

# Protected Disclosures Commissioner

## Summary Procedures

### Introduction

1. The Protected Disclosures Commissioner is an independent statutory office established under the Protected Disclosures Act 2014 (the “**Act**”).
2. The role of the Protected Disclosures Commissioner (the “**Commissioner**”) is to receive reports of relevant wrongdoing from members of the public, Ministers and from prescribed persons, and transmit those reports to the most suitable authority. The Office of the Protected Disclosures Commissioner (the “**Office**”) assists in the work of the Commissioner.
3. The Commissioner may delegate such of his functions as he considers appropriate to the staff of the Office.
4. The Commissioner has no role in assessing whether a report of relevant wrongdoing qualifies for the protections provided under the Act.
5. This document explains our procedures from when we receive reports, including how we transmit reports and, where applicable, follow up on reports accepted by the Commissioner.
6. We aim to ensure that the approach we adopt in each case is fair, and seen to be fair, to all the parties concerned. The document is for general information only and it does not contain a detailed description of the many issues that arise during the process.
7. These procedures have been approved by the Commissioner. The procedures will be reviewed by the Commissioner every three years.

### The role of the Designated Person

8. The Commissioner has designated staff members (known as “**Designated Persons**”) who are responsible for handling reports and in particular, for providing any person with information on procedures for making a report. The staff of the Office are Designated Persons for the purposes of the Act.
9. Where the Commissioner accepts a report, the Designated Person will also be responsible for following up on reports and maintaining communication with the reporting person for the purposes of providing feedback and where necessary requesting further information from the reporting person.

## The role of the Authorised Officer

10. The Commissioner may appoint members of staff and other suitably qualified persons as the Commissioner considers appropriate to be Authorised Officers to exercise the Commissioner's powers under section 10F of the Act.
11. An Authorised Officer may be a member of the staff of the Office of the Protected Disclosures Commissioner or such external person as the Commissioner considers appropriate.

## Pre-engagement Procedure

12. The purpose of the pre-engagement procedure is to provide reporting persons with information on how to make a report to the Commissioner and how the process of making a report will operate.
13. The staff of the Office will speak with anyone who is considering making a report and will outline in general terms the process for making a report to the Commissioner. If a person wishes to engage with the Office before making a report, they can telephone 01 639 5650
14. Where appropriate, the reporting person may be advised to take a cooling off period to consider their circumstances and/or to obtain legal advice before making their report.
15. The pre-engagement procedure is a voluntary and confidential process conducted over telephone before making a report. During this process, reporters should not disclose information relating to their report.

## How to make a report to the Commissioner

16. Reports can be made to the Commissioner using the following methods
  - By letter or email
  - Orally by telephone
  - At in-person meetings
17. Calls to the Commissioner are not recorded and the lines are fully encrypted. Our emails are fully encrypted also.
18. Emails can be sent to [info@opdc.ie](mailto:info@opdc.ie) or letters can be posted or dropped to 6 Earlsfort Terrace, Dublin 2, D02 W773. Telephone calls can be made to 01 639 5650.
19. The Commissioner can receive reports from
  - a reporting person directly
  - a Minister

- a prescribed person

20. When making a report to the Commissioner, 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. Whether the reporter is of the opinion that they are at risk of serious penalisation or that there is a risk that evidence of the relevant wrongdoing will be concealed or destroyed and if so, by whom.
4. The date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
5. Whether or not the alleged wrongdoing is still ongoing
6. Whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken;
7. Information in respect of the alleged wrongdoing (what is occurring / has occurred and how)
8. The name of any person(s) allegedly involved in the alleged wrongdoing (if any name is known and the reporter considers that naming an individual is necessary to report the wrongdoing disclosed);

21. Reports can be made using the report form available on our website here [insert link.]  
Use of this form is optional.

22. Reporters are encouraged not to include supporting documentation when making a report to the Commissioner at this stage. If further information is needed by the Commissioner in order to determine the most suitable authority to follow up on the report, the Commissioner will request that information from the reporter.

23. Reporters are encouraged to frame their report in terms of information that has come to their attention rather than seeking to draw conclusions about particular individuals or specific offences.

### Receipt of a Report by the ODPC

24. Once we receive a report we will normally acknowledge the report within 7 days of receipt. The acknowledgement will be provided to the email address or postal address as is provided by the reporter unless the report specifies otherwise.

25. Where no contact details are provided with a report it may not be possible for the office to acknowledge the report.

26. Reports will be dealt with in the order that they are received, however if necessary and appropriate, having due regard to the number of reports received, a report of serious relevant wrongdoing may be dealt with as a matter of priority.

