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Author	Christopher McCann	Effective from	08 December 2022
Version number	5	Review date	Above + 2 years
Document location	P:\Agency Procedures\Governance Manual 2018\Protected Disclosures		



## **Digital Hub Development Agency**

### **PROTECTED DISCLOSURES (WHISTLE-BLOWING) POLICY**

#### **1. BACKGROUND**

- 1.1. The Digital Hub Development Agency (“DHDA”) acknowledges its duty to conduct its affairs in accordance with high standards of integrity, propriety, accountability and openness, taking full account of the Ethics in Public Office Acts, the Code of Practice for the Governance of State Bodies and good practice. The DHDA operates a zero-tolerance attitude to wrongdoing, illegal practices and unethical conduct.
- 1.2. Occasionally, wrongdoing may occur in the workplace and the purpose of this Protected Disclosures (Whistle-Blowing) Policy & Procedures is to assist and encourage individuals to report this wrongdoing to DHDA.

#### **2. AIMS OF THE POLICY**

- 2.1. The Digital Hub Development Agency’s Protected Disclosures (Whistleblowing) Policy & Procedures is intended to encourage and enable individuals to raise concerns to the DHDA rather than overlooking a problem or “blowing the whistle” externally. Under this policy an individual (as listed within section 7 of this policy) is entitled to raise concerns or disclose information without fear of penalisation or threat of less favourable treatment, discrimination or disadvantage.
  - 2.1.1. People who work in DHDA will often be the first to notice any signs of wrongdoing and they therefore play an essential role in its early detection.
- 2.2. This policy aims to give effect to the obligations and provisions of the Protected Disclosures Act 2014 as amended by the Protected Disclosures (Amendment) Act 2022, (“the Act”). The Act does not oblige a worker to make a protected disclosure and it also does not absolve any worker from pre-existing mandatory obligations to report contained in other legislation or indeed other policies or procedures.
- 2.3. This policy does not replace the organisation’s grievance procedures, in particular where the issue relates to an individual worker’s contract of employment this matter should be referred under the DHDA’s Grievance Procedure.

#### **3. OUR COMMITMENT**

- 3.1. The Board of the DHDA is committed to maintaining an open culture in DHDA with the highest standards of honesty and accountability where our workers can report concerns in confidence and without retribution.

#### **4. WHAT TYPES OF CONCERNS CAN BE RAISED UNDER THIS POLICY?**

- 4.1. This policy deals with disclosures that relate to ‘relevant wrongdoings’. These correspond to the relevant wrongdoings in the Protected Disclosures Act 2014 as amended (Section 5(3)):-
  - that an offence has been, is being or is likely to be committed,

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- that a person has failed, is failing or is likely to fail 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,
- that a miscarriage of justice has occurred, is occurring or is likely to occur,
- that the health or safety of any individual has been, is being or is likely to be endangered,
- that the environment has been, is being or is likely to be damaged,
- that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur,
- that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement, or
- that a breach has occurred, is occurring or is likely to occur, or
- that information tending to show any matter falling within any of the preceding points has been, is being or is likely to be concealed or destroyed or an attempt has been, is being or is likely to be made to conceal or destroy such information

It is immaterial whether a relevant wrongdoing occurred, occurs or would occur in the State or elsewhere and whether the law applying to it is that of the State or that of any other country or territory.

A matter is not a relevant wrongdoing if it is a matter which 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.

A disclosure of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is not a protected disclosure if it is made by a person to whom the information was disclosed in the course of obtaining legal advice.

The motivation for making a disclosure is irrelevant to whether or not it is a protected disclosure.

In proceedings involving an issue as to whether a disclosure is a protected disclosure it shall be presumed, until the contrary is proved, that it is.

## **5. WHAT TYPE OF CONCERNS SHOULD NOT BE RAISED UNDER THIS POLICY**

5.1. Personal grievances between a reporting person and their employer or a co-worker that solely affect the reporting person are not protected by the Act. Such matters may be protected under general employment law however.

## **6. REASONABLE BELIEF**

6.1. A worker must have a reasonable belief that the information disclosed shows, or tends to show, wrongdoing. The term “reasonable belief” does not mean that the belief has to be correct. Workers are entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds.

6.2. It may be quite reasonable for a worker to believe that a wrongdoing is occurring on the basis of what he or she observes. A worker may not know all the facts of the case and the worker is not required or entitled to investigate matters himself/herself to find proof of their suspicion and should not endeavour to do so. That means that in some cases the worker may have reasonable

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grounds for believing that some form of wrongdoing is occurring, but it may subsequently turn out that the worker was mistaken.

- 6.3. No worker will be penalized simply for getting it wrong, so long as the worker had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing.
- 6.4. However, a disclosure made in the absence of a reasonable belief (for example where false allegations are deliberately made or made without any reasonable belief in the truth of the allegations) will not attract the protection of the 2014 Act and, furthermore, may result in disciplinary action against the discloser

## 7. WHO IS COVERED BY THIS POLICY

7.1. The Act and this policy applies to persons in the public, private and not-for-profit sectors who report concerns about wrongdoing they have encountered in the course of their work and or engagement with the Agency

The protections of the Act apply to:

- Employees (both current and former)
- Agency workers
- Contractors
- Trainees
- Volunteers
- Board members
- Shareholders
- Job applicants

## 8. Procedure for making a protected disclosure

The procedure for making a protected disclosure is located in the following folder "P:\Agency Procedures\Governance Manual 2018\Protected disclosure

A Plain English Guide to Whistleblowing and Making a Protected Disclosure is also included within this folder.

