



Protected Disclosures

Department of Rural and Community Development Policy

September 2023

1. Contents

Introduction.....	4
1. Department Commitment.....	5
2. What is a Protected Disclosure	7
2.1 To whom does this policy apply	7
2.2 What type of disclosure is covered by this policy	7
2.3 What type of disclosure is not covered	8
2.4 Who can make a disclosure	8
3. To whom do you make a disclosure	10
3.1 Disclosure within the Department – Internal Disclosure	10
3.2 Disclosures to the Minister for Rural and Community Development	11
3.3 Disclosure outside the Department – External Disclosure	12
3.4 Disclosures to the Protected Disclosures Commissioner – External Disclosure	13
3.5 A legal adviser	14
3.6 Reporting to third parties	14
3.7 Reporting to the EU	15
4. How to make a disclosure.....	16
4.1 Anonymous Disclosures	16
4.2 Assistance with making a Disclosure	17
5. Receiving a Disclosure.....	18
5.1 Investigating a Disclosure	19
6. Protection of the rights of the discloser	21
6.1 Penalisation (including dismissal and detriment)	21
6.2 Confidentiality/Protection of identity	22
6.3 Protection of the rights of the respondent	23
7. Review of decisions.....	24
8. Records	24
9. Further information /Review of Guidance.....	25
Appendix A – Protected Disclosures Reporting Form	26
Appendix B: Guidance for investigation of disclosures	28
Appendix C: Disclosure to a Minister	34

Appendix D: Data Protection	35
Appendix E: Freedom of Information.....	36

Introduction

The purpose of this document is to update the Department of Rural and Community Development's policy and procedures on Protected Disclosures in the workplace considering changes introduced in the Protected Disclosures (Amendment) Act 2022. This policy provides an update on the relevant changes and outlines the channels and procedures provided for reporting concerns. The Department welcomes the reporting of protected disclosures, where there are reasonable grounds, to protect against malpractice.

The Protected Disclosures (Amendment) Act 2022 commenced on **1 January 2023**. This new legislation makes significant changes to the operation of the legal framework for the protection of whistleblowers in Ireland, the Protected Disclosures Act 2014. These changes have important implications for employers in the public and private sectors and for persons prescribed under section 7 of the Act.

The Act provides a robust statutory framework within which workers can raise concerns regarding potential wrongdoing that has come to their attention in the workplace in the knowledge that they can avail of significant employment and other protections if they are penalised by their employer or suffer detriment for doing so.

The Act requires every public body to establish and maintain procedures for the making of protected disclosures and procedures for dealing with such disclosures. It also requires that Public Bodies provide written information relating to the procedures established.

The Act also introduces the Office of the Protected Disclosures Commissioner and appoints the Ombudsman as the Protected Disclosures Commissioner (the "**Commissioner**"). The Commissioner has a role in the handling of external reports made under section 7 of the Act (as amended) and reports made to Ministers under section 8 of the Act.

1. Department Commitment

The Department of Rural and Community Development (DRCD) is strongly committed to supporting a responsible and ethical organisational culture within the Department, our Agencies and organisations that we work with. We recognise and rightly pride ourselves on the integrity that we bring to bear on our daily work.

The Department is committed to fostering an appropriate environment for addressing concerns and supporting workers in 'speaking-up' about potential wrongdoing in the workplace and to providing the necessary support for workers who raise genuine concerns. Employees are encouraged to raise genuine concerns about possible wrongdoing at the earliest opportunity, and in an appropriate way.

A worker who makes a protected disclosure is protected from; penalisation (or threatened penalisation), which includes suspension, lay-off or dismissal, demotion and unfair treatment including without limitation withholding a promotion from a worker, ostracism, negative performance reviews or employment references, failure to make permanent a temporary employment contract, harming a worker's reputation or blacklisting within an industry or sector.

Any worker who has a reasonable belief that the information contained in his or her disclosure shows or tends to show a wrongdoing (see section 2.2 below for a list of the types of wrongdoing which are covered by the legislation) will be protected against penalisation even if the worker's concern is ultimately misguided or mistaken. The motivation of the worker for making a disclosure is irrelevant and disclosures will be dealt with regardless of the worker's motivation for making the disclosure so long as the worker reasonably believes that the information disclosed tended to show a wrongdoing.

However, a disclosure made in the absence of a reasonable belief will not attract the protection of the Act. In addition, disclosure of an alleged wrongdoing does not confer any protection or immunity on a worker in relation to any involvement they may have had in that alleged wrongdoing.

Where a protected disclosure is made, the following principles will apply:

- the concern will be treated seriously and investigated where it is considered appropriate following an initial assessment of the report;

- in accordance with Section 16 of the Act, where an investigation takes place, every appropriate step will be taken to safeguard the identity of the person raising the concern;
- the person raising the concern will be advised on how the issue has been assessed, including the outcome of any investigation;
- the person raising the concern will not be disadvantaged in any way for having made the disclosure, even if no wrongdoing is identified, providing the concern was based on **a reasonable belief**.

