

Disclosures to the Office of the Comptroller and Auditor General

Policies and Procedures

(revised January 2020)

Disclosures to the Office of the Comptroller and Auditor General (the Office) about alleged wrongdoing in regard to the administration of public money may emanate from a range of sources

- Whistleblowers (i.e. employees of public bodies who make disclosures about alleged wrongdoing in their workplace) – the disclosures may be made to the Office or directly to staff of the Office in the course of audit or an examination. The person making the disclosure may be identified or may be anonymous.
- Correspondence (or other forms of communication) from other parties – the disclosures may be from identified individuals or may be anonymous.

Policies and procedures

All disclosures, however made, are taken seriously and all efforts are made to address appropriately the issues raised.

Preliminary consideration of matters disclosed

The following are some of the matters taken into account by the Office in deciding on the appropriate course of action to take in response to a disclosure

- whether the matter disclosed is relevant to the Comptroller and Auditor General's (C&AG) legal remit
- the extent to which information in a disclosure may be considered reliable and whether it can be corroborated from other sources
- the materiality, or financial significance, of the matter disclosed
- whether the information disclosed is sufficient to indicate that serious wrongdoing has occurred
- the legality of the provenance of any documentation or information provided
- the availability of resources and competing work priorities.

The exercise of the Comptroller and Auditor General's independence and discretion

The functions that the C&AG may carry out are set out in law, principally the Comptroller and Auditor General (Amendment) Act 1993 (the 1993 Act). Broadly, the C&AG carries out audits and may, at his sole discretion, carry out examinations and inspections of those public sector bodies within his remit and report the results of that work to the Oireachtas.

The C&AG has powers to audit the accounts of, and carry out value for money examinations on public bodies as set out in law. He may also inspect the accounting records of bodies in receipt of substantial funding from the exchequer. Consequently, the C&AG considers disclosures only in the context of those powers.

The C&AG

- has no remit to investigate allegations of corruption or other criminal wrongdoing but may refer the matter to another appropriate body
- has no role in resolving disputes between audited bodies and clients, suppliers or employees (or former employees)
- has no role in resolving complaints or directing bodies to provide redress.

Explaining decisions to those who have made disclosures

When the Office has decided on the appropriate course of action to be taken in regard to a disclosure, the decision taken will be notified to the person who has made the disclosure.

Maintaining confidentiality of the audited body's information

Legislation specifies the ways in which the C&AG can report publicly, for example he may report to Dáil Éireann on matters arising from his audit of the appropriation accounts of government departments. You should be aware that the Office is bound to treat information obtained in the course of its work as confidential unless there is a duty in law to disclose it. Accordingly, the Office cannot inform those who have made disclosures of the results of the Office's engagement with the relevant public sector body. The Office acknowledges that this may be a source of dissatisfaction. However, confidentiality must be maintained.

Referring disclosures to other bodies

It may be that an issue merits further enquiry, but that the Office is not the appropriate body to deal with it. In some circumstances, the Office may suggest to the discloser that they might wish to refer their concerns to another appropriate (named) body. In other circumstances, it may be appropriate that the Office refers the concerns directly to that body.

Data protection

The Office will adopt sufficient technical and organisational security measures to maintain the security and confidentiality of any information received from a whistleblower, so as to protect such information from accidental or unlawful destruction or loss or unauthorised access to or disclosure of the information. These security measures will also apply to any reports or other material generated as a result of enquiries being carried out into the matters contained in any disclosure received from a whistleblower.

As part of these measures, access to the information contained in any disclosure received from a whistleblower will be restricted to the staff within the Office responsible for managing, and those who are explicitly tasked with enquiring into the matters contained in the disclosure.

Data retention

Any information received from a whistleblower will be retained and processed only for as long as it is needed for audit, examination or inspection purposes.

Legal advice

The Office cannot offer any legal advice. If you are considering making a disclosure, we recommend that you seek independent legal advice in advance of doing so.

