

## SIPO Protected Disclosures Procedure

1. The Standards in Public Office Commission (the “Commission”) is committed to creating a culture that supports the making of protected disclosures and provides protection for reporting persons.
2. The Secretary to the Standards in Public Office Commission is a prescribed person by virtue of S.I. No. 339/2014 Protected Disclosures Act 2014 (Section 7(2)) Order 2022. This means that a worker can make a protected disclosure to the Commission in respect of the following matters:
  - All matters relating to the supervision of the Ethics in Public Office Acts 1995 and 2001 in so far as they apply to specified persons and to members of the Oireachtas who are not office holders within the meaning of those Acts, including investigations and reports in relation to possible contraventions of those Acts;
  - All matters relating to the supervision of the Electoral Acts 1992 to 2019 in regard to-
    - the disclosure of donations to political parties, members of the Oireachtas, members of the European Parliament, and candidates at elections to Dáil Éireann, Seanad Éireann and the European Parliament,
    - the obligations of third parties,
    - the obligations of corporate donors,
    - the monitoring of limitations on expenditure by election candidates and political parties, and
    - the expenditure of Exchequer Funding received by qualified political parties.
  - All matters relating to the supervision of the Ministerial and Parliamentary Offices Act 1938 with regard to the expenditure of funding (Parliamentary Activities Allowance) received by the parliamentary leaders of qualifying parties and by independent members of the Oireachtas.
3. This policy applies to all workers who wish to report a relevant wrongdoing that relates to the matters outlined in paragraph 2.

### What is a Protected Disclosure

5. A protected disclosure, in the Protected Disclosures Act, is a disclosure of information which, in the reasonable belief of a worker, tends to show one or more relevant wrongdoings; came to the attention of the worker in a work-related context; and is disclosed in the manner prescribed in the Act.
6. For the purpose of the Protected Disclosures Act, a worker means an individual who has acquired information on a relevant wrongdoing in a work-related context.

7. A worker includes:

- an individual who is or was an employee,
- an individual who entered into or works or worked under any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertook to do or perform (whether personally or otherwise) any work or services for another party to the contract for the purposes of that party's business,
- an individual who works or worked for a person in circumstances in which (i) the individual is introduced or supplied to do the work by a third person, and (ii) the terms on which the individual is engaged to do the work are or were in practice substantially determined not by the individual but by the person for whom the individual works or worked, by the third person or by both of them,
- an individual who is or was provided with work experience pursuant to a training course or programme or with training for employment (or with both) otherwise than under a contract of employment,
- an individual who is or was a shareholder of an undertaking,
- an individual who is or was a member of the administrative, management or supervisory body of an undertaking, including non-executive members,
- an individual who is or was a volunteer,
- an individual who acquires information on a relevant wrongdoing during a recruitment process, and
- an individual who acquires information on a relevant wrongdoing during pre-contractual negotiations (other than a recruitment process referred to above).

8. The information must come to the attention of the reporting person in a work-related context. A work-related context means current or past work activities in the public or private sector through which, irrespective of the nature of these activities, the reporting person acquires information concerning a relevant wrongdoing, and within which the reporting person could suffer penalisation for reporting the information.

9. A reporting person must have a reasonable belief that the information disclosed shows, or tends to show, wrongdoing.

10. To make a protected disclosure to the Secretary of the Commission, as a prescribed person, you must also reasonably believe that the relevant wrongdoing falls with the Commission's remit and that the information disclosed and any allegation in it is substantially true.

11. "Relevant wrongdoings" include

- Criminal offences,
- Failure to comply with a legal obligation (other than your contract of employment)
- Miscarriage of justice
- Endangerment of health and safety
- Damage to the environment
- Unlawful or improper use of public funds
- Oppressive, discriminatory or negligent behaviour by a public body

- Breaches of EU law
- Concealing or destroying evidence of wrongdoing

Exclusively personal grievances between a reporting person and their employer or a co-worker that solely affect the reporting person are not protected by the Protected Disclosures Act.

A matter is not a relevant wrongdoing if it is the function of the worker or the worker's employer to detect, investigate or prosecute and does not consist of or involve an act or omission on the part of the employer.

### **Protections for reporters of protected disclosures**

1. When a worker makes a protected disclosure they have certain protections under the Protected Disclosures Act which are summarised below;
  1. **Confidentiality** – we have an obligation not to disclose your identity or to disclose information which might cause your identity to be known without your consent unless certain exceptions apply. This does not apply, where we consider that disclosure is reasonably necessary for the receipt, transmission or follow up on your report.
  2. **Penalisation** – the law prohibits an employer from penalising (mistreating) the reporter or someone who is connected to that person because they make a protected disclosure. If a worker is penalised they may be able to take action against their employer in the courts or in the Workplace Relations Commission. Penalisation by an employer is also an offence under the Protected Disclosures Act. If you believe you have been penalised you should seek advice as soon as possible as certain time limits apply to these remedies.
  3. **Detriment** - a person who makes a protected disclosure can take legal action against a person who causes them damage for having made a protected disclosure. This is not limited to an employer.
  4. **Liability for Damages** – with the exception of defamation, a person who makes a protected disclosure will not be liable for damages caused by making a protected disclosure.
  5. **Defences to a Criminal Offence of Disclosure** – where disclosure of information is an offence, it will be a defence to show that the disclosure was or was reasonably believed by the person to be a protected disclosure.
  6. **Non-disclosure agreement** – non-disclosure agreement cannot be used to prevent a person from making a protected disclosure.

### **Data Protection**

2. Section 16B of the Protected Disclosures Act provides for restrictions on the obligations of data controllers and on the rights of data subjects where compliance would result in the disclosure of information from which a reporter could be identified or which would prejudice the effective follow up of a relevant wrongdoing.
3. Subject to certain exceptions, the data subject will be informed where a restriction is applied.