The Department will take all reasonable steps to treat disclosures made in accordance with this Policy in a confidential and sensitive manner. The Department will not disclose the worker's identity without their consent unless it is required by law or necessary for the effective investigation of the relevant wrongdoing (see Section 6.1 below for further details on "Confidentiality/Protection of Identity").

If a worker believes that he/she has been penalised for the making of a disclosure of wrongdoing in accordance with this Policy they should inform the designated person or Head of Division (Assistant Secretary) or other senior officer of equivalent rank, as appropriate, to seek redress (see Section 6 below for further details on "Penalisation")

This policy document relates to the reporting of serious wrongdoing, as defined in the Protected Disclosures Act, and is not intended to act as a substitute for normal day to day operational reporting. Neither is it intended to act as a substitute for existing [grievance](#) and [dignity at work](#) procedures all of which remain in place.

2. What is a Protected Disclosure?

A Protected Disclosure is defined in the Protected Disclosures Act as a disclosure of information which in the reasonable belief of the worker tends to show one or more relevant wrongdoing(s) and came to the attention of the worker in a work related context.

2.1 To whom does this policy apply?

This policy is aimed at workers in the Department of Rural & Community Development.

However it is also possible for a worker employed by a public body to make a disclosure to a relevant minister and provision for such instances is outlined in Appendix C. If a worker is or was employed in a public body, or in a publically funded body or entity, the worker may, in certain circumstances, make a protected disclosure to a relevant Minister. However, they should, if at all possible, invoke their rights under their own organisations policy and procedures in the first instance. A “**relevant Minister**” is defined as a Minister with responsibility for the public body concerned in whom functions, whether statutory or otherwise, as respects the public body, are vested, or a Minister of State to whom any such function is delegated. In general, this will be the Minister for the parent department of the public body and particular criteria must be complied with (see Appendix C for guidance).

Under section 3 of the Act the definition of worker extends to former employees, and to, for example, independent contractors, trainees, agency staff, volunteers and board members. C.

2.2 What type of disclosure is covered by this policy?

A Protected Disclosure involves the disclosure of information which, in the reasonable belief of the worker, volunteer, trainee etc; making the disclosure, shows that one or more of the following relevant wrongdoings has been committed or is likely to be committed:

- Unlawful or improper use of public funds or resources.
- Financial misconduct or fraud.
- Corruption, bribery or blackmail.
- Failure to comply with any legal obligation, other than one arising under the worker’s contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services.

- Endangerment of the health and safety of any individual.
- Damage to the environment.
- The commission of an offence.
- Miscarriage of justice.
- Gross negligence or gross mismanagement by public bodies.
- The concealment or destruction of information relating to any of the above.

The list above is not exhaustive. A full definition of wrongdoing can be found in [Section 5\(3\)](#) of the Act.

2.3 What type of disclosure is not covered?

The Policy does not cover personal complaints or personal grievances. For example complaints around a dispute between a worker and a manager concerning their duties or work practices should generally be dealt with under the [grievance procedure](#). Claims by a worker that they are being bullied or harassed by a colleague should generally be dealt with under the [dignity at work procedure](#).

The policy does not cover a disclosure where the worker knowingly conveys false, misleading, frivolous or vexatious information. If it transpires that a worker makes a disclosure, which they know to be false or do not believe to be true, the Department reserves the right to take disciplinary or other appropriate action. In addition, persons knowingly reporting information that is false are liable to prosecution under Section 14A of the Act.

Legal Advisors are excluded from the protections of the Act in situations where information comes to their attention while providing legal advice. Where a claim to legal professional privilege could be maintained in respect of such information, the legal advisor will not be able to gain the protections of the 2022 Act.

2.4 Who can make a disclosure?

For the purposes of the Act, a worker means an individual who has acquired information on a relevant wrongdoing in a work-related context and includes; serving and retired staff members, an individual on work experience, an individual who is or was a member of the administrative, management or supervisory body, a contractor, a volunteer, a job applicant board members, shareholders.

3. To whom do you make a disclosure

A worker must make a disclosure in the manner set down in the Act to gain the protections of the Act. A disclosure can be made in the following ways:

1. Within the Department
2. To the Relevant Minister
3. Outside of the Department to a Prescribed person
4. To the Protected Disclosures Commissioner
5. To a Legal Adviser

3.1 Disclosure within the Department – Internal Disclosure

Staff are encouraged to make disclosures internally and to use the Department's internal procedures as outlined below. The Department will take all reasonable steps to treat disclosures made in accordance with this Policy in a confidential and sensitive manner. Any worker who possesses information, which came to his/her/their attention in the course of their work in the Department and which he/she/they reasonably believes tends to show one or more of the serious wrongdoings, as set out in Section 2.2 (type of disclosures covered) of this Policy, may disclose the relevant information to a dedicated email address protected_disclosures@drcd.gov.ie established for this purpose.