Protecting the identity of those making disclosures

A person making a disclosure may wish to remain anonymous and may request an assurance that the Office will protect his/her identity. Where possible, these requests will be acceded to. Correspondence received will be treated as confidential.

As set out above, the nature of the disclosure may need to be communicated to another appropriate body. The Office policy is to seek the author's consent before so doing. However, in certain circumstances, it may be necessary to refer the matter to another appropriate body even where consent is not forthcoming. In some circumstances the Office might find it necessary to disclose the identity of a person who has made a disclosure, either where it is in the public interest or where it is required by law. **Accordingly, an absolute assurance of confidentiality cannot be given.**

Rights of persons identified in a disclosure

The principles of natural justice do not require that a person against whom allegations are made should be notified that the Office has received the allegation. Nor does the person against whom the allegation is made have the right to know the identity of the person who has made the report. However, where the Office wishes to question or seek information from a person accused of wrongdoing in a disclosure, that person is entitled to be given details of the allegation and also to be given the opportunity to respond to and contest the allegation.

If the Office intends to make adverse comments or criticisms against a person who is named or capable of being identified in a report, the Office will make available to that person either a draft of the report or of that part of the report which contains the allegations or adverse comments concerning that person, or a summary of the allegations or adverse comments. This will be done in sufficient time before publication of the report so as to give the identified person a fair opportunity to reply to and contest the allegations or adverse comments.

The rights under the General Data Protection Regulations (GDPR) and the Data Protection Act 2018 of any person identified in a disclosure will be respected. The exercise of the right to information and to access may be restricted or deferred where the Office considers there is a risk that such exercise would be detrimental to its examination of the matter.

Specific legislation

In certain circumstances under individual pieces of legislation, disclosures may be brought to the attention of the Office. Persons seeking to make a disclosure to the C&AG in these circumstances should ensure, in all cases, that they are in compliance with all requirements set out in the legislation.

A person seeking to make a disclosure to the C&AG should ideally consult the relevant legislation in each case prior to making the disclosure. In certain cases, for example, it may be necessary to exhaust internal procedures before referring the matter to the C&AG.

Protected Disclosures Act 2014

The Protected Disclosures Act 2014, provides a legislative framework protecting whistleblowers in all sectors of the economy.

Purpose of the Act

The legislation is intended to provide a statutory framework within which workers can raise concerns regarding potential wrongdoing that has come to their attention in the workplace in the knowledge that they can avail of significant employment and other protections if they are penalised by their employer or suffer any detriment for doing so.

Role of the Office of the C&AG

The C&AG is a prescribed person under the legislation (Statutory Instrument 339 of 2014). This means that disclosures about all matters relating to improper use of public funds and resources or matters concerning value for money in respect of entities that fall within the remit of the C&AG can be made to the Office.

The Act does not require the Office to examine every disclosure it receives and disclosures made under the Act will be considered in the same way as any disclosure made to the Office.

In broad terms, whistleblowers making a disclosure to the Office will be entitled to remedies or defences under the Act in the event that they suffer unfair discrimination by their employer or dismissal provided the disclosure is made in good faith, they reasonably believe the allegations to be substantially true, and not for personal gain.

The Office has no role in assessing what is or is not a protected disclosure as defined in the legislation. This is a matter of law which, in the case of a dispute, will fall to the courts to decide.

In the case of any conflict between a provision of legislation and anything contained in this policy, the legislative provision shall prevail.

Making a disclosure

To make a disclosure to the Office of the C&AG please

telephone: 01 8638600

or write to: Private Secretary
Office of the Comptroller and Auditor General
3A Mayor Street Upper
Dublin 1
D01 PF72

or email to: privatesecretary@audit.gov.ie

A disclosure should contain

- Name of the individual making the disclosure and contact details
- Request for confidentiality, if preferred
- Name of the organisation(s) involved
- As many details as possible regarding the concerns
- the inclusion of any evidence to hand would benefit the assessment decision of the Office.

Where the discloser's identity and contact details are made known to us, we will acknowledge disclosures within 7 working days.