27. Within 14 days of receipt, unless specific conditions apply, the Commissioner will identify the prescribed person as the Commissioner considers appropriate and transmit the report to that person (see [here](#) for a list of prescribed persons).
28. Where appropriate, the Commissioner may make informal contact with the Prescribed Person to inform them in general terms that a report of relevant wrongdoing is likely to be transmitted to them. The main purpose of this communication is to ensure that the report is transmitted to the correct person in the correct manner.
29. If there is no appropriate prescribed person or, in the opinion of the Commissioner, transmission to the prescribed person would create a risk of serious penalisation or a risk that evidence would be concealed or destroyed, the Commissioner will identify another suitable person and transmit the report to that person.
30. Other suitable persons are identified by the Commissioner as being persons, who in the opinion of the Commissioner, appear by reason of their responsibility or functions to be the appropriate recipient of the report and to have the competence to provide feedback and follow up and protect the identity of the reporting person.
31. If the Commissioner cannot identify an appropriate prescribed person or an other suitable person, the Commissioner will accept the report for follow up.
32. The Commissioner may, where appropriate, separate a single report into parts to be transmitted to one or more prescribed persons and/or other suitable persons.
33. The Commissioner may be unable to transmit the report to the prescribed person or persons within the 14-day period due to the nature and complexity of the report and may in these circumstances extend the 14 day period to such a period as is reasonable in the circumstances.
34. As soon as practicable after transmitting or accepting the report, the reporting person will be notified of the actions taken and reasons for doing so.
35. Subject to the objection process as outlined below, once a report has been transmitted to by an appropriate prescribed person or other suitable person, the Commissioner's role has concluded and no further steps will be taken.

### Remit Objections for Prescribed Persons and Other Suitable Persons

36. A person to whom a report is transmitted may notify the Commissioner in writing not later than 7 days after the date of transmission of the report, that the matter to which

the report relates does not come within the person's remit, statutory or otherwise and the reasons for that opinion. Day 1 is the date of transmission.

37. Notifications of objection as to remit should be submitted by email to the following address [info@opdc.ie](mailto:info@opdc.ie). Notifications must include the reasons as to why a report does not come within a person's remit. A notification without reasons will not be considered a valid notification.
38. The person will be notified within 14 days of the notification of the Commissioner's decision. The Commissioner's decision is final. If the Commissioner's decision is that the report does not fall within the person's remit and the report should be transmitted to another person or accepted by the Commissioner, we will notify the reporting person of the actions taken and reasons for doing so as soon as practicable.

### Follow up by the Commissioner

39. If the Commissioner cannot identify an appropriate prescribed person or an other suitable person, the Commissioner will accept the report for follow up. In those circumstances, the procedures as outlined below will apply.
40. Follow up by the Commissioner will generally be conducted by the staff of the Office who are Designated Persons. In addition to the staff of the Office, the Commissioner may utilise such third party investigative services as he considers appropriate.

### Stage 1: Initial Assessment

41. An initial assessment will be undertaken to establish whether there is prima facie evidence that a relevant wrongdoing may have occurred in a work-related context.
42. If the report is an anonymous report, an assessment will be carried out as to whether acceptance of the report is prohibited by law. Where acceptance is prohibited by law, the Commissioner will close the procedure and no further steps will be taken.
43. Further information may be required from the reporter to establish whether there is prima facie evidence that a relevant wrongdoing has occurred. Depending on the circumstances of the report, information from the reporter may be obtained by a witness statement and/or by interview.
  - 43.1. The reporting person may be asked to provide full details as to the alleged relevant wrongdoing including to identify the name/s and contact details of any relevant witnesses.

- 43.2. The reporting person may also be asked whether they have made a previous report relating to the same or similar circumstances to the Commissioner or to another prescribed person and the details as to that report.
44. The reporting person has an obligation to reasonable cooperate with the Commissioner. Cooperation with the Commissioner does not interfere with a person's rights under the Act.
45. Having carried out the initial assessment, if the Commissioner decides that any of the below apply to the report, the procedure will be closed and the reporter will be notified:
- 45.1. There is no prima facie evidence that a relevant wrongdoing may have occurred.
  - 45.2. There is a prima facie evidence that a relevant wrongdoing may have occurred but it is clearly minor and does not require further follow up.
  - 45.3. In the case of a repetitive report, that there is no new meaningful information about a relevant wrongdoing compared to a previous report and there are no new legal or factual circumstances to justify a different follow up.
46. A single report may be broken down into a series of separate allegations or parts, each of which may need to be followed up separately or approached differently, according to the circumstances.
47. Interpersonal grievances which are exclusively personal to the reporter are not relevant wrongdoings under the Act.
48. If none of the above applies, the Commissioner will proceed to the next stage.