The Department's Protected Disclosure Group (PDG) which comprises, the Assistant Secretary for Corporate Affairs and Strategic Development, Head of Internal Audit and Head of Compliance, is the designated recipient for Protected Disclosures within the Department. Access to the dedicated protected disclosure email address is restricted to members of the PDG and is monitored by the Head of Compliance (Principal Officer). The Head of Compliance is responsible for receiving, and initial follow up, on reports, communicating with the reporting person where necessary to request further information and providing feedback to the reporting person. The Head of Compliance will also liaise with other internal or external investigators where an investigation is deemed necessary.

Workers are not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so. Workers should only disclose what they

consider to be an alleged wrongdoing based on a **reasonable belief** that it has occurred, is occurring or will occur.

The term 'reasonable belief' does not mean that the belief must be correct. A worker is entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds. No worker will be penalised simply for getting it wrong, so long as the worker/individual had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing.

The Department will also accept disclosures to its internal reporting channel from individuals such as contractors and their employees, agency workers or persons working for suppliers if they became aware of a relevant wrongdoing in a work-related context. These persons can make a disclosure as set out above.

3.2 Disclosures to the Minister for Rural and Community Development

Staff of the Department and its offices may, under specific circumstances, make a disclosure to the Minister for Rural and Community Development as the relevant Minister for the Department. Disclosures can be made to the Minister at

drcdministerprotecteddisclosures@drcd.gov.ie

or

drcdministerofstateprotecteddisclosures@drcd.gov.ie

The PDG monitors and manages these mail boxes.

To make a disclosure to the Minister, the worker must reasonably believe that the information disclosed tends to show one or more relevant wrongdoings; and one or more of the following must also apply:

- The worker has previously made a disclosure of substantially the same information to their employer or to another responsible person or prescribed person(as referenced in section 3.3), as the case may be, but no feedback has been provided to the worker in response to the disclosure within the period allowed, or, where feedback has been provided, the reporting person reasonably believes that there has been no follow-up or that there has been inadequate follow-up;
- The worker reasonably believes the head of the public body concerned is complicit in the relevant wrongdoing reported;

- The worker reasonably believes that the disclosure contains information about a relevant wrongdoing that may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage.

To ensure that the relevant Minister is aware of the worker's intention, it is recommended that the worker specify when making a disclosure, under this channel, that it is a disclosure in relation to an area that the Minister or Minister of State has responsibility for under section 8 of the Protected Disclosures Act 2014.

All reports received through the Ministerial reporting channel will be transmitted to the **Protected Disclosures Commissioner** who will ensure that the report is sent to the most appropriate person to deal with the concern raised.

It is up to the reporting person to ensure that they meet the conditions set out above to qualify for making a disclosure to the Minister. The Act places no obligation on the Minister to make any determination as to whether the reporting person has complied with the requirements for reporting to a Minister under Section 8(2) of the Act.

The only obligation on the Minister is to transmit the disclosure to the Protected Disclosures Commissioner within **10 calendar days** of receipt. The Minister will not act on the contents of the disclosure or engage in correspondence with the reporting person. Any further queries or correspondence from the reporting person following transmission should be referred to the Commissioner.

3.3 Disclosure outside the Department – External Disclosure

The Act allows a worker, to make a disclosure to persons other than their employer in certain circumstances.

1. Other responsible person

Where a worker reasonably believes that the alleged wrongdoing relates to the conduct of a person other than his/her employer, or to something for which another person has legal responsibility, then the worker can make the disclosure to that other person.

2. A prescribed person

Certain persons are prescribed by Statutory Instrument No. [367 of 2020](#) ("S.I. 367") to be the recipient of disclosures ("prescribed persons") for example , to the Comptroller and Auditor

General, Data Protection Commissioner, CEO of the Health and Safety Authority. A worker may make a disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed under S.I. 367. However, the 2014 Act also provides an additional requirement in this case. The worker must believe that the information disclosed, and any allegation contained in it, are **substantially true** (this is a higher standard than is required for disclosure to your employer).

3.4 Disclosures to the Protected Disclosures Commissioner – External Disclosure

The Protected Disclosures (Amendment) Act 2022 created the [Office of the Protected Disclosures Commissioner](#). The Commissioner's primary duty is to refer any reports received under the Act to the most appropriate prescribed person. Only as a last resort will the Commissioner directly follow-up on a report.

The Commissioner may receive disclosures by means of external reporting channels, which must meet the same criteria as the external reporting channels for prescribed persons (see section 3.3 for criteria). The Commissioner will also receive disclosures which have been transmitted onwards from Government Ministers.

Receipt of a report

When the Commissioner receives a report, it must be acknowledged within 7 days. The Commissioner has 14 calendar days (more in exceptional circumstances) to identify the prescribed person which the Commissioner considers appropriate and transmit the report to them.

Alternatively, where the Commissioner considers there is no appropriate prescribed person; or, having considered the nature of the wrongdoing, the Commissioner is of the opinion that the report should not be transmitted to the prescribed person due to the risk of serious penalisation against the reporting person or that evidence of the wrongdoing would be concealed or destroyed, the Commissioner may refer the report to another suitable person. The Commissioner will inform suitable persons of their obligations under the Act when a report is transmitted to them.

