



Office of the Services Commissions

Procedural Guidelines for Protected Disclosures

Protected Disclosure Act, 2011

October 2022

Approved by:

.....
Integrity Commission

Endorsed by:

Mrs. Jacqueline Mendez, JP
Chief Personnel Officer
Office of the Services Commissions

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Version Control Sheet

The Version Control Table below outlines the edit history of this Procedural Guidelines for Protected Disclosures.

Version Control Number	Revision(s)/ Amendment(s)	Year	Authorising Officer
1.0	New	2022	Mrs. Jacqueline Mendez, JP Chief Personnel Officer Mrs. Georgia Morris-Josephs Deputy Chief Personnel Officer Information, Standards & Public Education Miss Shenoweth Holmes Director, Human Resource Policy and Standards (Acting)

Acronym List

Acronym	Definition
CPO	Chief Personnel Officer
HR	Human Resource
OSC	Office of the Services Commissions

Procedural Guidelines for Protected Disclosures

1. Policy Statement

The Office of the Services Commissions (OSC) is committed to fostering an environment to address concerns relating to improper conduct by providing support to employees who raise genuine concerns about a possible improper conduct. Under the *Protected Disclosures Act, 2011* (hereafter referred to as the Act), an employee is entitled to protected disclosure without fear of occupational detriment. All employees can be assured that their reports of improper conduct will be taken seriously and, where necessary, duly investigated. All employees will have access to the Act and the *Procedural Guidelines for Protected Disclosures, 2022*, via the OSC's Intranet and Website.

2. Introduction

The purpose of this document is to provide guidance to employees on how to manage protected disclosures in the OSC and to outline the procedures for reporting improper conduct. The Act requires every public service entity to establish and maintain procedures for dealing with protected disclosures and to make the procedures known and available to employees. The Act enables employees to disclose information in relation to improper conduct in the workplace and provide safeguards to prevent reprisals being taken against them.

3. Objectives

The objective of the Protected Disclosures Act, 2011 (the Act) is to encourage and facilitate the making of Protected Disclosures by employees of improper conduct in the public interest; to regulate the receiving, investigating or otherwise dealing with disclosures of improper conduct; to protect employees who make specified disclosures from being subjected to occupational detriment; to protect the confidentiality of the employee making the disclosure and any statement given, or document, information or thing provided; and to grant immunity from civil or criminal proceeding or any disciplinary proceeding to a person who makes a protected disclosure, or receives, investigates or otherwise deals with a protected disclosure.

These guidelines and procedures are to:

1. Enable employees to identify instances of improper conduct in keeping with the Act;
2. Encourage employees to make reports of improper conduct within the legal parameters without fear of repercussions;

3. Establish a system to ensure that the Designated Authority is informed within 30 calendar days about acts of improper conduct;
4. Reassure employees that they will be protected from occupational detriment for disclosing issues in good faith in accordance with these procedures; and
5. Encourage a culture of fairness, accountability, ethical behaviour, transparency, and integrity in the workplace.

4. Scope

These guidelines and procedures are applicable to all employees as well as to third parties working at or on behalf of the OSC.

5. Definition of Terms

5.1. Disclosure

Disclosure of information made by an employee, regarding any conduct of an employer of that employee or another employee of the employer, where the employee has a reasonable belief that the information disclosed shows or tends to show that improper conduct has occurred, is occurring or is likely to occur, and "disclose" shall be construed similarly.

5.2. Employee

An employee can be defined as the following person who:

- a) Works or has worked for another person; and
- b) Receives, received, or is entitled to receive, any remuneration for work done;
- c) Any person who in any manner assists or has assisted in the carrying on or conduct of the business of an employer, without any entitlement to receive remuneration or reward; or
- d) Any person who is, or was, engaged or contracted under a contract for services to do work for another person, or any agent of the person.

5.3. Grievance and Disciplinary Panel

Panel recognised and established by the OSC to address grievance, staff related and disciplinary issues.