## How do I make a report to the Commission?

4. If you wish to make a report to the Commission, you can do so by telephone on 01 639 5798 or by email to our dedicated email address [disclosures@sipo.ie](mailto:disclosures@sipo.ie)
5. When a report is made orally it will be recorded or documented in the form of minutes by the recipient. Where minutes are taken, the reporting person will be asked to confirm the information provided.
6. The Commission may prioritise reports of serious relevant wrongdoing, if necessary and appropriate, having regard to the number of reports received.
7. When making a report to the Commission, the reporter should outline:
  1. The reporting person's name, position in the organisation, place of work and contact details;
  2. Whether the reporting person wishes to be contacted;
  3. The date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
  4. Whether or not the alleged wrongdoing is still ongoing
  5. Whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken;
  6. Information in respect of the alleged wrongdoing (what is occurring / has occurred and how)
  7. The name of any person(s) allegedly involved in the alleged wrongdoing (if any name is known and the worker considers that naming an individual is necessary to report the wrongdoing disclosed);
8. The Commission may accept certain anonymous reports. However, where the report of wrongdoing relates to an allegation that a person has committed a specified act, the Commission cannot deal with it unless the identity of the reporting person is known to the Commission. Where, having regard to all the circumstances, the Commission considers it appropriate to do so, it may restrict the disclosure of such identity to those to whom knowledge of it is necessary or expedient for the Commission's investigation or otherwise in the interests of justice. In other circumstances where an anonymous report is received, the Commission's ability to provide acknowledgment, feedback and to carry out follow up may be limited.

## What happens when I make a report to the Commission?

9. Protected Disclosures will be acknowledged in writing by the Designated Person within 7 calendar days receiving the report unless:
  - The reporting person has requested otherwise; or
  - The Designated Person reasonably believes acknowledgement would jeopardise the protection of the identity of the reporting person.
10. The members of the investigation team are designated persons under the Protected Disclosures Act to follow up on reports, carry out an initial assessment of the report, maintain communication and request further information from, and provide feedback to, the reporting

person. They are also responsible for providing information on the Commission's processes and procedures under the Protected Disclosures Act.

11. On receipt of a report, an initial assessment will be carried out by the Designated Person in order to determine:
  - 11.1. whether there is prima facie evidence that a relevant wrongdoing may have occurred;
  - 11.2. whether the report is a protected disclosure;
  - 11.3. whether the report falls within the remit of the Commission.
12. Further information may be required from the reporter to establish whether there is prima facie evidence that a relevant wrongdoing may have occurred. Depending on the circumstances of the report, information from the reporter may be obtained by a witness statement and/or by interview.
13. If there is no prima facie evidence that a relevant wrongdoing may have occurred, the matter will be closed.
14. If the initial assessment shows that there is a relevant wrongdoing but that it is clearly minor and does not require further follow up, the matter will be closed.
15. If the report is one which has previously been made and if it does not contain any meaningful new information about a relevant wrongdoing compared to a past report where the procedures have been concluded and where no new legal or factual circumstances justify a different follow up, the matter will be closed.
16. If the initial assessment shows that the report concerns matters that are not within the Commission's remit, the report will be transmitted to the relevant prescribed person, or where there is no such other prescribed person, the Protected Disclosures Commissioner.
17. The reporting person will be informed, as soon as practicable, if any of these outcomes arise and the reason for the decision.

#### Further follow up by the Commission

18. If none of the above grounds to close the matter apply, the Designated Person will determine the most appropriate action to address the wrongdoing in line with the Commission's functions under the relevant legislation. Appropriate action, may include but is not limited to:
  - 18.1. Referral to the Commission for consideration as to whether to request a preliminary inquiry under section 4 of the Standards in Public Office Act 2001 or to initiate an investigation under the Ethics in Public Office Act 1995.
  - 18.2. The exercise of the Commission's powers under section 4 of the Electoral Act 1997 in relation to contravention of obligations under that Act.

19. While the Commission has powers of investigation and certain powers of sanction, circumstances may arise where the most appropriate action is a referral to a body responsible for enforcement or sanction or investigation.

#### Communication with the reporting person (feedback and the final outcome)

20. The reporting person will be provided with feedback within three months of acknowledgement of receipt of the disclosures or if no acknowledgement is sent, within three month of receipt of the report.
21. Where a report is received from the Protected Disclosures Commissioner or another prescribed person, feedback will be provided three months from the date of the original acknowledgement.
22. The time to provide feedback may be extended to six months where it is justified due to the particular complexity of the report concerned.
23. The nature of the feedback that will be provided will depend on the nature of the protected disclosure made but in general will include the provisions of information on the actions that the have been taken or is envisaged as follow up and the reasons for such follow up. No information will be provided which could prejudice the outcome of the investigation or any action that ensues.
24. A reporting person may request that feedback be provided to them at three monthly intervals until the matter is closed.
25. The final outcome of the report will be communicated in writing to the report subject to legal restrictions applying concerning confidentiality, legal privilege, privacy and data protection or any other legal obligation.

#### Protection of Identity

26. The Commission is required to keep confidential the identity of any reporting person, unless the Commission reasonably considers that disclosure is necessary for the purposes of receipt, transmission or follow up of reports.
27. There are some other limited exceptions to the duty of confidentiality, some of which usually require that the reporting person is notified in advance.
28. The Commission is required to keep confidential the identity of any person accused of relevant wrongdoing as long as any investigation is ongoing, unless the Commission reasonably considers that disclosure is necessary for the purposes of the legislation or otherwise authorised or required by law.