## Stage 2: Further follow up

49. The Commissioner will conduct diligent follow-up and take appropriate action in accordance with the Commissioner's functions in every case. However, what further follow up is appropriate in an individual case may vary depending on the nature and content of the report.
- 49.1. For example, some cases may require substantial investigation by the Commissioner to establish the facts, whereas others may not merit any further investigation by the Commissioner as the facts are clear and uncontroversial. While the Commissioner has powers of investigation, the Commissioner has no powers of enforcement or sanction, so appropriate action by the Commissioner may include referral of a case to a body responsible for enforcement or sanction of the person about whom a report has been made. In some cases, the Commissioner may be under a duty to pass information to An Garda Síochána or an other regulatory authority and to suspend any further action by the Commissioner pending the outcome of that investigation.

50. In the event that the Commissioner decides that investigation of the report by the Commissioner is required as part of appropriate follow-up, the investigation process may include the following:

- I. The person who made the report will be informed of the investigation and may be asked to provide further information. This may include being asked or required to make a statement to the Commissioner or to provide supporting documentation or other evidence available to the person.
- II. Any persons accused of wrongdoing or associated with them (e.g. that person's employer) will be informed of the investigation and may be asked to provide further information. This may include being asked or required to make a statement to the Commissioner or to provide documentation or other evidence available to the person.
- III. In appropriate cases, Authorised Officers may enter premises, with or without a warrant, and require information or other evidence.

51. Persons who are under investigation will be afforded an opportunity to comment on the alleged relevant wrongdoing. However, a copy of the report or documents provided by the reporter will not be provided to persons under investigation as part of the investigation process unless the Commissioner considers that it is necessary for the purposes of the investigation.

52. Information from which the identity of the reporting person may be deduced will not be disclosed unless the Commissioner considers that disclosure is reasonably necessary for the purposes of the investigation. Where appropriate, documents may be exchanged in an anonymous format.

53. Reporting persons may be provided with the opportunity to address any new issues raised by persons under investigation if it considers it necessary for the purposes of the report.

54. At the conclusion of the investigation, a file will be prepared based on the information obtained, together with any statements and other relevant documents. The Commissioner will assess the evidence based on the balance of probabilities. Where there is conflicting accounts of an event, the Commissioner will make a finding as to which account, in their opinion is the most credible.

55. The Commissioner will determine the most appropriate course of action. This may include but is not limited to the referral of the report to the relevant authorities.

### Stage 3: Outcome

56. Subject to the Commissioner's legal obligations, the reporting person will be informed of the final outcome of the Commissioner's follow up including as appropriate the outcome

of any investigation carried out by the Commissioner as a result of the report or any referrals made by the Commissioner to another body as a result of the report.

57. The outcome may be communicated to the reporting person in a formal or informal manner as appropriate and using the communication channel which has been normally utilised by the reporting person unless otherwise specified.
58. The extent to which the reporting person will be informed of the outcome of the report will depend on the nature of the report. Examples of outcomes that might be communicated to a reporting person include:
  - 58.1. The Commissioner's findings and recommendations.
  - 58.2. That the Commissioner has referred the report to another authority, for example An Garda Síochána, for its consideration.
  - 58.3. That having carried out an investigation, the Commissioner has decided that there is no evidence that the relevant wrongdoing occurred or is occurring.
59. There is no obligation on the Commissioner to inform the reporting person of any particular actions e.g. a disciplinary process or legal actions involving another individual.
60. Information will not be provided to the reporting person if to do so would prejudice the outcome of other investigations or proceedings.

## Feedback from the Commissioner

61. During the follow up process, the reporter is entitled to receive feedback within 3 months from the date the report was acknowledged. Feedback will be provided to reporting person by the Designated Persons.
62. The purpose of feedback is to ensure that the reporting person is kept informed of the process and actions arising from the report made by them. The extent of the feedback will depend on the report itself. In general terms, the reporting person will be provided with feedback as to what actions have been taken or are being considered and the reasons for same.
63. No information will be communicated which could prejudice the outcome of an investigation or any actions that may follow e.g. legal or disciplinary actions.
64. In certain cases the period to provide feedback can be extended to 6 months from the date of the acknowledgment where justified due to the particular nature and complexity of the report. Where an extension is required the reporting person will be notified as soon as practicable.
65. A reporting person may also request regular feedback (at three monthly intervals). Requests for regular feedback should be made in writing to the Designated Person.