5.4. Improper Conduct

Within the context of the Act, improper conduct refers to any:

- a) Criminal offence;
- b) Failure to carry out a legal obligation;
- c) Conduct that is likely to result in a miscarriage of justice;
- d) Conduct that is likely to threaten the health or safety of a person;
- e) Conduct that is likely to threaten or damage the environment;
- f) Conduct that shows gross mismanagement, impropriety or misconduct in the carrying out of any activity that involves the use of public funds;
- g) Act of reprisal or victimisation of an employee;
- h) Conduct that tends to show discrimination on the basis of gender, race, place of origin, social class, colour, religion or political opinion or affiliation; or
- i) Wilful concealment of any act described in (a) through (h) above.

5.5. Protected Disclosure

Disclosure made by an employee to an employer, a Minister or Prime Minister, Prescribed Person, Designated Authority or Attorney-at-Law.

5.6. Designated Authority

The Designated Authority is an individual or entity designated by the Minister with the responsibility for monitoring compliance with the Act. The Minister has designated the Integrity Commission to be the designated authority.

5.7. Occupational Detriment

Any act or omission that results in an employee, in relation to his employment, being:

- a) Subject to disciplinary action;
- b) Dismissed, suspended, or demoted;
- c) Harassed, intimidated or victimised;
- d) Transferred against his will;
- e) Refused transfer or promotion;
- f) Subject to a term or condition of employment or retirement from employment, that is altered to his disadvantage;
- g) Provided with an adverse reference;
- h) Denied appointment to any employment, profession or office;
- i) Threatened with any of the actions specified in paragraphs (a) to (h); or
- j) Otherwise adversely affected in respect of his employment, profession or office, including employment opportunities and job security.

5.8. Designated Officer

The Designated Officer is the person(s) appointed by the employer and conferred with the requisite authority to receive, take steps to investigate or otherwise deal with disclosures.

5.9. Prescribed Persons

Any person specified for receiving, investigating, or otherwise dealing with disclosures under the Act:

1. Auditor General
2. Bank of Jamaica
3. Bureau of Standards
4. Children's Advocate
5. Commissioner of Police

6. Director of Public Prosecutions
7. Electoral Commission of Jamaica
8. Fair Trading Commission
9. Financial Services Commission
10. Independent Commission of Investigations
11. Integrity Commission
12. Tax Administration Jamaica
13. National Environment and Planning Agency
14. Office of Utilities Regulation
15. Political Ombudsman
16. Public Defender

6. Appointment of a Designated Officer

The following officer has been appointed as Designated Officer under the Act. The Designated Officer was assessed to be the most suitable officer given the sensitivity and trust required by staff. After being consulted, the officer agreed to accept the role. This officer has been given the responsibility and authority by the Chief Personnel Officer (CPO) to receive and investigate disclosures of improper conduct by the employees of the Office of the Services Commissions:

Mrs. Merle I. Tam

Senior Deputy Chief Personnel Officer, Public Service HR Audit

Office of the Services Commissions

Ministry of Finance and the Public Service Building

2nd Floor G Block

30 National Heroes Circle

Kingston 4

Tel: 876-922-8600

Cell: 876-348-1415

Fax: 876-924-9764

Email: mtam@osc.gov.jm

7. Roles and Responsibilities

7.1. Chief Personnel Officer

The Chief Personnel Officer (CPO) is responsible for:

- a) Ensuring that employees are aware of, and have access to the Act and the Guidelines;
- b) Ensuring that the Act and Guidelines are available to staff and the public on the OSC's Intranet and Website;
- c) Approving the assignment of the Designated Officer (s) for the OSC;
- d) Notifying the Designated Authority of the assignment of the Designated Officer (s) within the OSC;
- e) Referring disclosures based on subject matter and their seriousness to the appropriate authority;
- f) Ensuring that persons who have made a disclosure and the Designated Authority are kept up-to-date with the progress of the investigations.