## 9. Approval

Authority for the approval of this policy rests with the Board.

## 10. Version control

Version number	Summary of Revision	Date of approval
1		16 May 2018
2	Changes made to policy in December 2018:  (1) Removal of references to the requirement that the disclosure must be made in the public interest or in good faith from the title of the policy and the text of the policy	21 December 2018

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	<p>(the Act very deliberately does not require disclosures to be made in public interest/good faith)</p> <p>(2) Removal of the obligation to raise a protected disclosure internally first (the Act very deliberately does not require this)</p> <p>(3) Broadening the definition of worker in line with the Act</p> <p>(4) Clarifying as per the Act, the occasions in which the identity of the discloser can be revealed</p> <p>(5) Briefly referring to the Sections of the Act that provide for protections for the discloser</p> <p>(6) Broadening who the policy should apply to (i.e current and former) workers and trainees, independent contractors – as per the legislation</p> <p>(7) According to the legislation “The motivation for making a disclosure is irrelevant to whether or not it is a protected disclosure.” Therefore even if maliciously made, once there is a reasonable belief that it tends to show one of the wrongdoings it is still a protected disclosure so you cannot punish a person for their motivation. Therefore, references to punishing someone for making a malicious disclosure were removed.</p> <p>(8) Addition of paragraph regarding the new Trade Secrets amendment to the Act stating that: “The worker must be motivated by the public interest if the disclosure concerns unlawful acquisition, use or disclosure of a trade secret and if the discloser isn’t motivated by public interest here the DHDA may take disciplinary action.”</p>	
3	<p>This version incorporates the spirit of version 2 while giving the further detail advised by the DPER Guidance. It aims to give full detail while being user friendly (and fulfilling its purpose which is to encourage disclosures) through the structure of a short policy, with Appendices. While giving full detail it aims not to be too prescriptive to ensure that commitments aren’t given in the policy that cannot be met.</p> <p>Some key matters to note:-</p> <ul style="list-style-type: none"> <li>• The role of the ARC Chair as a disclosure recipient and as a reviewer (para. 9.8) has been removed.</li> <li>• There have been other changes to the review procedure now at para. 9.8. Previously you would approach Board Chair and Board Chair would nominate ARC member. Now you approach Board Chair or Board Sec and the person approached will nominate Board member...See other changes as outlined in para. 9.8. Idea is to give</li> </ul>	Unapproved

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	<p>alternative option if Board Chair was the initial reportee.</p> <ul style="list-style-type: none"> <li>• Respondent's rights are more broadly stated than before. Previous position was "The person or persons against whom an allegation is made will be told of it and of the evidence supporting it, and will be given full opportunity to offer refutation, explanation or mitigation before the investigation is concluded. They will however only be told of the identity of the discloser where this is necessary for their right to fair procedures and natural justice." Now their rights are more broadly stated.</li> <li>• The paragraph on investigations has been amended considerably.</li> <li>• The policy has been amended to enable reviewers take professional advice.</li> <li>• The policy has been amended to reference that the reportee might need to disclose to persons in the course of the performance of their duties...</li> <li>• The exception to protection of identity where it is necessary "to deal appropriately with the matter disclosed" has been edited to state "for the effective investigation of the matter disclosed". This is in line with the wording of the Act.</li> <li>• Para 11.2 changed from the equivalent paragraph in V2.</li> </ul> <p>The above is not a comprehensive account of all changes made and these can be identified through comparing the two documents.</p>	
4	<p>Updated to emphasise that findings of wrongdoing is expected to be occasional.</p> <p>Updated re email address of Chair.</p> <p>Removed the parts of the policy that required internal disclosures to the employer to be made only through the policy.</p> <p>Included detail of what the disclosure should contain ideally</p> <p>Separation of policy and procedure into separate documents</p> <p>Minor formatting and text amendments to accommodate above</p>	16 May 2019
4.1	<p>Minor update to include reference to location of procedure and Plain English Guide to Whistleblowing and Making a Protected Disclosure.</p>	10 October 2019
4.2	<p>Minor update made to procedure to direct staff members to latest list of 'prescribed persons' published by Department of Public Expenditure and Reform. In addition, updates required to policy by 17 December 2021 to align with EU</p>	15 October 2020

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	whistleblowing directive. Changes not made to align with directive at this time as primary legislation in Ireland will change to align with EU whistleblowing directive.	
5	Updates to give effect to the obligations and provisions of the Protected Disclosures Act 2014 as amended by the Protected Disclosures (Amendment) Act 2022	

