interest Disclosure Commissioner. It has been my pleasure to serve in this role since June of 2015. I am looking forward to 2017, when I plan to carry out more outreach to public entities and their employees.

In 2016, we opened just one disclosure file. This file was closed after we determined that our office does not have jurisdiction in the matter that was raised. Although we closed the file, we learned about a potential gap in the *Public Interest Disclosure of Wrongdoing Act* (PIDWA) that we are now examining. We also continued work on a disclosure investigation we opened in 2015 and are gradually making progress on it. It is a very complex case involving different levels of government and regulation.

Our office received several enquiries about what constitutes a disclosure and a reprisal, which demonstrates there is some awareness about PIDWA. More outreach, however, is needed to ensure that employees of public entities understand the protections that PIDWA affords them. I also want to highlight the important responsibility of public entities to communicate these protections to their employees and to ensure that their organization knows what to do if a disclosure from an employee is received. Education and awareness of PIDWA throughout public entities will work to ensure that employees benefit from the protections within the act.

### What employees need to know to make a disclosure under PIDWA

The primary purpose of PIDWA is to provide a tool that employees of Yukon public entities can use to disclose wrongdoings without reprisal repercussions. As long as you, the disclosing employee, follow the disclosure rules, you will be protected from reprisal. If you don't follow PIDWA rules when making a disclosure of wrongdoing, you run the risk of not receiving this protection. It's important for you to know that even if you just need advice in deciding whether to make a disclosure or not, PIDWA protects you.

So what are the rules? I've summarized them below, although I also encourage every employee to review the Act.

It's relatively short and not overly complicated. A link to the Act can be found on our website at [www.ombudsman.yk.ca/pidwa-act](http://www.ombudsman.yk.ca/pidwa-act).

#### Disclosure rules

1. You must be an employee of a public entity to report a wrongdoing. You can be a contract employee but not a 'fee-for-service' contractor. See reverse for a list of public entities.
2. You must have a reasonable belief that a wrongdoing is being or may be committed.
3. Your disclosure must be made in good faith.
4. You must **only** disclose a wrongdoing to:
  - a supervisor (i.e. your immediate supervisor or chief executive)
  - the designated officer, if one exists in your public entity, or
  - the Public Interest Disclosure Commissioner (PIDC).
5. You must make your disclosure in writing and it must include the following information:
  - a description of the wrongdoing
  - the name of the individual(s) alleged to have committed, or who may be about to commit, the wrongdoing
  - the date of the wrongdoing
  - whether the disclosure has been made to someone else and what response was received
  - other information, if prescribed (there are currently no regulations prescribing additional specifics), and
  - any other information the person receiving the disclosure identifies as reasonably necessary to investigate the allegation.

When making a disclosure directly to your public entity, be sure to inform them that you are **making a disclosure under PIDWA**, so it is clear what your intentions are. I strongly recommend that you obtain advice prior to making any disclosure. This advice can be obtained from your supervisor, a designated officer or the Public Interest Disclosure Commissioner.

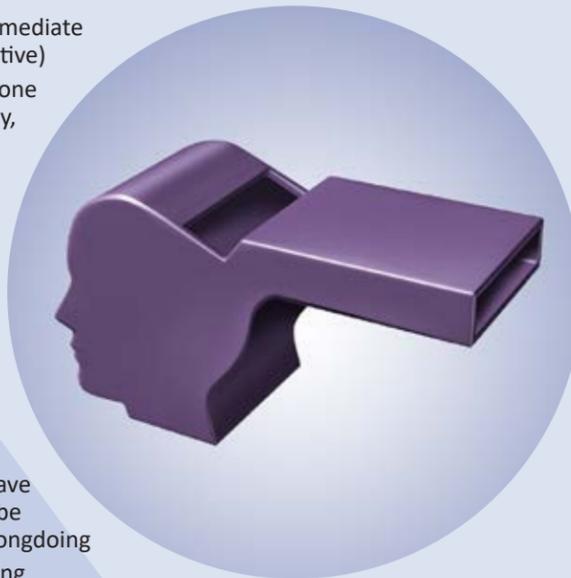
#### Disclosing in urgent situations

If you believe there is an imminent risk of substantial and specific danger to the life, health or safety of individuals, or to the environment, **and** there is not

enough time to make a disclosure using the above procedure, you may make a disclosure to the public **only** if:

- you make the disclosure to the appropriate law enforcement agency
- you follow any direction the law enforcement agency issues, and
- immediately following the disclosure, you notify your supervisor or, if one exists, your designated officer.