## Other information you should know

### Can a report of relevant wrongdoing be withdrawn?

66. It is not possible to withdraw a report of relevant wrongdoing. For this reason, reporting persons are advised to participate in the [pre-engagement procedure](#) as outlined above before, making their report.
67. Circumstances may arise where a reporting person no longer wishes to proceed with their report. Where a reporting person no longer wishes to proceed with their report, they should contact the office in writing as soon as possible confirming their position and the reason for same. Any communication from the reporting person will be considered and such action will be taken as the Commissioner considers appropriate.
68. Reporters should be aware that the Commissioner is obliged to transmit the reports received within 14 days of receipt. Where a report has already been transmitted, the Commissioner will not be in a position to take any further steps in relation to that report.
69. It may occur that the reporting person considers that the report is not or is no longer a report of a relevant wrongdoing under the Act. In those circumstances the reporting person should make contact with the office immediately and outline why they consider that the report is no longer a report of relevant wrongdoing. For example, the reporter may be of the opinion that information provided is not true or that the wrongdoing is more appropriately considered an exclusively interpersonal grievance.
- 69.1. In the event that the report is not a report of relevant wrongdoing under the Act, the Commissioner is not obliged under the Act to transmit the report.
- 69.2. However, the Commissioner may be otherwise obliged to report the information to another authority for example, where there report contains information relating to certain offences, the Commission may be obliged to report this information to An Garda Síochána.
70. Where a reporting person is concerned that they are at risk of serious penalisation or that evidence will be concealed or destroyed, those concerns should be raised with the Office. The concerns of the reporting person will be considered before any action is taken in respect of a report.
71. Where a reporting person no longer wishes to participate in the follow of the report this will be noted and, where appropriate, communicated to the recipient of the report.

While the reporting person has a statutory duty to cooperate with the Commissioner and any recipient of the report, this is only to the extent that may be reasonably and lawfully required.

### **Anonymous reports**

72. We will act upon anonymous reports to the greatest extent practicable, although our ability to follow up may be constrained if we do not know the identity of the reporter. There may be circumstances where we are prohibited or limited by law from following up an anonymous report.

73. If the identity of the reporting person is not known to us, we may not be able to keep the reporter informed or take such steps as is required to avoid disclosure of the reporter's identity.

### **Offences relating to the Commissioner's functions**

74. The following are offences under the Act:

- 74.1. withholding, destroying, concealing or refusing to provide any information or record, book, document or other thing required for by the Commissioner under section 10F7(1);
- 74.2. failing or refusing to comply with any requirement made under section 10F(1) or (4), or (c);
- 74.3. Obstructing or hindering the Commissioner or an Authorised Officer in the performance of his or her functions under section 10F of the Act.

75. Persons who commit an offence under this Act shall be liable— (i) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or both, or (ii) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 2 years, or both.

76. Investigation of any such offence would be a matter for An Garda Síochána.

### **Witness Expenses**

77. The Commissioner will consider reimbursement of out-of-pocket expenses incurred by any ordinary witness as a result of having to give evidence to the Commissioner. These expenses must be reasonable vouched expenses.

### **Representation**

78. Where a person under investigation is being interviewed, their representative may accompany them to in-person meetings. The name and contact details of the representative must be provided to in advance of the interview.

### **Confidentiality and security**

79. The Commissioner takes confidentiality and security of information very seriously.

80. The Commissioner is required to keep confidential the identity of any reporting person, unless the Commissioner reasonably considers that disclosure is necessary for the purposes of receipt, transmission or follow up of reports. It is likely that it will be necessary to disclose the identity of the reporting person to the appropriate prescribed person or other suitable person to enable them to properly follow up on the report.

81. There are some other limited exceptions to the duty of confidentiality, some of which usually require that the reporting person is notified in advance.

82. If a reporting person has particular concerns that they may be penalised or their report may be hindered if their identity is disclosed, they should raise this with our office. Any such concerns will be treated sensitively and confidentially.

83. The Commissioner is required to keep confidential the identity of any person accused of relevant wrongdoing as long as any investigation is ongoing, unless the Commissioner reasonably considers that disclosure is necessary for the purposes of the legislation or otherwise authorised or required by law. It is likely that it will always be necessary disclose the identity to the appropriate prescribed person or other suitable person to enable them to properly follow up the report.

84. The Commissioner stores information for the purposes outlined in our Privacy Notice and will be kept according to our retention policy, which can be found on our website. The retention policy sets out the time-periods for how long information is kept by the Commissioner for different purposes, and as a result of our legal requirements. The length of time we hold your personal data for will depend on the type of document or record which contains the personal data however, in general we will not hold your personal data for longer than one year.

85. The Commissioner has business continuity plans in place to enable it to continue to carry out its functions in the event of its secure systems being temporarily unavailable. In the event that the Commissioner's systems are unavailable for any reason, the Commissioner will be unable to receive new reports of wrongdoing during that period.