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## **PROTECTED DISCLOSURES (WHISTLE-BLOWING) PROCEDURE**

### **1. HOW CAN YOU MAKE A DISCLOSURE?**

- 1.1. The 2014 (as amended) Act (as amended) provides for both internal disclosure by a worker (i.e. disclosure to the DHDA) and for external disclosure (disclosure outside the DHDA).
- 1.2. The simplest form of disclosure, and the form the DHDA encourages, is to internally disclose to the DHDA, where all that is required is a reasonable belief that the information disclosed shows or tends to show that the wrongdoing is occurring. This is a deliberately low threshold designed to ensure that most reports are made to the person best placed to correct the alleged wrongdoing – the employer. Workers may also choose to report to the Minister for Communications, Climate Action and Environment. The DHDA encourages workers to disclose internally, at least in the first instance, where internal disclosures will be taken seriously and the worker making the disclosure will receive appropriate protection.
- 1.3. More detail on the various external disclosure avenues are contained in Appendix 1. A list of prescribed persons as outlined in appendix 1 is maintained on the following website: [www.gov.ie/en/collection/41798-protected-disclosures-whistleblowing-list-of-prescribed-persons](http://www.gov.ie/en/collection/41798-protected-disclosures-whistleblowing-list-of-prescribed-persons)

### **2. INTERNAL DISCLOSURES – DISCLOSURES TO THE DHDA**

- 2.1. The individual making the disclosure should as soon as possible disclose in confidence the grounds for the belief of wrongdoing in the workplace through the internal reporting channel outlined in paragraph 2.3 below. Any disclosure under this procedure shall, whenever possible, be in writing and at a minimum should:-

- State that the disclosure is being made under the Protected Disclosure procedures;
- Provide the discloser’s name, position in the organisation, place of work and confidential contact details;
- the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
- Whether or not the wrongdoing is still ongoing;
- Indicate whether the wrongdoing has already been disclosed and if so to whom, when and what action was taken; and
- Provide relevant information in respect of the relevant wrongdoing.

All protected disclosures will be acknowledged within 7 days and followed up upon in a diligent manner.

All endeavours will be made to provide feedback to the reporting person within 3 months or at three month intervals on request.

- 2.2. Persons making a protected disclosure are encouraged to frame it in terms of information that has come to their attention rather than seeking to draw conclusions about particular individuals or specific offences. The default position is that; a worker making a protected disclosure should highlight a wrongdoing rather make an accusation against a person and that as a starting point the processing of personal data is therefore avoided. The worker making a protected disclosure should

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only reference a specific person when it is absolutely necessary to do that to make the protected disclosure (i.e. it would not otherwise be possible for the worker to make the protected disclosure).

- 2.3. Disclosures should be made to [protecteddisclosures@thedigitalhub.com](mailto:protecteddisclosures@thedigitalhub.com).

Disclosures made to [protecteddisclosures@thedigitalhub.com](mailto:protecteddisclosures@thedigitalhub.com) will be treated with the utmost confidence for both the discloser and any individuals party to their report. The list of individuals who will receive disclosures made through this internal reporting channels is the:

- Board Secretary and Chief Financial Officer
- Chief Executive Officer of the DHDA
- Chair of DHDA

The Board Secretary and Chief Financial Officer is the person responsible for the operation of the internal reporting channel who will maintain communication with discloser, follow up on the report and provide feedback to the reporting person.

A discloser if they consider it more appropriate, may directly report to one of the positions outlined above. Disclosures made directly will be treated with the utmost confidence for both the discloser and any individuals party to their report. In the case of a direct report, the person receiving the direct report will offer to maintain communication with discloser, follow up on the report and provide feedback to the reporting person in lieu of the Board Secretary and Chief Financial Officer.

A reportee may decline to become involved on reasonable grounds. Such grounds might include previous involvement or interest in the matter concerned, incapacity or unavailability or that the reportee is satisfied that a different reportee would be more appropriate to consider the matter in accordance with this procedure. In addition, the reportee is authorised to appoint a third party to act on their behalf. The Office of Government Procurement maintains a framework of third parties who provide services related to the Receipt and Investigation of Protected Disclosures.

- 2.4. On receipt of the disclosure, the reportee will offer to interview, in confidence, the individual making the disclosure. Such an interview will take place as soon as practicable after initial disclosure. The purpose of the interview will be for the reportee to obtain as much information as possible about the grounds for the belief of wrongdoing and the strength of the available evidence, and consult about further steps which could be taken. The individual making the disclosure may be accompanied by a local trade union representative or work colleague at the interview. The reportee may be accompanied by an administrative assistant to take notes. The notes will not identify the individual making the disclosure unless this is necessary.
- 2.5. The reportee may make such further preliminary enquiries as he/she deems reasonable and appropriate. The reportee may take professional advice at the expense of the DHDA if he/she deems this to be appropriate.
- 2.6. Where the reportee is satisfied that this whistleblowing procedure is appropriate and that there are sufficient grounds for proceeding further, she/he shall decide on the nature of the investigation of the allegations. This may be an internal investigation by Digital Hub Development Agency staff, or referral of the matter to the Garda Síochána or other appropriate public authority; or the commissioning of an independent enquiry, for example by the Digital Hub Development Agency's internal auditors.