3.5 A legal adviser

The 2014 Act allows a disclosure to be made by a worker in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body (an excepted body is a body which negotiates pay and conditions with an employer but is not a trade union as defined in Section 6 of the Trade Union Act, 1941).

3.6 Reporting to third parties

It is preferable that workers in DRCD would disclose to DRCD in the first instance.

There are specific – and more onerous – conditions that must be met for a worker to be protected if they make a disclosure to any person other than their employer, a prescribed person, the Protected Disclosures Commissioner or a relevant Minister. **These are set out in section 10 of the Protected Disclosures Act.**

The worker must reasonably believe that the information disclosed in the report, and any allegation contained in it, is substantially true, and that at least one of the following conditions is met:

- the worker previously made a disclosure of substantially the same information to their employer, to a prescribed person, to the Protected Disclosures Commissioner, or to a relevant Minister, but no appropriate action was taken in response to the report within the specified feedback period; or
- the worker reasonably believes that the relevant wrongdoing concerned may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage, or
- the worker reasonably believes that if he or she were to make a report to a prescribed person, the Protected Disclosures Commissioner or a relevant Minister that there is a risk of penalisation, or
- the worker reasonably believes that if he or she were to make a report to a prescribed person, the Protected Disclosures Commissioner or a relevant Minister that there is a low prospect of the relevant wrongdoing being effectively addressed, due to the particular circumstances of the case, such as those where evidence may be concealed or destroyed or where a prescribed person may be in collusion with the perpetrator of the wrongdoing or involved in the wrongdoing.

3.7 Reporting to the EU

Article 6(4) of the EU Whistleblowing Directive provides that:

“Persons reporting to relevant institutions, bodies, offices or agencies of the Union breaches falling within the scope of this Directive shall qualify for protection as laid down in this Directive under the same conditions as persons who report externally”

To address the concerns raised by the Commission, SI 375 (19 July 2023) amends the Protected Disclosures Act to insert a new section 7B into the Act, **which provides that a worker can report a relevant wrongdoing which is a breach of the EU laws listed in the Directive to a relevant institution, body, office or agency of the EU.** There are also a number of consequential amendments to other sections of Act, mainly to provide that a worker who makes a report under section 7B is entitled to the protections of the Act.

4. How to make a disclosure

The Department recommends that the disclosure be submitted on the template at Appendix A and should include the following at a minimum:

- Date submitted
- Date of the alleged wrongdoing
- Detail of alleged wrongdoing including whether it is ongoing, what has occurred and how.
- Names of any person allegedly involved (if appropriate)
- Detail of whether the wrongdoing was previously raised and to whom
- Confidential contact details of the discloser (as appropriate)
- Any other relevant information

The detail of the disclosure should be sufficient to enable a person without prior knowledge to understand the issue. Disclosures should be submitted to the dedicated email address protected_disclosures@drcd.gov.ie. Access to this mailbox is restricted to the Protected Disclosures Group to ensure confidentiality.

4.1 Anonymous Disclosures

Anonymous disclosures made by workers are not excluded from the protection of the Act.

Reports or concerns expressed anonymously will be acted upon to the extent that this is possible given the constraints in obtaining further information on the alleged wrongdoing when it is received anonymously. The Department encourages workers to identify themselves in making a report to facilitate a full investigation, where it is deemed such an investigation is warranted.

Workers should note, however, that important elements of these Procedures (e.g. keeping the discloser informed and protecting a discloser from penalisation) may be difficult or impossible to apply unless the worker is prepared to identify themselves. Also, a worker cannot obtain redress under the 2014 Act without identifying themselves.

4.2 Assistance with making a Disclosure

Transparency International Ireland run a [Speak Up helpline](#) where reporting persons can seek advice - including legal advice, information, and/or advocacy support.

Advice and support may also be available from the Civil Service Employee Assistance Service, workers' trade unions as well as Citizens' Advice.

5. Receiving a Disclosure

Access to the protected disclosures mailbox (protected_disclosures@drccd.gov.ie) is restricted to the PDG to ensure confidentiality. The mailbox is monitored by the Head of Compliance and, in their absence, by the Head of Internal Audit.

Any persons who receive a disclosure under the Protected Disclosures Act outside of the internal reporting channel must forward it to the dedicated email address protected_disclosures@drccd.gov.ie

The Department's PDG will make an initial assessment of the protected disclosure. This will determine if there is prima facie evidence of a wrongdoing having occurred and if in fact it should be treated as a protected disclosure. If any member of the PDG has a conflict of interest in relation to a disclosure, they must declare it and absent themselves from the case. In such instances, the Head of Corporate Services or Secretary General (as appropriate) may seek to appoint an appropriate alternative person to the PDG for the specific disclosure where the conflict of interest arises.

During this initial assessment by the PDG, the Head of Compliance (or other member of the PDG as required) may contact the reporting person if further information or clarification is required.

