




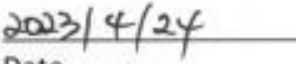
**Office of Utilities Regulation
Protected Disclosures Policy**

**Version 3
Released: 2023-05-30**



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Protected Disclosures Policy

DOCUMENT TITLE AND APPROVAL PAGE
1. DOCUMENT NUMBER: HRM/POL/001
2. DOCUMENT TITLE: Protected Disclosures Policy
3. PURPOSE OF DOCUMENT This document sets out the protected disclosure policy of the Office of Utilities and Regulation (OUR)
4. AUTHOR: Director, Human Resource and Administration
5. APPROVAL This document is approved by the Chairman and becomes effective on the date of approval. On behalf of the Office:  Alvin G. Wint  Date

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Approved by:	
Endorsed by:	
Effective Date:	2023/04/30



TABLE OF REVISIONS/CHANGES

OUR's Protected Disclosures Policy	Original Date of Creation: 2020 April 23
Revision Number 1	Date of Last Revision: 2021 May 19
Revision Number 2	Date of Last Revision: 2023 April 19

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Aspects of the content of this document were adapted from the Protected Disclosures Act, 2011 and Jamaica Producers Group, Jamaica Stock Exchange and Jamaica Mortgage Bank Whistle Blower Policies.

The contents of this documents are to be read alongside the related procedures. These policies supersede any other that were approved.

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Protected Disclosures Policy

1 Statement of Support to Persons Making Protected Disclosures

The Office of Utilities Regulation (OUR) is committed to the highest possible standards of openness, probity, accountability and the provision of an environment that promotes honesty, integrity, professionalism, accountability and ethical conduct. In line with that commitment Team Members are encouraged to disclose, in good faith, any improper conduct which they know or believe has occurred or is likely to occur. To advance this commitment the OUR will ensure that it operates within the context of The Protected Disclosures Act, 2011 (the Act).

The Directors and Management of the Office of Utilities Regulation are committed to the provisions of the Protected Disclosures Act, 2011 and have endorsed this policy and the 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.



Chairman

2023/4/24

Dated



Director-General

2023/04/24

Dated

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2 Objects of the Act

The objects of the Protected Disclosures Act, 2011 (the Act) are to:

- (a) facilitate and encourage the making by employees of specified disclosures of improper conduct in the public interest;
- (b) regulate the receiving, investigating or otherwise dealing with disclosures of improper conduct;
- (c) protect employees who make specified disclosures from being subject to occupational detriment;
- (d) protect the confidentiality of the employee making the disclosure and any statement given, or document, information or thing provided; and
- (e) grant immunity from civil or criminal proceedings or any disciplinary proceeding to a person who makes a protected disclosure, or receives, investigates or otherwise deals with a protected disclosure.

3. Definitions

In accordance with the Act the definitions below shall apply:

Designated Authority	Means the individual or entity so designated to monitor compliance with the Protect Disclosures Act, 2011 and established procedural guidelines under it. As stated in the Jamaica Gazette dated November 15, 2021, the Integrity Commission is the designated authority under the Act
Designated Officer	Means the person or persons designated by the OUR under this policy and pursuant to Section 13(3) of the Act, as the person or persons to whom disclosures may be made. In the context of this Policy, the Designated Officer shall be the Chair of the Audit and Conduct Committee or a co-opted Member of that

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	Committee. The name and contact details of the Designated Officer are provided in the OUR's Protected Disclosures Procedures document.
Disciplinary Committee/Panel	Means a committee/panel as constituted in accordance with Section 10 of the OUR's Disciplinary Policy. The committee is empowered to review the findings of the Designated Officer and recommend appropriate disciplinary action arising from a protected disclosure.
Discloser	Means a person, who discloses information, which relates to improper conduct in the workplace. The disclosure must be made in good faith and in accordance with the OUR's established procedures and the Protected Disclosures Act, 2011.
Disclosure	Means disclosure of information made by an employee, regarding any conduct of an employer of that employee or another employee of the employer, where the disclosing employee has a reasonable belief that the information disclosed shows or tends to show that improper conduct has occurred, is occurring or is likely to occur, and "disclose" shall be construed similarly.
Employee	Means- (a) any person who (i) works or has worked for the OUR; and (ii) receives, 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 the OUR, 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 the OUR .