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- 2.7. If the reportee decides that this whistle-blowing procedure is not appropriate in respect of the matter disclosed, he/she shall so inform the discloser, giving reasons in writing in so far as is appropriate. These could be on grounds that the matter should be, is already, or has already been the subject of appropriate proceedings under one of the Digital Hub Development Agency's other procedures relating to staff; or that it is already the subject of legal proceedings, or has already been referred to the Garda Siochana or other public authority; or that there does not appear to be sufficient evidence, or the reasonable prospect of sufficient evidence being found, to substantiate the allegations(s) of wrongdoing; or of reasonable doubt as to the discloser's reasonable belief about wrongdoing.
- 2.8. If the discloser is not satisfied with the reportee's decision, he/she may ask the Chair of the DHDA or the Board Secretary/CFO to nominate a Board member to review the reportee's decision ("the reviewer)". The reviewer will review the matter of the disclosure, the information and evidence presented, the process followed by the reportee and the grounds for the reportee's decision. If the reviewer concludes that the decision of the reportee was correct, no further action will be taken. If the reviewer concludes that the matter should be investigated under the whistle-blowing procedure, they may direct that the matter be investigated in accordance with the procedures outlined at para. 9.6 above or if they consider that no further action should be taken, at their absolute discretion, they may direct that no further action be taken. The reviewer may take professional advice at the expense of the DHDA if he/she deems this to be appropriate.

### **3. PROTECTION FOR THE DISCLOSER**

- 3.1. The Digital Hub Development Agency wishes to offer support to workers who may be considering whether or not to make a disclosure but have reservations about raising concerns at a high level, or other difficulties which might affect their ability to initiate action under this procedure. This could include issues relating to ethnicity, culture or disability. The Digital Hub Development Agency strongly encourages such potential disclosers to seek support or advice from the Board Secretary.
- 3.2. An individual may seek a confidential meeting with the Digital Hub Development Agency's Board Secretary to discuss whether it would be appropriate to make a formal disclosure under this procedure. An individual seeking or taking part in such a meeting is guaranteed the same protection against personal detriment as is given under the procedure to someone making a formal disclosure, whether or not a formal disclosure follows.
- 3.3. Subject to paragraph 3.4 below, the Digital Hub Development Agency will not (and it will use all reasonable endeavours to ensure that its employees do not) subject the discloser to any detriment on the grounds of the disclosure of information under this procedure. The person making the disclosure should report any complaints of such treatment to the reportee. If the discloser wishes the reportee to take action in relation to such complaints, the discloser may be asked to consent in writing to the reportee revealing the discloser's identity for the purpose of any such action. While protecting the discloser's identity is paramount in some limited situations the identity of the discloser may need to be revealed as set out in Section 16 of the Act (e.g. where it is necessary for the effective investigation of the matter or in the public interest – see Section 16 for full details).
- 3.4. For further detail on the statutory protections for the discloser who makes a "protected disclosure" please see Appendix 4.

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- 3.5. No disciplinary action will be taken against anyone for making a disclosure in accordance with this procedure. This will not prevent the Digital Hub Development Agency from bringing disciplinary action in cases where there are grounds to believe that a disclosure is made without any reasonable belief that it tends to show one of the relevant public interest type wrongdoings or where an external disclosure is made in breach of the mechanisms and requirements surrounding external disclosure as set out in Sections 6 – 10 of the Protected Disclosures Act. An individual who persists in making allegations which have been found after due process to be unsubstantiated may face disciplinary action for pursuing malicious or vexatious allegations.
- 3.6. The worker must be motivated by the public interest if the disclosure concerns unlawful acquisition, use or disclosure of a trade secret and if the discloser isn't motivated by public interest here the DHDA may take disciplinary action.

#### **4. INVESTIGATION AND OUTCOME**

- 4.1. The reportee will ensure that the investigation is not carried out by any person with an involvement in the matter disclosed.
- 4.2. Where the discloser participates in an investigation (and sometimes, depending on the nature of the information disclosed and the nature of the investigation they may be required to participate), that participation will usually be required to be on an open rather than a confidential basis.
- 4.3. Where an allegation is made against an individual (the Respondent), it is important to ensure that the Respondent is afforded appropriate protection, this means that the principles of fair procedures and natural justice apply.
- 4.4. In many cases, the Respondent's right to fair procedures may include a right to challenge the evidence against him / her. This right will need to be balanced against rights contained in the 2014 (as amended) Act (as amended), such as the discloser's right to have his / her identity protected (which is, nevertheless, not absolute and may not be applied, for example, in cases where the disclosure recipient reasonably believes that this is necessary for the effective investigation of the wrongdoing concerned).
- 4.5. The procedures that will apply in the approach to protected disclosures investigations will be informed by the procedures that normally apply in DHDA when other allegations are investigated.
- 4.6. The DHDA will provide whatever support is appropriate in the circumstances to an individual against whom an allegation is made.
- 4.7. The reportee will receive from the investigators a written report setting out their conclusions and recommendations for further action. The reportee will liaise with appropriate members of the Digital Hub Development Agency's Executive as to the implementation of any recommendations. The reportee will also inform the discloser of the recommendations in so far as this is appropriate. The overriding requirement when providing feedback is that no information is communicated that could prejudice the outcome of the investigation or any action that ensues. Where allegations of malpractice on the part of a named individual are substantiated, the reportee will consider whether or not the matters should be referred for action under staff disciplinary procedures.
- 4.8. A formal account of the investigation and outcomes shall be made to the Audit & Risk Committee.