7.2. Designated Officer (s)

The Designated Officer (s) shall have the authority to:

- a) Take steps to ensure that the identity of the person who makes a disclosure is kept confidential;
- b) Preserve and protect evidence gathered in relation to a protected disclosure;
- c) Make monthly reports electronically and/or in print to the Integrity Commission (Designated Authority) on the status of the investigations into disclosures received;
- d) Make the necessary arrangements for a disclosure to be made privately and discretely, and if necessary, away from the workplace;
- e) Be the contact point for general advice about the operation of the Protected Disclosures Act and these procedures;
- f) Put in writing any disclosure received orally, within 24 hours of its receipt;
- g) Determine whether a disclosure meets the criteria of a protected disclosure under the Act and conduct an impartial investigation into the allegation;
- h) Recommend the referral of disclosures to the appropriate authority based on the subject matter and its seriousness;

- i) Update the person who made the disclosure within 30 calendar days and in intervals of 30 calendar days thereafter;
- j) Forward an investigation report and all evidence gathered to the CPO for action.

7.3. Employees

Employees are encouraged to do the following:

- a) Employees should report within 30 calendar days, any case of improper conduct to the Designated Officer;
- b) No employee should take any retaliatory action against another employee for making a protected disclosure;
- c) Employees must direct fellow employees to the Designated Officer (s) for advice or support in making a protected disclosure.

7.4. Grievance Panel

The Director, Human Resource Management & Development is responsible for addressing grievance and staff related issues on a case-by-case basis.

7.5. Disciplinary Panel / Committee of Enquiry

- a) The Public Service Commission, in keeping with the Public Service Regulations would recommend the appointment of a Committee of Enquiry to address disciplinary matters with a view to dismissal in accordance with the Public Service Regulations, 1961, Regulation 43. The Committee of Enquiry is appointed by the Governor General.
- b) Disciplinary matters without a view for dismissal will be addressed by the CPO on a case-by-case basis, guided by the Public Service Regulations, 1961, Regulation 42.

8. Procedures for Protected Disclosures

At the OSC, the following procedures should be observed regarding Protected Disclosures:

- a) An employee should make all protected disclosures to a Designated Officer through any of the following means:
 - i. Private meeting,
 - ii. Phone-call, and
 - iii. Completed form in a sealed envelope, marked as 'Confidential' and delivered to the Designated Officer;
- b) Where possible, all details of a protected disclosure should be captured on the Protected Disclosure Case Form (PDA1), available on the OSC's Intranet (see Appendix 1);
- c) Where possible, employees should submit along with the Protected Disclosure Case Form all evidence deemed relevant to the case;
- d) Disclosures made orally should be recorded on the Protected Disclosure Case Form within twenty-four hours of receipt by the Designated Officer;
- e) The Designated Officer should assess the details of the case and determine whether the subject matter meets the criteria established as being a protected disclosure under the Act;
- f) Where it is believed that the subject matter disclosed would be better addressed by more suitable personnel, is inconsequential, or the circumstances have determined that no investigation is warranted, the Designated Officer should inform the employee who made the disclosure within 15 calendar days of the decision;
- g) Upon deciding that an investigation is warranted, the designated officer should prepare an investigation plan detailing the steps to be taken in the investigation, inclusive of witnesses who may have to be interviewed and resources required;
- h) If the Designated Officer believes that a criminal act has been committed, the information should immediately be referred to the appropriate investigative authority;
- i) Where a non-criminal investigation is taking place, the Designated Officer should provide updates to the employee who made the disclosure within 30 calendar days and in intervals of 30 calendar days thereafter;
- j) On completion of the investigation, the Designated Officer should forward to the CPO, a report containing:
 - i. The allegation disclosed;
 - ii. Findings of the investigation;
 - iii. The conclusion; and
 - iv. Recommendations of the steps to be taken to correct the improper conduct, if any. All evidence gathered during the investigation should be documented and included in the report.

8.1. Right to Refuse

A Designated Officer, acting in good faith, may refuse to deal with a disclosure, or commence an investigation into any improper conduct alleged in a disclosure; or cease an investigation under the following circumstances:

- a) The subject matter of the disclosure or the related investigation has been adequately dealt with, or could more appropriately be dealt with by another person;
- b) The subject matter of the disclosure is frivolous or not sufficiently important to warrant an investigation; or
- c) The circumstances surrounding the subject matter of the disclosure have changed (whether by reason of a change in the circumstances of the employee or the employer, insufficiency of evidence or otherwise) so that it renders the investigation unnecessary.