If, on preliminary examination, the allegation is judged to be wholly without substance or merit or the matter does not meet the criteria of a protected disclosure (e.g. where the issue is a personal grievance or complaint), the allegation may be dismissed and the person who made the report will be informed accordingly. They will be provided with a clear explanation for how this decision was arrived at and, where necessary, advice on the appropriate steps to take.

If, on preliminary examination, there appears to be prima facie substance to the allegation, the PDG will determine if the matter is to:

- Be investigated informally for less serious wrongdoing
- Be the subject of a full investigation
- Be referred to an outside body, including An Garda Síochána or another body with the statutory power and function of investigation of particular matters.

The Head of Compliance will manage the process from the receipt of the disclosure and initial assessment up to issuing an acknowledgement within **7 days** of receipt.

If it is determined that the matter disclosed meets the criteria of a protected disclosure under the 2014 Act, the matter will be referred for investigation and the discloser will be notified of this development. The Head of Compliance will advise the discloser of this conclusion and offer advice on the appropriate steps to take.

5.1 Investigating a Disclosure

The nature of the investigation will vary depending on the seriousness of the matter disclosed and may include referral to an outside body, including An Garda Síochana.

In some instances, where the issue is deemed to be straightforward and capable of resolution without resort to a full external investigation, the Head of Compliance may conduct the investigation. An alternative person at Principal Officer grade or higher may be selected by the Head of Corporate Affairs (Assistant Secretary) to conduct the investigation where he/she considers that person to be suited to investigate the alleged wrongdoing based on their specific skills, experience and independence from the matters being reported.

It is important to note that some matters may be more appropriately investigated by external investigators or by professional experts in a particular area. Where it is proposed to refer the matter to an external investigator, the worker reporting the concern will be notified of the name and contact details of the person investigating the matter.

Where a full investigation is warranted, it may include interviews with all the witnesses and other parties involved. Statements from all parties will be recorded in writing and a copy given to the person making the statement for confirmation of its accuracy.

Where it is necessary to interview individuals during the investigation, they are entitled to be accompanied by a colleague or staff representative, should they so wish.

It should be noted that fair and due process requires any person accused of wrongdoing should be made aware of, and given, the opportunity to respond to any allegations made against them.

Feedback will be provided to the person making a report as soon as is practicable but within 3 months of the date of acknowledgement of the report as specified by the Act. Feedback will be general in nature and no information will be shared that would breach the legal rights of any person who has been accused of wrongdoing or compromise the investigation of the case. At the end of the investigation, the person will be informed of the general outcome of the investigation.

The PDG, through the Head of Corporate Affairs, will also notify the Secretary General and the Management Board of the receipt of the disclosure, the nature of the information contained in the disclosure and once concluded, the decision transmitted to the reporting person, consistent with the statutory requirement to protect the confidentiality of the worker who has made the disclosure.

6. Protection of the rights of the discloser

6.1 Penalisation (including dismissal and detriment)

The Act provides specific remedies for workers who are penalised for making a disclosure. Penalisation means any act or omission that affects a worker to the worker's detriment and includes:

- Suspension
- Lay-off
- Dismissal
- Demotion
- Loss of opportunity for promotion
- Transfer of duties
- Change of location of place of work
- Reduction in wages
- Change in working hours
- The imposition, or administering, of any discipline
- Reprimand or other penalty (including a financial penalty)
- Unfair treatment
- Coercion, intimidation
- Harassment, discrimination, disadvantage
- Injury, damage, loss or threat of reprisal

All reasonable steps will be taken to protect workers from penalisation.

Workers who experience any act of penalisation should notify their Head of Division (Assistant Secretary), Head of HR or Secretary General and the notification will be assessed and investigated, and appropriate action taken, where necessary.

Claims of penalisation will be dealt with separately to any reported disclosure. Such complaints will normally be dealt with through the HR function of the Department and will be progressed without delay by the appropriate person,

Workers who believe they have been penalised for making a protected disclosure can bring a claim before the Workplace Relations Commission. This claim must be made within 6 months of the penalisation.

In claims for penalisation before the Workplace Relations Commission, the alleged penalisation shall be deemed to have been as a result of the reporting person having made a protected disclosure, unless the employer proves that the act or omission was justified on other grounds.

6.2 Confidentiality/Protection of identity

The Department will take all reasonable steps to treat disclosures made in accordance with this Policy in a confidential and sensitive manner. The Department will not disclose information that might identify the worker who made the disclosure unless it is required by law or necessary for the effective investigation of the relevant wrongdoing.

The 2014 Act provides that a disclosure recipient (which in this context includes any person to whom a disclosure is referred in the performance of their duties) must not disclose to another person any information that might identify the reporting person, except where:

- (i) the disclosure recipient shows that he or she took all reasonable steps to avoid so disclosing any such information;
- (ii) the disclosure recipient reasonably believes that the reporting person does not object to the disclosure of any such information;
- (iii) the disclosure recipient reasonably believes that disclosing any such information is necessary for:
 - (a) the effective investigation of the relevant wrongdoing concerned,
 - (b) the prevention of serious risk to the security of the State, public health, public safety or the environment, or
 - (c) the prevention of crime or prosecution of a criminal offence;
- (iv) the disclosure is otherwise necessary in the public interest or is required by law.