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4.9. If the discloser is unhappy with the outcome of the decision on the investigation, they may ask for a review. Although, in some cases (for example, where the matter has been reviewed externally such as by the Gardai) it will not be appropriate and/or necessary to review the investigation. In any event, whether or not a review will be granted will be at the absolute discretion of the Board of DHDA.

## 5. SAFEGUARDS

5.1. The reportee, reviewer and any person to whom the protected disclosure is referred in the performance of the duties of the reportee/reviewer (such as legal advisors or external persons charged with carrying out the investigation or giving advice in relation to any stage of the process) will not reveal the identity of the discloser or reveal any information that might identify them, either in the course of their duties, their investigation or in any report or recommendations that follow unless:-

- the discloser consents; or
- there is a legal obligation to do so or the public interest requires it; or
- it is necessary to prevent a crime or for the prosecution of a criminal offence or prevent serious risk to State security, public health, public safety or the environment; or
- the information about the identity of the discloser is already in the public domain; or
- it is essential to do so in order for the effective investigation of the matter disclosed (For example, if the anonymity of the discloser is incompatible with a fair investigation of allegations against a named individual)

5.2. Where it is decided that it is necessary to disclose information that may or will disclose the identity of the discloser, the discloser will be informed of this decision in advance of the disclosure, except in exceptional cases and if possible the discloser's consent will be obtained prior to any action being taken that could identify them. Except in exceptional cases, a discloser may appeal a decision to disclose his or her identity and the discloser will be informed of this review process. Further detail on the protections available to the discloser, including the protection of their identity is contained in Appendix 4.

## 6. OTHER REPORTING CHANNELS

6.1. The purpose of this policy is to give effect to the obligations and provisions of the Protected Disclosures Act 2014 (as amended).

6.2. Disclosures may also be made by workers of wrongdoing in respect of other relevant employment-specific or profession-specific obligations, which may not be covered by the definition of wrongdoing in section 5 of the 2014 (as amended) Act and may be covered by other statutory protection for disclosures and may require mandatory reporting (depending on the terms of the legislation).

6.3. Indeed, workers may also be required to disclose wrongdoing further to other policies or requirements of DHDA, which wrongdoing is not covered by the definition of wrongdoing in section 5 of the 2014 (as amended) Act and this policy doesn't remove the operation of those other obligations or policies.

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6.4. Furthermore, this Policy does not replace any legal reporting or disclosure requirements arising under other legislation and where statutory reporting requirements or procedures exist, including where under other laws there is a mandatory reporting requirement these must be fully complied with.

6.5. Examples of other legislation which contain reporting provisions include:-

- Ethics in Public Office Acts 1995;
- Standards in Public Office Act 2001;
- Protections for Persons Reporting Child Abuse Act 1998;
- Competition Act 2002;
- Garda Síochána Act 2005;
- Safety Health and Welfare at Work Act 2005;
- Employment Permits Act 2006;
- Consumer Protection Act 2007;
- Communications Regulation Act 2002;
- Charities Act 2009;
- Criminal Justice (Corruption Offences) Act 2018

## 7. MONITORING THE OPERATION OF THESE PROCEDURES

7.1. The control functions of the public body (such as Internal Audit or Compliance) should monitor the operation of the Procedures on an ongoing basis and report to the Audit Committee on their findings. Such monitoring should not be conducted by the same person / area that has responsibility for the operation of the Procedures.

7.2. Furthermore, a formal account of the investigation and outcomes under this policy shall be made to the Audit & Risk Committee.

## 8. POLICY REVIEW

8.1. This procedure will be reviewed every two years (or more often as required) to ensure that it remains relevant and appropriate to the needs of the Digital Hub Development Agency.

## 9. CONTACT DETAILS

Contact details for the reportees and other relevant contacts are as follows:

Title	Name	Phone	Email
Board Secretary and CFO	Róisín Henehan	ext. 229	rhenahan@thedigitalhub.com
Chief Executive	Fiach Mac Conghail	ext. 201	fmacconghail@thedigitalhub.com
Chair of the DHDA	Paul Holden	Via Board Secretary	pholden@thedigitalhub.com

## 10. APPROVAL

Authority for the approval of this procedure rests with the Board.

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1		16 May 2018
2	<p>Changes made to policy in December 2018:</p> <p>(1) Removal of references to the requirement that the disclosure must be made in the public interest or in good faith from the title of the policy and the text of the policy (the Act very deliberately does not require disclosures to be made in public interest/good faith)</p> <p>(2) Removal of the obligation to raise a protected disclosure internally first (the Act very deliberately does not require this)</p> <p>(3) Broadening the definition of worker in line with the Act</p> <p>(4) Clarifying as per the Act, the occasions in which the identity of the discloser can be revealed</p> <p>(5) Briefly referring to the Sections of the Act that provide for protections for the discloser</p> <p>(6) Broadening who the policy should apply to (i.e current and former) workers and trainees, independent contractors – as per the legislation</p> <p>(7) According to the legislation “The motivation for making a disclosure is irrelevant to whether or not it is a protected disclosure.” Therefore even if maliciously made, once there is a reasonable belief that it tends to show one of the wrongdoings it is still a protected disclosure so you cannot punish a person for their motivation. Therefore, references to punishing someone for making a malicious disclosure were removed.</p> <p>(8) Addition of paragraph regarding the new Trade Secrets amendment to the Act stating that: “The worker must be motivated by the public interest if the disclosure concerns unlawful acquisition, use or disclosure of a trade secret and if the discloser isn’t motivated by public interest here the DHDA may take disciplinary action.”</p>	21 December 2018