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Employer	<p>Means any person who-</p> <p>(a) employs or has employed another person to carry out work or provide services and who remunerates, or expressly or tacitly undertakes to remunerate, that other person for the work carried out or services provided; or</p> <p>(b) permits or has permitted another person to assist in any manner in the carrying on or conduct of the business of that person, without any obligation to provide remuneration or reward to that other person.</p> <p>In the context of this policy, the OUR shall be the employer.</p>
Ex-employee	An employee, who was previously employed to the OUR.
Good Faith	A state of mind consisting of honesty in belief and purpose. Good faith is evident when the report is made without malice or consideration of personal benefit and the discloser has a reasonable basis for believing that the report is true. Provided however, that a report does not have to be proven to be true to be made in good faith. There is an absence of good faith when the disclosure is known to be malicious or false.
Improper Conduct	<p>means any</p> <p>(a) criminal offence;</p> <p>(b) failure to carry out a legal obligation;</p> <p>(c) conduct that is likely to result in a miscarriage of justice;</p> <p>(d) conduct that is likely to threaten the health or safety of a person;</p> <p>(e) conduct that is likely to threaten or damage the environment;</p> <p>(f) conduct that shows gross mismanagement, impropriety or misconduct in the carrying out of any activity that involves the use of public funds;</p> <p>(g) act of reprisal against or victimization of an employee;</p>

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	<p>(h) conduct that tends to show unfair discrimination on the basis of gender, race, place of origin, social class, colour, religion or political opinion;</p> <p>(o) wilful concealment of any act described in paragraphs (a) to (h) or any other act deemed improper conduct by law or other established standards.</p>
Investigation	Means the carrying out of an enquiry under this policy and in accordance with the Act in respect of a disclosure.
Occupational Detriment	<p>Means any act or omission that results in an employee in relation to his employment, being-</p> <p>(a) subject to disciplinary action;</p> <p>(b) dismissed, suspended, or demoted;</p> <p>(c) harassed, intimidated or victimized;</p> <p>(d) transferred against his will;</p> <p>(e) refused transfer or promotion;</p> <p>(f) subject to a term or condition of employment or retirement from employment, that is altered to his disadvantage;</p> <p>(g) provided with an adverse reference;</p> <p>(h) denied appointment to any employment, profession or office;</p> <p>(i) threatened with any of the actions specified in paragraphs (a) to (h); or</p> <p>j) otherwise adversely affected in respect of his employment, profession or office, including employment opportunities and job security.</p>
Prescribed Persons	<p>Means the entities listed in the First Schedule of the Act:</p> <ol style="list-style-type: none"> 1. Auditor-General 2. Bank of Jamaica 3. Bureau of Standards 4. Children’s Advocate 5. Commissioner of Police

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	<ol style="list-style-type: none"> 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
Protected Disclosure	Means information given by an employee to the employer, designated officer or the designated authority, regarding any conduct of an employer of that employee or another employee of the employer, where the disclosing employee has a reasonable belief that the information disclosed shows that improper conduct has occurred, is occurring or is likely to occur.

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Protected Disclosures Policy

4. Scope of Policy

This policy shall apply to the disclosure, in good faith, of acts that are considered to be improper conduct. The policy is confined to the treatment of disclosure by the OUR in its capacity as an employer and does not extend to its role as a prescribed person pursuant to Section 9 and the First Schedule of the Act. Where this policy is limited, the provisions of the Act shall apply.

5. Purpose of Policy

The purpose of this policy is to:

1. ensure that OUR team members are confident in disclosing any improper conduct, knowing that it will be taken seriously, investigated as appropriate, and treated confidentially;
2. provide the OUR team with guidance as to how to make a disclosure, under this policy;
3. reassure OUR team members that they will not be subject to any occupational detriment having made a disclosure, irrespective of the outcome.

6. Who Does This Policy Apply to?

This policy applies to any person, who is an employee of the OUR.

7. Authority

This policy is guided by principles that are outlined in the Act.

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8. Safeguards

Protection - this policy is designed to offer protection to OUR Team Members, who disclose information concerning actual or perceived improper conduct, provided the disclosure is made:

- in good faith, without malice or other improper motive.
- in accordance with the procedures established, by the employer, for the making of the disclosure, where such procedures are in operation. These procedures shall at least be the minimum standards, as required by the Act.
- in the reasonable belief of the individual making the disclosure that the information discloses improper conduct and that it is substantially true.

Confidentiality - The OUR shall treat all disclosures in a confidential and sensitive manner, subject to any duty to disclose under applicable law, the identity of the individual making the allegation shall be kept confidential, so long as it does not hinder or frustrate any investigation. However, the investigation process may reveal the source of the information and the individual making the disclosure may need to provide a statement as part of the evidence required.

Anonymous Allegations - this policy encourages individuals to put their name to any disclosures they make. Concerns expressed anonymously are much less credible, but they may be considered at the discretion of the OUR. In exercising this discretion, the factors to be taken into account will include:

- The seriousness of the issues raised.
- The credibility of the concern
- The likelihood of confirming the allegation from reliable sources

Employees must be aware however, that anonymous disclosures are not protected under the Protected Disclosures Act, 2011.

Untrue Allegations - If an employee makes an allegation in good faith, which is not confirmed by subsequent investigation, no action will be taken against that individual. In making a disclosure the employee should exercise due care to ensure the accuracy of the

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information. If, however, an employee makes malicious or vexatious allegations, and particularly if he or she persists with making them, disciplinary action(s) may be taken against that employee.