Where it is necessary to disclose the identity of the reporting person, they will be contacted and, where possible, provide consent, prior to any action being taken that could identify them.

Where it is decided that it is necessary to disclose information that may or will disclose the identity of the reporting person, they should be informed of this decision. The reporting person may request a review of this decision and a review should be carried out, where practicable before any such disclosure of information is made.

All reasonable steps will be taken to protect the identity of the reporting person, except as set out in points (i) to (iv) above. Workers who are concerned that their identity is not being protected should notify the person assessing/investigating their disclosure. Such notifications will be assessed and/or investigated and appropriate action taken where necessary.

6.3 Protection of the rights of the respondent

Where an allegation is made against an individual (the respondent), the principles of natural justice and fair procedures will be complied with.

The respondent will be included in the investigation process and made aware of the details of any allegation against him/her/them in so far as is possible having regard to the requirements of confidentiality contained in the Act and will be given the opportunity, as part of a full investigation, to put forward their case in response to the allegation(s).

7. Review of decisions

If the reporting person is not satisfied with

- (a) The conduct or outcome of any follow-up actions (including any investigation) taken on foot of the receipt of a report;
- (b) The conduct or outcome of any investigation into a complaint of penalisation; and
- (c) Any decision to disclose the identity of a reporting person (except in exceptional cases).

he/she/they may bring the matter to the attention of another senior officer of equivalent or higher rank (e.g. member of Management Board) stating that the matter has already been considered by another senior officer and outlining the reasons as to why he/she/they feel that the matter requires further investigation.

If the concerns are referred to a second recipient, that person will undertake an independent evaluation of the concerns raised. This will not be a full re-investigation of the matter in question, but will address the specific issues the applicant feels have received insufficient consideration. Only where this review finds significant shortcomings or failings in the process, will the Department consider if further action is needed- up to and including a full review.

The outcome of any such review will be final with no entitlement to further internal reviews of the same issue.

8. Records

Written records, including timelines, in relation to any assessment and/or investigation undertaken will be maintained.

Records of concerns raised, including the outcome, will be maintained by the Head of Compliance, for a minimum of five years after the closure of the case. These records will be maintained in a confidential and secure environment.

An Annual Report on Protected Disclosures, in accordance with Section 22 of the Act, must be provided to the Minister for Public Expenditure and Reform by the 1st March each year. Each Department is also required to publish an annual report not later than 31st March each year in relation to the preceding year.

Annual Reports are published on the Departments' website at:

[Protected Disclosures](#)

9. Further information /Review of Guidance

The Head of Compliance is responsible for the implementation of the Department's Protected Disclosures Policy. This policy document replaces the Department's existing Protected Disclosures Policy from 2018. The policy will be reviewed at minimum of two-year intervals or when required by the Management Board.

The Protected Disclosures Act 2014 can be downloaded at:

<http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/acts/2014/a1414.pdf>

The Protected Disclosures (Amendment) Act, 2022 can be accessed at:

[Protected Disclosures \(Amendment\) Act 2022 \(irishstatutebook.ie\)](#)

Appendix A – Protected Disclosures Reporting Form

The Department Rural and Community Development welcomes the reporting of disclosures under the Protected Disclosures Policy. The Protected Disclosures Policy is part of the Department's approach to good governance as it seeks to deter, prevent and detect fraud and other significant malpractices.

Before completing this form, you should:

- a) Consider whether the Protected Disclosures Policy is the appropriate policy under which to report your concern (matters of private interest may be reported under grievance or bullying and harassment policies through the Human Resources Unit)
- b) Ensure that the report is being made in relation to a matter that you have reasonable grounds to be concerned about.

Reports should be submitted to an appropriate person as outlined in the Department's Protected Disclosures Policy. Ideally all reports should be submitted to the dedicated mailbox for disclosures protected_disclosures@drccd.gov.ie

Note – When making a protected disclosure, you should only disclose as much information as is necessary to report the wrongdoing and should not access, process, disclose or seek to disclose information about individuals that is not necessary for the purpose of disclosing the wrongdoing.

Department of Rural and Community Development Protected Disclosures Form

<p>Name of person/worker reporting the concern: (anonymous reports will be considered but may be difficult to assess / investigate)</p>	
<p>Confidential contact number:</p>	
<p>Email address</p>	
<p>Details of alleged wrongdoing including dates, if applicable: (Care should be taken to only include the name(s) of individual(s) directly relevant to the report.)</p> <p>The information provided here should be of sufficient detail to enable a person without prior knowledge to understand the issue/s being raised.</p>	
<p>Has the alleged wrongdoing been reported previously: (if so please specify when and to whom)</p>	
<p>Any other relevant details</p>	
<p>Signature & date:</p>	

Appendix B: Guidance for investigation of disclosures

This Appendix provides guidance for senior officers in the Department who are responsible for investigating alleged serious wrongdoing under the Protected Disclosures Acts 2014 & 2022. The Act provides protection for workers from penalisation by their employer for having made a disclosure in accordance with its provisions. The Department's Policy on Protected Disclosures in the Workplace reflects the provisions and intent of the legislation.