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3	<p>This version incorporates the spirit of version 2 while giving the further detail advised by the DPER Guidance. It aims to give full detail while being user friendly (and fulfilling its purpose which is to encourage disclosures) through the structure of a short policy, with Appendices. While giving full detail it aims not to be too prescriptive to ensure that commitments aren't given in the policy that cannot be met.</p> <p>Some key matters to note:-</p> <ul style="list-style-type: none"> <li>• The role of the ARC Chair as a disclosure recipient and as a reviewer (para. 9.8) has been removed.</li> <li>• There have been other changes to the review procedure now at para. 9.8. Previously you would approach Board Chair and Board Chair would nominate ARC member. Now you approach Board Chair or Board Sec and the person approached will nominate Board member...See other changes as outlined in para. 9.8. Idea is to give alternative option if Board Chair was the initial reportee.</li> <li>• Respondent's rights are more broadly stated than before. Previous position was "The person or persons against whom an allegation is made will be told of it and of the evidence supporting it, and will be given full opportunity to offer refutation, explanation or mitigation before the investigation is concluded. They will however only be told of the identity of the discloser where this is necessary for their right to fair procedures and natural justice." Now their rights are more broadly stated.</li> <li>• The paragraph on investigations has been amended considerably.</li> <li>• The policy has been amended to enable reviewers take professional advice.</li> <li>• The policy has been amended to reference that the reportee might need to disclose to persons in the course of the performance of their duties...</li> <li>• The exception to protection of identity where it is necessary "to deal appropriately with the matter disclosed" has been edited to state "for the effective investigation of the matter disclosed". This is in line with the wording of the Act.</li> <li>• Para 11.2 changed from the equivalent paragraph in V2.</li> </ul> <p>The above is not a comprehensive account of all changes made and these can be identified through comparing the two documents.</p>	Unapproved
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4	<p>Updated to emphasise that findings of wrongdoing is expected to be occasional.</p> <p>Updated re email address of Chair.</p> <p>Removed the parts of the policy that required internal disclosures to the employer to be made only through the policy.</p> <p>Included detail of what the disclosure should contain ideally</p> <p>Separation of policy and procedure into separate documents</p> <p>Minor formatting and text amendments to accommodate above</p>	16 May 2019
4.1	<p>Minor update made to procedure to direct staff members to latest list of 'prescribed persons' published by Department of Public Expenditure and Reform.</p> <p>In addition, updates required to procedure by 17 December 2021 to align with EU whistleblowing directive. Changes not made to align with directive at this time as primary legislation in Ireland will change to align with EU whistleblowing directive.</p>	
5	<p>Updates to give effect to the obligations and provisions of the Protected Disclosures Act 2014 as amended by the Protected Disclosures (Amendment) Act 2022</p>	

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## APPENDIX 1 – EXTERNAL DISCLOSURE

- Workers must make a disclosure in the manner set out in the Act to gain the protections of the Act.
- It should be possible in most, if not all cases, for workers to make protected disclosures internally to their employer and the Digital Hub Development Agency very much encourages workers to disclose internally to the DHDA, at least in the first instance, where your disclosure will be taken seriously and you will be protected. There are external options for disclosure permitted under the Act and in general, higher standards apply when the protected disclosure is being made externally. The external disclosure options are summarised below and for further detail on external disclosures please see Sections 6-10 of the Protected Disclosures Act.
- The Act identifies the following avenues for making a protected disclosure outside the employer (in this case, the DHDA):-

*(a) Other responsible person*

Where the worker reasonably believes that the wrongdoing relates to the conduct of a person other than the worker's employer, or to something for which that other person has legal responsibility, then the worker can disclose to that other person.

*(b) A prescribed person*

Certain persons are prescribed by Statutory Instrument 339/2014 (as amended) (as amended by SI 448/2015 and 490/2016) to receive protected disclosures ("prescribed persons"). This includes the heads or senior officials of a range of statutory bodies. Examples of prescribed persons include; the Comptroller and Auditor General, the Data Protection Commissioner, the Chief Executive of the Health and Safety Authority, Director of Commission for Public Service Appointments etc.

A worker may make a protected 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. However, the 2014 (as amended) 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.

*(c) A Minister of the Government*

A worker in the DHDA can make a protected disclosure to the Minister for the Environment, Climate and Communications

*(d) A legal adviser*

The 2014 (as amended) Act allows a protected 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).

*(e) Alternative external disclosures (in very limited circumstances) (section 10)*

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In very limited circumstances a worker can disclose in accordance with section 10. It should be noted that there are stringent requirements for alternative external disclosures (for example seeking to disclose directly to the media) to qualify as protected disclosures under Section 10 of the Act.

