



INTEGRITY COMMISSION

OFFICE OF THE DIRECTOR OF
INFORMATION AND COMPLAINTS

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Ref. No. IC/P11-A

2023 March 01

BY EMAIL & BEARER

Mrs. Carolyn Reid-Cameron
Public Defender
Office of the Public Defender
22-24 Duke Street
Kingston

Dear Mrs. Reid-Cameron:

Re: Protected Disclosures Act, 2011 - Procedural Guidelines Approval

Pursuant to Section 21(3)(d) and (e) of the Protected Disclosures Act, please be advised that the Protected Disclosures Procedural Guidelines (PDPG) presented to the Integrity Commission was reviewed and found to be in keeping with the Act.

In the circumstance, the Commission has approved the Procedural Guidelines and consequently, the Office of the Public Defender is authorised to implement said Procedures and cause them to be circulated among the employees of the entity, in accordance with Section 13(6) of the Act. It is also recommended that the Protected Disclosures Procedural Guidelines be placed on the entity's website for public access.

In the foregoing regard, kindly inform the Commission of the date of implementation.

The Integrity Commission will discharge its oversight functions through the monitoring of monthly reports submitted by your entity, in keeping with the established reporting form. Please note that these reports should be submitted on or before the 10th day of the subsequent month.

The Commission thanks you for your kind cooperation and looks forward to a strong partnership.

Yours respectfully,

Mr. Craig Beresford
Director of Information and Complaints
For and on behalf of the Integrity Commission

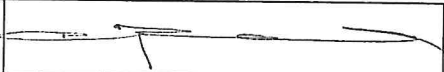


OFFICE OF THE PUBLIC DEFENDER

22-24 DUKE STREET, KINGSTON

PROTECTED DISCLOSURES PROCEDURAL GUIDELINES

"These procedures are to outline the system that has been established for the employees of Office of the Public Defender to report improper conduct or occupational detriment."

Approved by:	
Endorsed by:	Public Defender
Effective Date:	November 2, 2022

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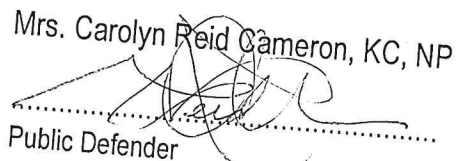
1. Statement of Support to Persons Making Protected Disclosures

The Directors and Management of the Office of the Public Defender are committed to the provisions of the Protected Disclosures Act, 2011 and have endorsed these procedures. We also pledge to encourage our employees to make disclosures of known or suspected incidences of improper conduct, to facilitate a fair and impartial investigation into each allegation and to take the necessary steps to implement the recommendations of any such investigation. We also give the assurance that all reasonable steps will be taken to protect employees who have made a protected disclosure from occupational detriment or fear of reprisals.

Mr. Herbert McKenzie


Chairman

26th February 2023
Dated

Mrs. Carolyn Reid Cameron, KC, NP

Public Defender

38.2.23
Dated

2. Object of the Act

The object of the Protected Disclosures Act, 2011 (the Act) is to encourage and facilitate the making by employees of specified disclosures 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.

3. Purpose of the Procedures

These procedures are in compliance with the Protected Disclosures Act, 2011 and are to outline the system that has been established for the employees of Office of the Public Defender to report improper conduct or occupational detriment. These procedures also describe the timely and impartial investigating and reporting mechanism in place to deal with protected disclosures.

4. Definitions of Terms

i. Designated Authority

The Designated Authority is an individual or entity appointed by the Minister of Justice with the responsibility for monitoring compliance with the Act. The Minister has appointed the Integrity Commission as the Designated Authority.

ii. 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. The Designated Officer is also responsible for keeping the employee updated on the status of the investigation of the disclosure.

iii. Employee

- (a) any person who:
 - (i) works or has worked for another person; and
 - (ii) receives, has received, or is entitled to receive, any remuneration for work done;
- (b) 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
- (c) 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.

iv. Grievance and Disciplinary Panel

Panel recognized and established by an organization to address grievance, staff related and disciplinary issues.

v. Improper Conduct

- (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 against or victimization of an employee;
- (h) conduct that tends to show unfair discrimination on the basis of gender, race, place of origin, social class, colour, religion or political opinion; or
- (i) wilful concealment of any act described in (a) to (h) above.

vi. 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 victimized;
- (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 (a) to (h); or
- (j) otherwise adversely affected in respect of his employment, profession or office, including employment opportunities and job security.

vii. Prescribed Persons

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

5. Roles and Responsibilities

i. Employee

Employees are encouraged to disclose known or suspected incidences of improper conduct or detrimental action in good faith and in the public's interest in accordance with the Act. Employees should also support those who have made a legitimate disclosure and should refrain from activities that could be perceived as victimization, harassment or reveal the identity of the persons who have made disclosures.

ii. Designated Officer

The Designated Officer shall have the authority to:

- (a) make the necessary arrangements for a disclosure to be made privately and discretely and if necessary, away from the workplace;
- (b) be the contact point for general advice about the operation of the Protected Disclosures Act, 2011 and these procedures;
- (c) put in writing any disclosure received orally within twenty-four hours of its receipt;
- (d) take all steps to ensure that the identity of the person who makes a disclosure is kept

- confidential;
- (e) determine whether a disclosure meets the criteria of a protected disclosure under the Act and conducting an impartial investigation into the allegation;
 - (f) recommend the referral of disclosures based on the subject matter, the seriousness of its nature or if it prejudices national security, defence or international relations to the appropriate authority;
 - (g) give an update to the person who made the disclosure within thirty (30) days and in intervals of thirty (30) days thereafter;
 - (h) forward an investigation report and all evidence gathered to the **Public Defender** for action; and
 - (i) make monthly reports to the Designated Authority on the status of the investigations into disclosures received.

iii. Employer (Chief Executive Officer)

The **Public Defender** has the responsibility of ensuring that employees are aware of these procedures and that the Designated Officers are accessible and have the requisite training to carry out their function(s). The **Public Defender** is responsible to approve and monitor the investigation plan and investigation into allegations of improper conduct; however, he/she may delegate this task to a senior officer or assign a nominee. The **Public Defender** is responsible for ensuring that persons who have made a disclosure and the Designated Authority are kept up-to-date with the progress of the investigations, the findings, recommendations and any subsequent actions taken.

iv. Grievance and Disciplinary Panel

The Disciplinary Panel of **The Office of the Public Defender**, which has as its members the **Public Defender, Herbert McKenzie, Lorna Palmer, Kayla Beckford Harrison** and a staff Representative appointed by the Public Defender, have the responsibility to review the findings of the Designated Officer and approve the actions necessary to correct the improper conduct reported.

6. Appointment of a Designated Officer

The following Officers have been appointed as Designated Officers in compliance with the Protected Disclosures Act, 2011. They have been given the responsibility and authority to receive and investigate disclosures of improper conduct made by the employees of **Office of the Public Defender**:

Name: Audry Jones Chong
Title: Director, Corporate Affairs
Office of the Public Defender
22-24 Duke Street, Kingston
Tel.: (876) 922-7089/90
Cell: 876-550-9966

Name: Yvonne Smith
Title: Investigator
Office of the Public Defender
22-24 Duke Street, Kingston
Tel.: (876) 922-7089/90
Cell: (8 76) 224-3300

Email: Audry Jones Chong - achong@opd.gov.jm Email: Yvonne Smith - ysmith@opd.gov.jm

7. The Reporting System

At **Office of the Public Defender** all disclosures of improper conduct must be made confidentially to the Designated Officers outlined above. Where possible the disclosure should be made on the Protected Disclosures Form (PDA1 – Appendix 1) which is available in each department of the entity and on the entity's website. Disclosures made orally will be recorded on the same form, PDA1, within twenty-four (24) hours of receipt by the Designated Officer.

Alternatives

A disclosure can be made to a Minister if the employer of the person making the disclosure was appointed under a law by the Minister or is a public body whose members were appointed by the Minister. A disclosure can also be made to a Prescribed Person (defined in Section 4) if the employee believes that the subject matter of the improper conduct disclosed falls within their portfolio. A disclosure can be made to the Designated Authority (defined in Section 4) where there is a reasonable fear of occupational detriment or that the evidence of the improper conduct will be destroyed. A disclosure can also be made to the Designated Authority if no action was taken on an earlier disclosure made.

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

8. Receiving and Assessing

Upon the receipt of a disclosure the Designated Officer should make an assessment as to whether the subject matter of the disclosure meets the criteria established as being a protected disclosure under the Act. All disclosures received must be entered into a Protected Disclosures Log (Form PDA2 – Appendix 2) which is to be kept by the Designated Officer.

If the subject matter disclosed is found to be better dealt with by another person/entity, frivolous, of a nature not sufficiently important or the circumstance has changed and it is decided that no investigation is warranted, then the Designated Officer should convey the decision taken to the person who made the disclosure in writing within fifteen (15) days of the decision.

9. Investigation and Feedback

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. The Investigation Plan should be forwarded to the **Public Defender /Employer Designate** for approval.

On approval of the Investigation Plan the Designated Officer should commence the investigation forthwith. The investigation should be done fairly and the rights of the person who made the disclosure and any other witnesses protected.

The employee who made the disclosure should be updated on the status of the investigation within thirty

(30) days of receipt of the disclosure and at intervals of thirty (30) days thereafter. A Protected Disclosures Summary Report (PDA3 – Appendix 3) should be completed at the end of each month and forwarded in print and electronically to the Designated Authority.

On completion of the investigation the Designated Officer should forward to the Public Defender a report containing:

- (1) the allegation disclosed;
- (2) findings of the investigation;
- (3) conclusion; and
- (4) recommendations of the steps to be taken to correct the improper conduct. All evidence gathered during the investigation should be documented and included in the report.