Preliminary evaluation

The Department's Policy makes a distinction between an initial evaluation and a full investigation. The initial evaluation will consist of two separate elements – an assessment as to whether the matters reported fall within the scope of the Policy and an assessment as to whether the matters reported are sufficiently serious to merit a full investigation. This initial evaluation is determined by the PDG. The full investigation, where warranted, will generally be referred to an external investigator or be carried out by the Head of Compliance, or by an officer of the same grade who is deemed by the Head of Corporate Affairs to be more suitably placed to assess the reported wrongdoing.

The PDG, as the designated body for receipt of reports in the Department, will inform the necessary people as appropriate, including the Secretary General, of the receipt of the disclosure and the nature of the information contained in the disclosure. The PDG will also advise the same individuals that the matter has been referred for investigation.

Your task as the investigator

Not all matters raised by a staff member may merit a full investigation, and, in most cases, the experience of the PDG will be sufficient to decide whether the matter is of sufficient seriousness to merit further investigation. Examples of where an investigation may not be required include cases where the officer reporting a wrongdoing does not have access to all of the relevant facts or where a simple misunderstanding has arisen.

It may be necessary for the senior officer on the PDG to make some discreet queries or to consult with a fellow officer of the same grade to assist in the evaluation (see "responsibilities in relation to confidentiality" below), but care must be taken, where possible, not to give the

impression that an investigation is in the process of being implemented. In addition to their responsibility to the reporting person, the senior officer also has a responsibility to ensure that accusations of wrongdoing, which could potentially prove to be incorrect, are not made against innocent persons.

Consultation with colleagues regarding evaluating a report may be required, that said, it is important that the senior officer arrives at their own independent conclusions in relation to the matter under investigation.

If a decision is reached that a full investigation is not necessary, it is nonetheless important that the evaluation is sufficiently robust to allow an explanation of the basis of that decision to the person who reported it.

The way the investigation is conducted is one for determination having regard to the circumstances of the case. This is, however, subject to two very important considerations:

- The issue of confidentiality - The Act and the Department's Policy recognise that it may not always be possible to completely protect the identity of the reporting person. The senior officer does, however, have a responsibility to safeguard the identity of the reporting person insofar as is pragmatically possible. It is, therefore, important to ensure that all reasonable steps are taken to maintain the confidentiality of the identity of the person who made the disclosure of wrongdoing.
- It is also important to note that in accordance with the legislation a failure to take all reasonable steps to protect the identity of the reporting person is actionable against the Department by the person who made the disclosure if that person suffers any loss by reason of the failure to comply.
- Fair investigatory procedures – The Department's Policy makes it clear that any investigation arising as a consequence of a disclosure will, as with all other investigations, be carried out in a manner which is fully consistent with existing investigatory procedures which embody the principles of natural justice. Remember that, in addition to the responsibility to the reporting person, the officer also has a responsibility to ensure that accusations of wrongdoing, which could potentially prove to be incorrect, are not made against innocent persons.

Any particular guidance in relation to fair procedures can be requested from HR Unit or the Department's Legal Advisors.

Where it is necessary to interview individuals during the course of the investigation, they should be advised that they are entitled to be accompanied by a colleague or staff representative, should they so wish.

Keeping the reporting person informed

The Act requires that feedback is provided to the reporting person within three months of acknowledgement of receipt of the report of a disclosure, or if no acknowledgement is sent within three months of receipt of the report. However, there is nothing preventing the provision of feedback earlier than this, and it is recommended that feedback be provided sooner than three months if the circumstances allow.

Some investigations will be more complex and will run beyond 3 months. In such cases, the reporting person can request further feedback after the initial feedback after 3 months.

Regular communication with the reporting person is encouraged to provide assurance that the disclosure is being taken seriously.

Time should be taken to explain the officer's role in the process as set out in the Department's Policy, and the nature of the investigation that will be undertaken. It should also be made clear that an underlying principle of the Guidance is that the reporting person is not disadvantaged in any way for having made a disclosure based on a reasonable belief, even if no wrongdoing is identified. This would also be an appropriate time to discuss the limits on confidentiality as set out in the legislation.

While there is a clear necessity to draw attention to the consequences of making a disclosure not based on a reasonable belief, an over emphasis on this aspect could potentially discourage persons from making reports of wrongdoing. Such an outcome would be contrary to one of the main purposes of the Guidance which is to encourage workers to speak up about wrongdoing.

Upon completion of the investigation

Regardless as to the nature of the findings it is a requirement under the Department's Policy to advise the Assistant Secretary for Corporate, the Head of Division, as appropriate, the Head of HR and the Secretary General of the outcome of the investigation. It is a requirement also to advise the reporting person of the outcome.