*(f) Certain Special Cases - Defined Categories of information*

In order to take account of certain special cases, the Protected Disclosures Act provides, under Section 17, for disclosure of information that might reasonably be expected to facilitate the commission of an offence or to prejudice or impair (a) the prevention, detection or investigation of offences, the apprehension or prosecution of offenders or the effectiveness of lawful methods, systems, plans or procedures employed for any of those matters, (b) the enforcement or administration of, or compliance with, any law, (c) lawful methods, systems, plans or procedures employed for ensuring the safety of the public or the safety or security of persons or property, (d) the fairness of proceedings before a court or tribunal, (e) the security of a relevant institution, or (f) the security of any system of communications of the Garda Síochána, the Defence Forces or a relevant institution. Section 17 should be consulted further when a disclosure of such information is contemplated.

The Act also provides, under Section 18, for disclosure of information that might reasonably be expected (a) to affect adversely—(i) the security of the State (ii) the defence of the State or (iii) the international relations of the State, or (b) to reveal, or lead to the revelation of, the identity of a person who has given information in confidence to a public body in relation to the enforcement or administration of the law or any other source of such information given in confidence. In such case, the Act provides for disclosure to be made to the Disclosures Recipient appointed by the Taoiseach for this purpose in accordance with Schedule 3 of the Act.

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### APPENDIX 3 – FAQs

Question	Answer
I have a personal complaint, is this a protected disclosure?	Personal complaints are not relevant wrongdoings and therefore cannot be a protected disclosure covered by this policy. The Digital Hub Development Agency has in place policies and procedures relating to staff, including discipline and grievance procedures and a bullying and harassment policy. Allegations of injustice, discrimination or other misconduct made against employees should normally be raised under these established procedures.
I am worried that if I disclose about a relevant wrongdoing that my motivation will be questioned.	All protected disclosures will be dealt with regardless of the worker's motivation for making the disclosure, and the worker will be protected 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 (for example where false allegations are deliberately made or made without any reasonable belief in the truth of the allegations) will not attract the protection of the 2014 (as amended) Act and, may result in disciplinary action against the discloser. This policy places responsibilities on the person making a disclosure. It must be done from a reasonable (even if mistaken) belief. A person who makes a protected disclosure and has a reasonable belief of wrongdoing will not be penalised by the Digital Hub Development Agency even if the concerns or disclosure turn out to be unfounded.
I'm not sure whether it is appropriate to raise my issue under this policy, what can I do?	An individual may seek a confidential meeting with the Digital Hub Development Agency's Board Secretary to discuss whether it would be appropriate to make a formal disclosure under this procedure. An individual seeking or taking part in such a meeting is guaranteed the same protection against personal detriment as is given under the procedure to someone making a formal disclosure, whether or not a formal disclosure follows.
What happens if I need some support throughout the process?	When you are being interviewed by the reportee you can be accompanied by a local trade union representative or work colleague.  And, where you do this, you will be under an obligation to use all reasonable endeavours to ensure that the representative or colleague keeps the matter strictly confidential save, as permitted under this procedure, as required by law or until such time as it comes into the public domain.  Outside of that, you must only disclose the information through the appropriate channels. You are not permitted to tell colleagues. This is because you may be mistaken about the wrongdoing or have misunderstood something.

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What is the difference between an anonymous disclosure and a confidential disclosure?	An anonymous disclosure is where a discloser withholds their identity, and a confidential disclosure is where identity is protected by the recipient.
Can I make a disclosure anonymously?	<p>Anonymous disclosures made by workers are not excluded from the protection of the 2014 (as amended) Act. Anonymous disclosures will be acted upon to the extent that this is possible, although the ability to investigate may be constrained in the absence of the knowledge of the identity of the discloser.</p> <p>It should be noted that keeping the discloser informed and protecting a discloser from penalisation may be difficult or impossible to apply unless the worker's anonymity lifts. Furthermore, a worker cannot obtain redress under the 2014 (as amended) Act without identifying themselves.</p>
If I disclose about a wrongdoing that I was involved in does that give me immunity in relation to that wrongdoing?	Disclosure of a wrongdoing does not necessarily confer any protection or immunity on a worker in relation to any involvement they may have had in that wrongdoing.
What does it mean that the information has to be in "connection with employment"?	The information must come to the attention of the worker in connection with his / her employment, but a disclosure of any wrongdoing which is the worker's, or the worker's employer's, function to detect, investigate or prosecute does not come within the terms, or attract the protections and redress, of the 2014 (as amended) Act unless it involves an act or omission on the part of the employer.
The 2014 (as amended) Act says a protected disclosure is a disclosure of "information", what does that reference to "information" mean?	The ordinary meaning of disclosing "information" is conveying facts, such as stating that particular events have occurred. This is different to simply making an allegation on the basis of a suspicion that is not founded on anything tangible.