Where a Designated Officer decides to refuse to carry out an investigation, he/she should provide reasons in writing to the CPO, as well as the employee, within 15 calendar days of the decision.

8.2. Disclosures relating to the Chief Personnel Officer and Designated Officer

- a) Any disclosure in relation to a Designated Officer must be made directly to the CPO;
- b) Any disclosure in relation to the CPO must be made directly to the Integrity Commission, which is the Designated Authority.

8.3. Anonymous Disclosures

There is a distinction between an anonymous disclosure (where identity is withheld by the disclosing employee) and confidential disclosures (where identity is protected by the Designated Officer). Anonymous disclosures are accepted but are not protected by the Act. Despite constraints, reports or concerns of alleged wrongdoings expressed anonymously will be acted upon.

As best as possible, employees are encouraged to identify themselves when making a report in order to facilitate a full investigation. Employees should note 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 they are prepared to identify themselves. Additionally, an employee cannot obtain redress under the Act without identifying himself/herself.

8.4. Alternatives

A disclosure can be made to the Designated Officer, Prescribed Person, Designated Authority, Minister or Prime Minister.

A disclosure can be made to the Designated Authority where there is a reasonable fear of occupational detriment, fear that the evidence of the improper conduct will be destroyed or where no action was taken on an earlier disclosure made.

Disclosures on matter that prejudice national security, defence or international relations must be made to the Minister with portfolio responsibility or the Prime Minister or to both.

9. Collating and Publishing Statistics

The designated officer should maintain a secure log of the disclosures received (Protected Disclosures Log, PDA2 – Appendix 2). This log records the following:

- a) Date the disclosure was received;
- b) Disclosure Number - This number for instance could be arrived at by first using the abbreviation of the entity, followed by the last two numerals of the year and then three (3) digits for numerical count. For example the first case in the year 2022 would be numbered as OSC22001. The second case for the year 2023 would be OSC23002 and so on;
- c) Summary of the improper conduct disclosed;
- d) Date referred where applicable;
- e) Date of completion of the report which on that date should be forwarded by the designated officer to the CPO;
- f) The decision taken as a result of the recommendations made by the Designated Officer.

The Designated Officer must make monthly reports to the Designated Authority of the status of the disclosures received (Protected Disclosure Summary Report PDA3 – Appendix 3).

The report includes the:

- a) Entity's Name;
- b) Date of the report;
- c) Date the disclosure was received;
- d) Summary of the improper conduct;
- e) Summary of the action taken during the period;
- f) Number of days since an update was given to the person who made the disclosure (the discloser);

- g) Date and name of entity to which referral made where applicable;
- h) Date of completion of the investigation report;
- i) Decision taken as a result of the recommendations of the designated officer.

Statistics from the records/data may be published, however, no information must be published that would lead to the identification of the person who made the disclosure.

10. Confidentiality

The OSC will take all reasonable steps to protect the identity of an employee who makes a disclosure, and will treat all disclosures, witnesses, statements given, information or evidence provided to the Designated Officer(s) as secret and confidential (see Section 24 (1) and (2) of the Act). The OSC also recognises reprisals.

10.1. Breach of Confidentiality

A person who breaches the confidentiality clause is liable upon summary conviction in a Parish Court to a fine not exceeding two million Jamaican dollars (\$2,000,000.00) or to imprisonment for a term not exceeding two (2) years or to both.

10.2. Exceptions to breach of Confidentiality

The circumstances by which disclosed information may be obtained in an investigation of a protected disclosure are:

- a) In furtherance of an investigation;
- b) Legal Proceedings; or
- c) Disciplinary Proceedings.

However, the identity of the employee who made the initial disclosure may not be revealed.

11. Rights of Employees

- a) An employee shall not be subjected to any occupational detriment on the basis that the employee seeks to make, has made, or intends to make, a protected disclosure;
- b) An employee who is dismissed as a consequence of seeking to make, making or intending to make a protected disclosure shall be treated as being unjustifiably dismissed. Where an employee resigns as a consequence, it could be viewed as a constructive dismissal if challenged before a tribunal;
- c) Where an employee suffers occupational detriment at or about the same time that he/she makes a protected disclosure, the occupational detriment shall be presumed to be as a consequence of the protected disclosure, unless the employer shows that the act that constitutes the occupational detriment is otherwise justified.