Non-Protected Disclosures

A disclosure shall not qualify for protection:

- unless it is made in good faith and in the public interest.
- if the employee making the disclosure commits an offence by making the disclosure.
- If the disclosure is made for an illegitimate purpose or to seek an unfair advantage over others or to cause detriment to a third party.

The policy does not allow for the disclosure of information, which is protected by legal professional privilege.

9. Procedure for Making Disclosures Internally and Externally

1. The OUR shall ensure procedures are established for receiving, investigating and otherwise dealing with disclosures.
2. An employee, who seeks to make a disclosure shall utilize the procedures that are established by the OUR.
3. The procedures shall identify at least one person to whom disclosures may be made.
4. Where an employee makes a disclosure, that employee shall be updated on the status of the investigation of the alleged misconduct contained in the disclosure.
5. The OUR shall cause information on the procedures for making a disclosure to be circulated among the employees on a regular basis, in order that the employees may be made aware of the procedures.
6. The procedure must include a provision that, where an employee makes an internal disclosure and steps to deal with this disclosure have not been taken by the employer or Designated Officer, within thirty days, the employee may make an external disclosure to the Designated Authority.

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- 7. The procedures shall contain turnaround times. In the event that an investigation is required, which may involve internal or external investigations and/or the police, it is not recommended that a specific turn-around time is suggested for such investigation. The Designated Officer should ensure that the investigations are undertaken as quickly as possible without affecting the quality and depth of the investigations.

The persons conducting the investigation shall as soon as is practicable, send a written acknowledgement of the concerns to the complainant and thereafter continue communication with the complaint, in writing, about the process of the investigation. All responses to the complainant shall be sent to an address that has been provided and shall be marked “confidential”.

10. Investigation

Due to the sensitive nature of a protected disclosure, the person conducting the investigation will be required to sign a confidentiality agreement before proceeding with the investigations.

The person conducting the investigation is expected to act independently, impartially and be thorough in the execution of the duties.

If the investigation finds the allegations unsubstantiated and all internal procedures have been exhausted, but the complainant is not satisfied with the outcome of the investigation, the OUR recognises the lawful rights of employees and ex-employees to make disclosures to the Designated Authority.

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11. 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.

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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 this confidentiality requirement 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.

12. Record Keeping

Records of disclosures that are submitted to the Designated Officer, shall be kept safely and confidentially, and at the earliest convenience be submitted to the Director with responsibility for Human Resource, who shall be responsible to make appropriate recording of receipt and to keep as a confidential document.

Disclosures and related documents, that are received electronically, shall be posted to a designated confidential folder on Microsoft SharePoint and shall be accessible only to the Designated Officer and the Director with responsibility for Human Resource. In the case where the disclosure is against the Designated Officer, access shall be granted to an alternate officer and the Director with responsibility for Human Resource. If the disclosure is against the Director with responsibility for Human Resource, the Designated Officer shall communicate with the Director-General, regarding the officer, who is next best suitable.

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Record of Amendments

The information below represents a record of major additions or omissions that are reflected in this version of the document.

<u>Seq. No.</u>	<u>Page(s) No.</u>	<u>Where Change Made</u>	<u>Reason for Change or Explanation of Change</u>
1	-	Title Page and throughout the entire document – the name Whistle Blower Policy to Protected Disclosures Policy	This was recommended by the Integrity Commission.
2	-	The term whistle blower was replaced by employee or discloser throughout the Policy.	This was recommended by the Integrity Commission.
3	-	Definition – Whistle Blower was removed from the Policy.	This was recommended by the Integrity Commission.
4	-	The term ‘complaints’ was replaced with ‘disclosures’ throughout the Policy.	This was recommended by the Integrity Commission.
5	5	Statement of support to Person Making Protected Disclosures was added to the Policy.	This was recommended by the Integrity Commission.
6	6	Objects of the Act section was added to the Policy.	This was recommended by the Integrity Commission.
7	6	Definition – Designated Authority was expanded to indicate that the Integrity Commission was named as the Designated Authority in Jamaica Gazette dated November 15, 2021.	This was recommended by the Integrity Commission.
8	7	Definition – Disciplinary Committee/Panel was added to the Policy.	This was recommended by the Integrity Commission.

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<u>Seq. No.</u>	<u>Page(s) No.</u>	<u>Where Change Made</u>	<u>Reason for Change or Explanation of Change</u>
9	7	Definition – Discloser was added to the Policy.	This was recommended by the Integrity Commission.
10	9-10	Definition - Prescribed Persons was added to the Policy	This was recommended by the Integrity Commission.
11	12	Anonymous Disclosure – A statement was added to reflect that anonymous disclosures are not protected by the Act.	This was recommended by the Integrity Commission.
12	15	Section Criminal Offenses was added to the Policy.	This was recommended by the Integrity Commission.

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