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<p>What happens if someone makes a protected disclosure in relation to something they say I have done? What are my rights?</p>	<p>Where an allegation is made against an individual (the Respondent), it is important to ensure that the Respondent is afforded appropriate protection, this means that the principles of fair procedures and natural justice apply.</p> <p>In many cases, the Respondent’s right to fair procedures may include a right to challenge the evidence against him / her. This right will need to be balanced against rights contained in the 2014 (as amended) Act, such as the discloser’s right to have his / her identity protected (which is, nevertheless, not absolute and may not be applied, for example, in cases where the disclosure recipient reasonably believes that this is necessary for the effective investigation of the wrongdoing concerned).</p> <p>Further, the Procedures that will apply will be informed by the procedures that normally apply in DHDA when other allegations are investigated.</p>
<p>What happens if a disclosure is made in the course of an investigation, disciplinary or other process?</p>	<p>Generally, in assessing the Protected Disclosure, DHDA will focus on the disclosure made (the message), as opposed to any disciplinary (or other) issues related to the person making the disclosure (the messenger).</p> <p>In general where a protected disclosure is made during an investigation, disciplinary or other process, this should not affect those distinct processes, except where the investigation, disciplinary or other action represents, in essence, a form of penalisation for making a protected disclosure.</p>
<p>If I make a protected disclosure do I get feedback on the matter?</p>	<p>DHDA will endeavour to provide disclosers with periodic feedback in relation to the matters disclosed and when consideration of the disclosure is complete, except in exceptional cases.</p> <p>However, the overriding requirement when providing feedback is that no information is communicated that could prejudice the outcome of the investigation or any action that ensues.</p>

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## APPENDIX 4– PROTECTIONS

1. The 2014 (as amended) Act provides specific remedies for workers who because of making a protected disclosure are penalised, suffer detriment or suffer an unjustified loss of the protection of their identity as set out in Sections 11-16 of the Protected Disclosures Act 2014 (as amended).
2. Penalisation of workers who make a disclosure will not be tolerated and workers who feel that they are being subjected to adverse treatment should report the matter immediately to management who will assess and/or investigate such notifications and take appropriate action (which may include disciplinary action against supervisors and co-workers) where necessary. If a complaint is made of penalisation contrary to the 2014 (as amended) Act, then that complaint will be dealt with, having regard to the continued obligation to protect the identity of the discloser under the Act.
3. Penalisation of a person who makes a protected disclosure will not be tolerated by the DHDA. The definition of penalisation includes:
  - Suspension or dismissal;
  - Demotion or loss of opportunity for promotion;
  - Transfer of duties, changes of location of place of work, reduction in wages or change in working hours (jurisprudence, subsequent to the enactment of the legislation, clarifies that transfer of duties in the Civil Service context does not necessarily amount to penalisation under the Act);
  - The imposition or administering of any discipline, reprimand or other penalty (including a financial penalty);
  - Unfair treatment;
  - Coercion, intimidation or harassment;
  - Discrimination, disadvantage or unfair treatment;
  - Injury, damage or loss; and
  - Threat of reprisal.
4. Employees, as defined in the Protected Disclosures Act, are protected from dismissal and penalisation as a result of having made a protected disclosure as per Sections 11 and 12 of the Act and have access to the State's dispute resolution machinery in this regard.
5. All workers (including employees) in making a protected disclosure have civil and criminal immunity (on terms as provided for in Sections 14 and 15 of the Act), and are entitled to take an action in tort for suffering detriment (as provided for in Section 13), or suffering loss arising out of a breach of their identity (as provided for in Section 16).

### ***Protecting the identity of the maker of a protected disclosure***

6. The reportee, reviewer and any person to whom the protected disclosure is referred in the performance of the duties of the reportee/reviewer (such as legal advisors or external persons charged with carrying out the investigation or giving advice in relation to any stage of the process) will not reveal the identity of the discloser or reveal any information that might identify them, either in the course of their duties, their investigation or in any report or recommendations that follow unless:-
  - the discloser consents; or
  - there is a legal obligation to do so or the public interest requires it; or

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- it is necessary to prevent a crime or for the prosecution of a criminal offence or prevent serious risk to State security, public health, public safety or the environment; or
  - the information about the identity of the discloser is already in the public domain; or
  - it is essential to do so in order for the effective investigation of the matter disclosed (For example, if the anonymity of the discloser is incompatible with a fair investigation of allegations against a named individual)
7. Where it is decided that it is necessary to disclose information that may or will disclose the identity of the discloser, the discloser will be informed of this decision in advance of the disclosure, except in exceptional cases and if possible the discloser's consent will be obtained prior to any action being taken that could identify them. Except in exceptional cases, a discloser may appeal a decision to disclose his or her identity and the discloser will be informed of this review process.
  8. Those involved in the processing of a protected disclosure must take care that in relation to document security and filing (whether digital or manual) the discloser's identity is protected.
  9. As there is a legal obligation on the Recipient of a disclosure to keep the discloser's identity confidential, a discloser whose identity has been compromised (outside of the occasions provided for in Section 16) can take an action if the discloser suffers any loss by reason of such a compromised identity contrary to Section 16 of the Act.
  10. Workers who are concerned that their identity is not being protected should notify DHDA who will assess / investigate such notifications and commit to take appropriate action where necessary.

If a complaint is made of penalisation contrary to the 2014 (as amended) Act, then that complaint will be dealt with, having regard to the continued obligation to protect the identity of the discloser under the Act. The discloser should also be informed of the applicable review process, which may be invoked by the discloser in respect of the outcome of any assessment / investigation in respect of any complaint of penalisation.