Where a conclusion is reached that the reporting person was not fully aware of all the facts or was genuinely mistaken in their belief of the occurrence or likely occurrence of wrongdoing, it is especially important to explain the basis of the finding to the reporting person. As a reporting person has a right under the legislation to disclose the information elsewhere, a failure on the part of the official to adequately explain matters will inevitably lead to such an outcome.

In a case where a conclusion is arrived at that the reporting person did not make his/her disclosure based on a reasonable belief, the reporting person should be advised of that finding setting out how the decision was arrived at. The Head of HR will need to be advised in order to consider whether disciplinary proceedings ought to be pursued against the person concerned.

The making of a disclosure and subsequent investigation is a serious matter. The official should carefully record all of the steps taken during the course of all discussions with the reporting person and during the course of the investigation. A checklist has been prepared for guidance which should be signed and maintained for the Department's records. As there are no time limits for retention set out in the legislation or the Department's Policy, it is important that records are maintained until such time as all matters connected with the investigation have been concluded.

Once the investigation has been concluded, all records should be forwarded to the Head of Compliance for secure storage.

Investigation Checklist

1. Have you read and familiarised yourself with the content of the latest version of the Department's Protected Disclosures Policy?
2. Have you taken particular note relating to your responsibilities concerning the avoidance of the disclosure of information that might identify the person by whom the disclosure was made?
3. Have you met / spoken with the reporting person and advised them that their concerns will be treated seriously?
4. Have you confirmed with the reporting person that he/she has read latest version of the Department's Protected Disclosures Policy?
6. Have you advised the reporting person that you are investigating the disclosure, that you will keep him/her advised of the progress of the investigation, as appropriate, and that when your investigation is completed you will advise him/her of the outcome of that investigation?
7. Have you explained to the reporting person the limits on confidentiality as set out in the Protected Disclosures legislation?
8. Have you explained to the reporting person that if he/she is not happy with the outcome of your investigation, he/she may seek to have the decision reviewed?
9. Are you familiar with procedures for conducting an investigation taking account of the principles of natural justice?
10. Have you advised the reporting person of the outcome of your investigation and explained, insofar as is possible, the reasons for your decision?

- 11.** If you arrived at the conclusion that in making his/her disclosure the reporting person did not have a reasonable belief in the wrongdoing, have you referred the matter to the Head of Human Resources for further attention?
- 12.** Have you formally advised the Head of Compliance of the outcome of your investigation?

Appendix C: Disclosure to a Minister

As noted in section 2.1, if a worker is or was employed in a public body, or publically funded body, the worker may make a protected disclosure to a relevant Minister. The relevant Minister for the public body should be identified in the Procedures.

A “**relevant Minister**” is defined as a Minister with responsibility for the public body concerned in whom functions, whether statutory or otherwise, as respects the public body, are vested, or a Minister of State to whom any such function is delegated. In general, this will be the Minister for the parent department of the public body.

In order to make a disclosure to a relevant Minister, the worker must reasonably believe that the information disclosed tends to show one or more relevant wrongdoings; and one or more of the following must also apply:

- I. The worker has previously made a disclosure of substantially the same information to their employer, other responsible person, prescribed person as the case may be, but no feedback has been provided to the worker in response to the disclosure within the period allowed, or, where feedback has been provided, the reporting person reasonably believes that there has been no follow-up or that there has been inadequate follow-up;
- II. The worker reasonably believes the head of the public body concerned is complicit in the relevant wrongdoing reported;
- III. The worker reasonably believes that the disclosure contains information about a relevant wrongdoing that may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage.

To ensure that the relevant Minister is aware of the worker’s intention, it is recommended that the worker specify when making a disclosure under this channel that it is a disclosure to the named Minister under section 8 of the Protected Disclosures Act 2014.

Email addresses are: drcdministerprotecteddisclosures@drcd.gov.ie and drcdministerofstateprotecteddisclosures@drcd.gov.ie

Disclosures received by Ministers are required to be forwarded by Ministers to the Protected Disclosures Commissioner.

Appendix D: Data Protection

All personal data will be processed in accordance with applicable data protection law, including the General Data Protection Regulation (GDPR).

It is important to note that the Protected Disclosures Act imposes certain restrictions on data subject rights, as allowed under Article 23 of the GDPR.

Where the exercise of a right under GDPR would require the disclosure of information that might identify the reporting person or persons concerned, or prejudice the effective follow up of a report, exercise of that right may be restricted.

Rights may also be restricted to the extent, and as long as, necessary to prevent and address attempts to hinder reporting or to impede, frustrate or slow down follow-up, in particular investigations, or attempts to find out the identity of reporting persons or persons concerned.

If a right under GDPR is restricted, the data subject will be given the reasons for the restriction, unless the giving of such reasons would identify the reporting person or persons concerned, or prejudice the effective follow up of a report, or prejudice the achievement of any important objectives of general public interest as set out in the Act

A person whose data subject rights are restricted can make a complaint to the Data Protection Commissioner or seek a judicial remedy in respect of the restriction.

Appendix E: Freedom of Information

The Freedom of Information Act 2014 does not apply to any records relating to disclosures made in accordance with the Protected Disclosures Act, irrespective of when it was made.