



An Roinn Fiontar,
Trádála agus Fostaíochta
Department of Enterprise,
Trade and Employment

Protected Disclosures

Department of Enterprise, Trade and Employment Policy

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Introduction

The purpose of this document is to update the Department of Enterprise, Trade and Employment'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. Departments Commitment

The Department of Enterprise, Trade and Employment 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 6.2 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 6.1 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 and can be accessed on the Department’s intranet [Bob](#) or are available from the DETE HR Unit.

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 and came to the attention of the worker in a work related context.

2.1 To whom does this policy apply

This policy is applicable to all workers in the Department, including its offices as defined in section 3 of the Act, which includes current and former employees, independent contractors, trainees, agency staff, volunteers, board members, shareholders and job candidates.

Workers of Agencies of this Department are required to report under their own organisation's policy.

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 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 complains 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.

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 follow 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

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 attention in the course of their work in the Department and which he/she reasonably believes tends to show one or more of the serious wrongdoings, as set out in Section 5 of this Policy, may disclose the relevant information to a dedicated email address protecteddisclosure@enterprise.gov.ie established for this purpose.

The Head of Management and Business Support Unit and the AP in Management Support Unit are the designated persons for the receipt of Protected Disclosures within the Department. This dedicated email address will be monitored by the Designated persons, who will be 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 Designated person(s) 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 endeavor to do so. Workers should only disclose what they consider to be an alleged wrongdoing based on a reasonable belief that it has, is 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 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 Enterprise, Trade and Employment

Staff of the Department and its offices may under specific circumstances make a disclosure to the Minister for Enterprise, Trade and Employment as the relevant Minister for the Department. Disclosures can be made to Ministerprotecteddisclosure@enterprise.gov.ie.

The Minister may designate a relevant person to monitor this mailbox. The Head of Management and Business Support Unit and the AP in Management Support Unit are the relevant persons in this regard.

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, 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;
- 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 to the Minister who has responsibility for the area being complained about. named Minister 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”). 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)

For information, the following Officers of Agencies and Offices of the Department are amongst those listed as prescribed persons under S.I. 367

- Registrar of Companies

- Registrar of Friendly Societies
- Chairperson & Members of the Competition and Consumer Protection Commission
- Director Corporate Enforcement Authority
- Chief Executive of the Health and Safety Authority
- Chief Executive of the Irish Auditing and Accounting Supervisory Authority
- Chief Executive of the National Standards Authority of Ireland
- Controller of the Intellectual Property Office of Ireland
- Director of Workplace Relations Commission

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. 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. 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.

The reporting person will be notified, as soon as practicable, of the transmission of the report and the reasons for doing so, as well of any extension to the 14 day period referred to above.

Only where a prescribed person or other suitable person cannot be identified will the Commissioner accept the report and notify the reporting person. Once the report has been accepted, the Commissioner must perform an initial assessment, feedback and follow-up.

A person to whom a report is transmitted by the Commissioner may notify the Commissioner within 7 calendar days of receipt that they are of the opinion the report does not come within their remit, and the reasons for this. The Commissioner may not accept this opinion; or accept this opinion and transmit the disclosure to another prescribed person / suitable person; or where no prescribed person / suitable person can be identified, accept the report and follow-up.

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 Alternative external disclosures (in very limited circumstances)

It is preferable in most circumstances to disclose to the employer and, if that is not appropriate, to one of the disclosure options at 1 to 4 above. It will rarely be appropriate to make alternative external disclosures where the disclosure could be dealt with through one of the other disclosure options above, as there are stringent requirements for alternative external disclosures to qualify as protected disclosures under the 2014 Act.

The protections will only be available if the following conditions are met:

- The worker must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true; and
- The disclosure must not be made for personal gain; and
- At least one of the following conditions at (i) to (iv) must be met:

- (a) At the time the disclosure was made the worker reasonably believed that they would be penalised if they made the disclosure to the employer, a responsible person, a prescribed person or a Minister; or
- (b) Where there is no relevant prescribed person, the worker reasonably believed that it was likely that evidence would be concealed or destroyed if the worker made the disclosure to the employer or responsible person; or
- (c) The worker has previously made a disclosure of substantially the same information to the employer, a responsible person, a prescribed person or a Minister; or
- (d) The wrongdoing is of an exceptionally serious nature;
and
- (e) In all these circumstances, it is reasonable for the worker to make an alternative external disclosure.

The assessment of what is reasonable takes account of, among other things, the identity of the person to whom the disclosure is made, the seriousness of the wrongdoing, whether the wrongdoing is ongoing or likely to occur in future, whether any action had been taken in cases where a previous disclosure was made and whether the worker complied with any procedures in place when making that previous disclosure.

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 protecteddisclosure@enterprise.gov.ie.

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 to people looking to report wrongdoing.

5. Receiving a Disclosure

Disclosures should be submitted to the internal reporting channel protecteddisclosure@enterprise.gov.ie. Access to this mailbox is restricted to ensure confidentiality and is monitored by the Designated person(s) in MBSU,

If the Designated person(s) have 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) will seek to appoint an appropriate alternative Designated Person to make an assessment of the disclosure.

The designated person (or another suitable person) will then make an initial assessment of the report to determine if there is prima facie evidence of a wrongdoing having occurred and if in fact it should be treated as a protected disclosure.