12. Offences under the Act

12.1. Office of the Services Commissions

The OSC commits an offence if:

- a) An employee or former employee is subjected to occupational detriment as a consequence of the employee or former employee making a protected disclosure; or
- b) The Office refuses, in bad faith, to receive a disclosure or carry out an investigation in relation to a disclosure.

12.2. Employees

An employee commits an offence if he/she:

- a) Prevents, restrains or restricts any employee from making a protected disclosure;
- b) Makes a disclosure under the Act knowing that it is false, misleading, or reckless;
- c) Aids, abets, procures, or conspires with any other person to contravene this Act;
- d) Intimidates any employee who has made or intends to make a protected disclosure; or
- e) Induces any person by threats, promises or otherwise to contravene the Act.

12.3. Penalties under the Act

Persons who commit any of the offences listed under Sections 12.1 and 12.2 shall be liable upon summary conviction:

- a) In a Parish Court to a fine not exceeding two million dollars (\$2,000,000.00) or to imprisonment for a term not exceeding two (2) years or to both;
- b) On indictment in a Circuit Court to a fine or to imprisonment for a term not exceeding five (5) years or to both;
- c) On summary conviction in a Parish Court to a fine not exceeding two hundred and fifty thousand dollars (\$250,000.00) or to imprisonment for a term not exceeding three (3) months for failure to comply with, without reasonable excuse, requirements imposed by the Designated Authority in the lawful exercise of the functions of authority under this Act.


13. Remedies


Section 22 (1) and (2) and Section (23) of the Protected Disclosure Act, 2011, outline the actions to be taken by an employee to seek redress for occupational detriment having made a protected disclosure.

14. Monitoring and Review

The Chief Personnel Officer has primary responsibility for oversight of these Procedural Guidelines. These Guidelines will be reviewed periodically, and amendments made as per guidance from the Designated Authority. Employees will be informed of any changes accordingly.

15. Endorsed by:


Mrs. Jacqueline Mendez, JP
Chief Personnel Officer


Date:

Appendix 1

**PROTECTED DISCLOSURES FORM
THE PROTECTED DISCLOSURES ACT, 2011- PROCEDURAL GUIDELINES
FORM - PDA1**

First Name:	Middle Name:	Surname:	TRN:
Address:			
Occupation:			
Nature of Improper Conduct:			

Procedural Guidelines for Protected Disclosures

Name of Alleged Party of Improper Conduct:	
Time and Place of Alleged Party of Improper Conduct:	
Name of Witness:	Name of Witness:
Address of Witness:	Address of Witness:
Description of Witness:	Description of Witness:
Previous Disclosure (s) Made (State about whom and to whom the disclosure was made):	
State whether still in employment:	

I make this disclosure in good faith and in the public interest. I believe it to be true and accurate to the best of my knowledge and I know that I would be liable for prosecution if this disclosure contains any statement that I know to be false or misleading.

Signature of Person making Disclosure

Date

Name of Witness

Signature of Witness

Date

Name of Witness

Signature of Witness

Date

Appendix 2

**PROTECTED DISCLOSURES LOG
THE PROTECTED DISCLOSURES ACT, 2011- PROCEDURAL GUIDELINES
FORM - PDA2**

Entity: _____

Date Received	Disclosure Number	Summary of Improper Conduct Disclosed	Date and Entity of Referral	Date Closed	Decision Taken

Appendix 3

**PROTECTED SUMMARY REPORT
THE PROTECTED DISCLOSURES ACT, 2011- PROCEDURAL GUIDELINES
FORM - PDA3**

Entity: _____

Date of Report: _____

Date Received	Disclosure Number	Summary of Improper Conduct Disclosed	Actions Taken (Brief Description)	Days since last Notification to Discloser	Date and Entity of Referral	Date Closed	Decision Taken

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