10. Actions to be taken after the Investigation

The Public Defender on receipt of the completed report from the Designated Officer should at the earliest time convene a meeting of the Grievance and Disciplinary Panel to review the findings and recommendations of the investigation. The Grievance and Disciplinary Panel must agree on the course of action to be taken which may include:

- (1) Preventing the improper conduct from continuing or recurring in the future;
- (2) Bringing disciplinary proceedings against the person responsible for the improper conduct or referring the matter to the appropriate person/authority for further consideration; and
- (3) Reporting any action taken to the employee who made the disclosure and to the Designated Authority.

The Grievance and Disciplinary Panel in arriving at its determination should ensure that the rules of natural justice as indicated in Section 22(1)(a)(b)(c) and (d) of the Labour Relations Code are adhered to.

11. Preventing Detrimental Actions

The Office of the Public Defender is committed to the protection of the person who makes a protected disclosure from detrimental actions or reprisals for having made the disclosure. This agency believes that the best way to empower our employees who are considering or who have made disclosures is to endorse their rights that are guaranteed under the Protected Disclosure Act, 2011. Under the Act the employee has the following rights:

- (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; and
- (c) Where an employee suffers occupational detriment at or about the same time that he makes a protected disclosure, the occupational detriment shall be presumed to be a consequence of the protected disclosure, unless the employer shows that the act that constitutes the occupational detriment is otherwise justified.

12. Collating and Publishing Statistics

- 1) 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 digits for numerical count. For example, the first case for Office of the Public Defender in the year 2022 would be numbered as CA 1/2022 (K). The second case for the year 2022 would be CA 2/2022 (K) 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 Public Defender.
 - (f) The decision taken as a result of the recommendations made by the designated officer.

- 2) 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; and
- (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.

13. Confidentiality

The Office of the Public Defender will take all reasonable steps to protect the identity of an employee who has made a disclosure and to treat all such disclosures, statements given, information or thing provided to the Designated Officer as being secret and confidential. The entity recognizes that maintaining confidentiality is crucial in ensuring that reprisals are not made against the person(s) who have made disclosures under the Act.

Exceptions

A person may disclose any statement given or document or information or thing provided in the furtherance of an investigation or any legal or disciplinary proceedings. However, the identity of the person who made the disclosure may not be disclosed.

14. Criminal Offences

- 1) A person commits an offence if he:
 - (a) prevents, restrains or restricts any employee from making a protected disclosure;
 - (b) intimidates any employee who has made or intends to make a protected disclosure;
 - (c) induces any person by threats, promises or otherwise to contravene the Act; or
 - (d) being an employer-
 - i. subjects an employee or former employee of that person to occupational detriment as a consequence of the employee or former employee making a protected disclosure;
 - ii. refuses, in bad faith, to receive a disclosure or carry out an investigation in relation to a disclosure;
 - (e) being an employee, purports to make a disclosure under the Act knowing that it contains a statement that is false or misleading, or reckless as to whether the statement is false or misleading; and
 - (f) aids, abets, procures or conspires with any other person to contravene the Act.

Persons who commit the above offences shall be liable upon:

- (a) summary conviction 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 years or to both such fine and imprisonment; or
 - (b) conviction on indictment in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.
- 2) A person who, without reasonable excuse, fails to comply with a requirement imposed by the Designated Authority in the lawful exercise of the functions of the Authority under this Act, commits an offence and is liable 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 months.
 - 3) Every person receiving, investigating or otherwise dealing with a disclosure under the Act shall regard and deal with as secret and confidential:
 - (a) the identity of the employee making the disclosure and any disclosure made; and
 - (b) any statement given, or document, information or thing provided, to the person in the carrying out of an investigation, except that any statement given, or document, information or thing provided, given in furtherance of an investigation or any legal or disciplinary proceedings shall not be regarded as being inconsistent with the obligation for secrecy and confidentiality.

A person who contravenes the confidentiality requirement as noted above commits an offence and is liable upon summary conviction 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 years or to both such fine and imprisonment.

15. Anonymous Disclosures

Nothing in these procedures prevents any person from making an anonymous disclosure of improper conduct. In the case of anonymous disclosures basic information such as the name of the person making the disclosure may not be known. This information would be necessary to guarantee that the person making the protected disclosure is protected by the Act. The subject matter of the disclosure should however be examined.

Anonymous disclosures are not covered under these procedures.

Appendices



PROTECTED DISCLOSURE FORM

PROTECTED DISCLOSURES ACT, 2011 - PROCEDURAL GUIDELINES

FORM - PDA1

First Name	Middle Name	Surname	Taxpayer Registration Number
Address			
Occupation			
Nature of Improper Conduct <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>			

Name of Alleged Party of Improper Conduct	
Time and Place of Improper Conduct	
Name of Witness Address of Witness Brief Description of Witness	Name of Witness Address of Witness Brief 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



PROTECTED DISCLOSURES LOG
 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