During this initial assessment, the designated person 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, 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 matter may:

- 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 Designated person 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 (see section 2.20 following) and the discloser will be notified of this development. Where the PDG 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 Síochána.

In some instances, where the issue is deemed to be straightforward and capable of resolution without resort to a full external investigation, the Designated person may investigate the matter themselves or will identify a suitable person in the Department to

conduct the investigation. This will be a senior colleague (at Principal Officer grade or higher) who, it is deemed, is suited to investigate the alleged wrongdoing based on their specific skills, experience and independence from the matters being reported.

The Department can also use an external investigator if that is deemed necessary. Where it is proposed to refer the matter to an investigator, the worker reporting the concern will be notified of the name and contact details of the person investigating the matter.

It is important to note that some matters may be of such seriousness that the investigation will more appropriately be carried out externally or by professional experts in a particular area.

Where a full investigation is warranted, it will be thorough including interviews with all the witnesses and other parties involved where necessary. 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.

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.

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.

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 protecteddisclosure@enterprise.gov.ie.

The Designated person 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 respondent

Where an allegation is made against an individual (the respondent), the principals 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 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).

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.

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 may bring the matter to the attention of another senior officer of equivalent or higher rank stating that the matter has already been considered by another senior officer and outlining the reasons as to why he/she feels 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-investigate 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 MBSU, 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 - DETE \(enterprise.gov.ie\)](https://enterprise.gov.ie/protected-disclosures-dete)

9. Further information /Review of Guidance

The Head of MBSU is responsible for the implementation of the Department's Protected Disclosures Policy. This policy document replaces the Departments existing Interim Protected Disclosures Policy from 2015. 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 \(irishstatutebook.ie\)](https://www.irishstatutebook.ie/eli/2022/act/12/enacted/en/html)

Appendix A – Protected Disclosures Reporting Form

The Department of Enterprise, Trade & Employment 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 protecteddisclosure@enterprise.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.

Protected Disclosures Form

Name of worker reporting the concern: (anonymous reports will be considered but may be difficult to assess / investigate)	
Confidential contact number:	
Email address	
<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>(Information provide 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>	
Signature & date:	

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. For Internal reports this assessment will generally be carried out by the Head of MBSU or the AP in Management Support Unit, as the designated recipients of internal reports, or by an officer of the same grade who is deemed to be more suitably placed to assess the reported wrongdoing.

The Policy mirrors the matters listed as wrongdoings in the Act. They are broad and wide ranging in nature and are all considered to be serious matters.

The designated person(s) for receipt of reports in the Department, will inform the necessary people as appropriate, including the Head of Human Resources and the Secretary General of the receipt of the disclosure and the nature of the information contained in the disclosure. He/she will also advise the same individuals that the matter has been passed to you for investigation.

Your task as the investigator

Not all matters raised by a staff member may merit a full investigation, and, in most cases, your own experience as a senior officer will be sufficient to inform you as to 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 you to make some discreet queries or to consult with a fellow officer of the same grade to assist your evaluation (see “Your responsibilities in relation to confidentiality” below), but you must be careful, where possible, not to engage in or give the impression that you are in the process of carrying out an investigation. In addition to your responsibility to the reporting person, you also have a responsibility to ensure that accusations of wrongdoing, which could potentially prove to be incorrect, are not made against innocent persons.

Insofar as you may need to consult with colleagues regarding evaluating a report, it is important that you arrive at your own independent conclusions in relation to the matter under investigation.

If you arrive at the conclusion that a full investigation is not necessary, it is nonetheless important that your evaluation is sufficiently robust to allow you to explain the basis of your decision to the person who reported to you.

The way you conduct your investigation is one for determination by you 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. You do, however, have a responsibility to safeguard the identity of the reporting person insofar as is pragmatically possible. It is, therefore, important to ensure that you take all reasonable steps 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 your responsibility to the reporting person, you also have a responsibility to ensure that accusations of wrongdoing, which could potentially prove to be incorrect, are not made against innocent persons.

Should you require any particular guidance in relation to fair procedures you should seek advice 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 you provide feedback 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.

You should take the time and trouble to explain your role in the process as set out in the Department's Policy, and the nature of the investigation you will undertake. You should also make it 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 your investigation

Regardless as to the nature of your findings you are required under the Department's Policy to advise the Head of MBSU, the Head of Division, as appropriate, the Head of Human Resources Unit and the Secretary General of the outcome of your investigation. You also need to advise the reporting person of the outcome.

Where you have arrived at a conclusion 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 your finding to the reporting person. As a reporting person has a right under the legislation to disclose the information elsewhere a failure on your part to adequately explain matters will inevitably lead to such an outcome.

In a case where you have arrived at a conclusion that the reporting person did not make his/her disclosure based on a reasonable belief, you should advise the reporting person of your finding setting out how you arrived at your decision. You will also need to advise the Head of Human Resources who will consider whether disciplinary proceedings ought to be pursued against the person concerned.

The making of a disclosure and subsequent investigation is a serious matter. You should carefully record all of the steps you have taken during the course of your discussions with the reporting person and during the course of your investigation. A checklist has been prepared for your guidance which you should sign and maintain for your records. As there are no time limits for retention set out in the legislation or the Department's Policy, it is important that you maintain your records 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 MBSU for secure storage.

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, in so far 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 MBSU of the outcome of your investigation?