You are not allowed to disclose to the public any information that is subject to a restriction created by a Yukon or federal law.



#### Additional limits on information disclosure

When making any disclosure, you are not allowed to disclose the information described in subsection 15 (1) of the ATIPP Act unless the circumstances in subsection 15 (2) exist. You must also limit the amount of personal information disclosed to that which is necessary to make the disclosure. The ATIPP Act can be found on our website at [www.ombudsman.yk.ca/atipp-act](http://www.ombudsman.yk.ca/atipp-act).

### How public entities can help ensure employees are protected by PIDWA

Chief executives of public entities are required by PIDWA to ensure information about the Act is communicated to their employees. If they develop their own disclosure procedures, they must also

communicate those to their employees.

Other than what was communicated by the Public Service Commission when the Act was proclaimed in June of 2015 and my Office's outreach work, I am not aware of any work undertaken by public entities to inform their staff. I do understand that one public entity is currently drafting disclosure procedures.

For those public entities that have not adequately informed their employees about PIDWA, there is a risk that employees may inadvertently make disclosures contrary to the requirements of PIDWA. There is also a serious risk that staff are receiving disclosures but are not recognizing them as a disclosure under PIDWA. As a result, they may steer the disclosing employee down an incorrect path. In either case, the employee may pay the price for the failure of public entities to inform them adequately about the Act.

It is very important that staff receiving a disclosure, or what may appear to be a disclosure, first apply it to PIDWA before making any other determination, such as a process under another Act, an employment agreement or an applicable policy. Given this, I strongly encourage chief executives to take proactive steps this year to ensure their employees are well informed about the Act.

For those public entities that are drafting disclosure procedures, I strongly recommend that these procedures be geared solely to employees, as they are defined in PIDWA, so that the rules employees must follow for PIDWA reprisal protection are clear. A public body that creates disclosure procedures that apply to more than just PIDWA-defined employees, no matter how well-intentioned, runs the risk of failing to clarify exactly what rules employees must follow to be afforded PIDWA protection.

How reprisal protection works should be clarified in any policy or communication provided to staff to ensure that they know about these procedures and their rights.

My office is in the process of developing resources which will assist public entities in drafting disclosure procedures, in order to ensure compliance with PIDWA and to ensure rules for employees are clear.

## ► Goals for 2017

During 2017, my goals as the PIDC are to improve PIDWA case performance, to build relationships with public entities and employees, and to demonstrate accountability by measuring our work against quantifiable criteria.

### Improving Performance

Our experience so far in managing PIDWA cases is limited. We are conducting one disclosure investigation, we gave advice five times, and we provided comments about one disclosure procedures policy.

There is no doubt we have room to improve our processes and, in 2017, we will work on this by establishing performance measures to ensure we are accountable for the time we take to complete investigations.

When providing comment on a disclosure procedures policy in 2016, the exercise took some time to complete, given that we felt it was important to create a tool against which

we could evaluate all policies. The tool is nearly complete and will help us shorten our time considerably for this kind of work in the future.

In 2017, we will examine all our procedures to define what we believe are reasonable time frames for managing our PIDWA processes.

### Building Relationships

More work is needed to strengthen relationships with PIDWA public entities and their employees. My office will reach out to employees of public entities to ensure they understand how PIDWA protects them. We also plan to connect with chief executives in an effort to support their communication activities.

We hope to achieve this goal in part by increasing our own capacity to communicate. In order to increase communications regarding all our mandates, I have requested funds in my 2017/18 budget to hire a communications resource. Now that my

office has four laws that require annual reporting, as well as a responsibility to inform the public and the bodies subject to these laws, we need this support.

### Demonstrating Accountability

Once we have established the PIDWA performance measures noted above, we will begin assessing our work against them.

We have acquired and recently implemented a new case management system. This system will assist us in producing better information about our procedures, so we can improve them as needed.

For more information about the role and work of the Public Interest Disclosure Commissioner and PIDWA, please go to [www.ombudsman.yk.ca/public-employees](http://www.ombudsman.yk.ca/public-employees) or contact our office. Our contact information is given at the end of this report.



