

# Protected Disclosures

Guidelines for disclosures to  
NTA where a worker is not a  
NTA employee

February 2022



**IMPORTANT:** This document is for guidance purposes only. It does not purport to be an interpretation of the law or to offer legal guidance or advice. Any person considering making a protected disclosure should first consult the provisions of the Protected Disclosures Act 2014 and seek legal advice if necessary.

Guidance on the Protected Disclosures Act from the Department of Public Expenditure Reform can be found at <https://www.gov.ie/en/publication/e20b61-protected-disclosures-act-guidance-for-public-bodies/> and also at <https://raiseaconcern.com/legislation/protected-disclosures-act-2014-guidance>

### **Protected Disclosures Act 2014**

The purpose of the Protected Disclosures Act, 2014, is to provide a framework within which workers can raise concerns regarding potential wrongdoing that has come to their attention in connection with their employment. The Act provides protection from penalisation if it results from the making of a protected disclosure.

NTA has a Protected Disclosures Policy which applies to all NTA employees. Any NTA employee seeking to make a protected disclosure should refer to the Protected Disclosures Policy where reporting steps are set out.

**This procedural note is for workers who are not NTA employees and who are seeking to make a protected disclosure to NTA under the Act. This may arise in the following circumstances;**

#### **1. Section 6 – Employer or Other Responsible Person:**

Disclosures can be made by a worker to NTA, under Section 6 of the Act, where NTA is defined as an employer with regard to that worker (as distinct from an employee) under Section 3. This section covers, for example, contractors, trainees and agency staff.

Disclosures can also be made to NTA where a worker believes that NTA is a responsible person within the context of Section 6 of the Act – this means that the worker believes that the relevant wrongdoing which the disclosure tends to show relates solely or mainly to the conduct of NTA, or to something for which NTA has legal responsibility.

To make a disclosure under Section 6 of the Act a worker must have a reasonable belief that the relevant information disclosed tends to show one or more relevant wrongdoing.

#### **2. Section 7 – Prescribed Person:**

By Statutory Instrument 367 of 2020 the Minister for Public Expenditure and Reform prescribed the CEO of the National Transport Authority, as the recipient of disclosures of relevant wrongdoings falling within the description of matters specified in the instrument as follows:

- (a) All matters relating to the regulation of public transport services in the State, including the licensing of bus passenger services, the entering into of contracts for the provision of bus, light railway and railway services and the regulation of public transport fares.
- (b) All matters relating to the regulation of small public service vehicles (within the meaning of the Road Traffic Act 1961 (No. 24 of 1961)).

To make a disclosure under Section 7 of the Act a worker must reasonably believe that the relevant wrongdoing falls within the description of matters in respect of which the CEO of NTA is prescribed (as set out in S.I. 367 of 2020) and that the information disclosed, and any allegation contained in it, are substantially true.

### **Relevant Information & Relevant Wrongdoings**

Section 5 of the Act describes what counts as “relevant information” and can be the subject of a protected disclosure. It also lists the matters that are “relevant wrongdoings for the purposes of the Act.

For the purposes of the Act information is “**relevant information**” which:

- Must have come to the Worker’s attention in connection with his or her employment and;
- The Worker has a reasonable belief that the information disclosed tends to show one or more ‘relevant wrongdoings’.

The following matters are “**relevant wrongdoings**” for the purposes of the Act:

- An offence has been, is being or is likely to be committed;
- 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;
- A miscarriage of justice has occurred, is occurring or is likely to occur;
- The health and safety of any individual has been, is being or is likely to be endangered;
- The environment has been, is being or is likely to be damaged;
- An unlawful or improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur;
- An act or omission by or on behalf of a public body is oppressive, discriminatory, grossly negligent or constitutes gross mismanagement; or
- Information relating to the above has been, is being, or is likely to be concealed or destroyed.

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.

### **How to make a disclosure to NTA under Section 6 or Section 7**

Disclosures can be sent for the attention of the CEO of NTA as follows:

By Post

Confidential

CEO

National Transport Authority

Harcourt Lane

Dún Scéine

Dublin 2

D02 WT20

By email to [ceo@nationaltransport.ie](mailto:ceo@nationaltransport.ie)

### **Procedures for making a Protected Disclosure within or to the NTA**

Any NTA Worker who has a reasonable belief in relation to one or more of the relevant wrongdoings covered under either Section 6 or Section 7 (as applicable) of the Protected Disclosures Act 2014, may make the disclosure.

When making a report, a discloser should set out the background for their concerns and provide supports where such evidence is available. Reports should be factual and focus on the following key points where such information is known to the individual:

- Details on the alleged wrongdoing and any supporting information e.g.
  - What has occurred, is occurring or is likely to occur;
  - How the matter came to light;
  - Where it occurred;
  - What was involved; and
  - When alleged wrongdoing commenced or was identified.
- Discloser's name and confidential contact details;
- Name of person(s) and department allegedly involved;
- Whether the alleged wrongdoing is still ongoing/happened before;
- Whether the alleged wrongdoing has already been reported to anyone else in the department or externally; and if so, to whom, when, and what action was taken;
- Other witnesses; and
- Any other relevant information.

All records of disclosures will be securely maintained so as to comply with the strict requirements of confidentiality under the Protected Disclosures Act 2014 and with relevant obligations under data protection legislation.

NTA will protect the identity of the discloser where possible, but may be obliged to reveal the identity so that a proper investigation can be carried out. Anonymous disclosures will be investigated insofar as is practicable with the information supplied.

Workers should note that the requirements of the Act must be complied with in order for the protections of the Act to apply. Attention is drawn to the distinction between a reasonable belief requirement for disclosures under Section 6 and a belief of substantial truth for a disclosure under Section 7.

NTA Governance Department

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