Diane McLeod-McKay  
Public Interest Disclosure Commissioner

## ► Budget Summary

The budget for the Office of the Public Interest Disclosure Commissioner (PIDC) covers the period from April 1, 2016 to March 31, 2017.

Operations and maintenance (O&M) are expenditures for day-to-day activities. A capital expenditure is for items that last longer than a year and are relatively expensive, such as office furniture and computers.

Personnel costs comprise the largest part of our annual O&M budget and include salaries, wages and employee benefits. Expenses described as 'Other' include such things as rent, contract services, supplies, travel and advertising.

For accounting purposes, capital expenses are reported jointly for the Offices of the Ombudsman, the Information and Privacy Commissioner (IPC), and the Public Interest Disclosure Commissioner (PIDC) because all staff use these assets in their work. This is also the case for the personnel category.

Our personnel budget increased slightly in 2016 to provide staff with a small increase in wages and to create a new position to support the extra work load generated by the *Health Information Privacy and Management Act*, which was brought into force in August of 2016. The new position was filled in May of 2016. There was also a small increase in the O&M budget for the Ombudsman's Office to fund the Canadian Council of Parliamentary Ombudsman meeting, hosted in the territory by the Yukon Ombudsman in June of 2016.

2015/16 Budget	
Personnel (combined)	\$ 765,000
Capital (combined)	\$ 34,000
Other (Ombudsman's office)	\$ 104,200
Other (IPC's office)	\$ 131,000
Other (PIDC's office)	\$ 17,800
<b>Total</b>	<b>\$ 1,052,000</b>

2016/17 Budget	
Personnel (combined)	\$ 841,000
Capital (combined)	\$ 5,000
Other (Ombudsman's office)	\$ 109,000
Other (IPC's office)	\$ 131,000
Other (PIDC's office)	\$ 18,000
<b>Total</b>	<b>\$ 1,104,000</b>

### PIDWA - 2016 activity

Resolved at Intake - no file opened	
Non-jurisdiction	49*
Referred-back	0
Requests for Information	7
Informal complaint resolution	0
<b>Total</b>	<b>56</b>
Advice files opened	2
Comment files opened	1
Disclosure files opened	0
Reprisal files opened	1
<b>Totals</b>	<b>4</b>
All files opened in 2016	4
Files carried over from previous years	1
Files closed in 2016	2
Files to be carried forward	3

\*This number is the same for all tables showing intake non-jurisdiction.

## ► PIDWA Accountability Metrics

### Proactive compliance work

- Drafted policy development guidelines

### Skills development

- Attended one national meeting

### Complaints against the Office of the Public Interest Disclosure Commissioner

- None

### Office activity

- One disclosure received, which was not acted upon

### Activity within the Office of the Public Interest Disclosure Commissioner

Disclosures received	1 received in 2015 that is still under investigation
Disclosures acted upon	1
Disclosure investigations commenced	1
Number of recommendations made	0
Public entity has complied with the recommendations	Not applicable
Reprisal complaints received	1 received in 2016. We found we did not have jurisdiction to investigate because the complainant had engaged in the grievance process under a collective agreement.
Reprisal complaints acted upon	0
Reprisal investigations commenced	Not applicable
Number of recommendations made	Not applicable
Public entity has complied with the recommendations	Not applicable
Number of reprisal complaints sent to arbitration	0
Systemic problems that may or will give rise to wrongdoings	0
Recommendations for improvement	0

### Activity reported by public entities

All public entities in Yukon reported that they received no disclosures of wrongdoing or complaints of reprisal in 2016. A list of the public entities subject to PIDWA is below.

- Department of Community Services
- Department of Economic Development
- Department of Education
- Department of Energy, Mines and Resources
- Department of Environment
- Department of Finance
- Department of Health and Social Services
- Department of Highways and Public Works
- Department of Justice
- Department of Tourism and Culture
- Executive Council Office
- French Language Services Directorate
- Office of the Chief Electoral Officer
- Office of the Child and Youth Advocate
- Office of the Yukon Legislative Assembly
- Public Service Commission
- Women's Directorate
- Yukon College
- Yukon Development Corporation
- Yukon Energy Corporation
- Yukon Hospital Corporation
- Yukon Housing Corporation
- Yukon Liquor Corporation
- Yukon Workers' Compensation Health and Safety Board

## ► Contact us

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All services of the PIDC's office are free and confidential.

We welcome your feedback on our annual report including the method of delivery.