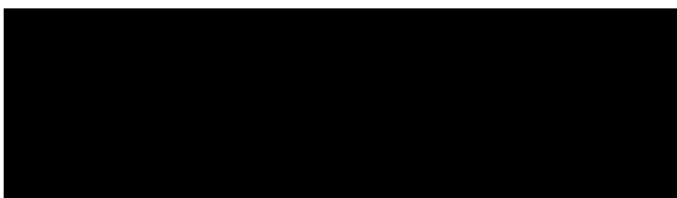




27 NOV 2018



Thank you for your email of 2 November 2018 to the Ministry of Education requesting the following information:

- "...a copy of your *Protective Disclosure Act* policies and procedures, and a copy of any guidance you have sent to schools, NZSTA, Education Review Office or Education Council."

Your request has been considered under the Official Information Act 1982 (the Act).

I am providing you our *Protected Disclosure Policy* and *Protected Disclosures Guidelines* as **Appendix One** and **Appendix Two**. These two documents are for our internal staff to use and are not distributed to the sector.

When schools ask us for guidance on protected disclosures, we direct them to a publicly available document which is a model policy on protected disclosures that they can adapt and use. The document can be downloaded from the following location:

<http://education.govt.nz/assets/Documents/School/Running-a-school/School-finance/KPPProtectedDisclosures.doc>

The same model policy can be found on page 97 of the Ministry's *Financial Information for Schools Handbook* which can be downloaded at the following location:


<http://education.govt.nz/assets/Documents/School/Running-a-school/Financial-Information-for-Schools-Handbook/Financial-Information-for-Schools-Handbook-2018-Final-3rd-Party-Contribution-Updated-June-2018.pdf>

We also direct schools to contact NZSTA for advice or consult the Ombudsman's website which has publicly available guidance on protected disclosures.

I am refusing your request for guidance sent to the NZSTA, Education Review Office and the Education Council under section 18(e) of the Act as the information does not exist. We have not sent guidance to these agencies on protected disclosures.

Thank you again for your email. You have the right to ask an Ombudsman to review this decision. You can do this by writing to info@ombudsman.parliament.nz or Office of the Ombudsman, PO Box 10152, Wellington 6143.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K Casey', written over the printed name.

Katrina Casey
Deputy Secretary
Sector Enablement and Support

Appendix One

Supporting
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PROTECTED DISCLOSURE POLICY

Purpose - why we have this policy

The purpose of the policy is to encourage people to report serious wrong doing and provide protection for employees who want to make a protected disclosure (whistle blow).

This policy is part of a suite of 3 policies related to conduct including:

1. Code of Conduct – the umbrella policy for managing conduct and behavioural issues of all employees
2. Fraud Policy – which covers allegations of fraud, corruption and dishonesty

Protected disclosures must be made in accordance with the Protected Disclosures Act 2000 (The Act). The Act's intent is to promote the public interest by facilitating the disclosure and investigation of serious wrongdoing in or by a public or private sector organisation. The Act has provisions for the protection of employees who use this policy and associated guidelines to make a disclosure about serious wrongdoing.

This policy and accompanying guidelines support our people to:

- Understand what a protected disclosure is
- Know when, how and to whom they can make a protected disclosure
- Recognise the type of conduct (serious wrongdoing) that may constitute a protected disclosure
- Understand how people will be protected and;
- Outline the process that will be followed.

Scope - who the Policy applies to

Employees of the Ministry can make a protected disclosure under the Act about serious wrongdoing in or by the Ministry. For the purposes of this policy, an employee includes:

- Current and former employees (permanent, fixed term, or casual) of the Ministry
- Contractors (engaged on a contract for services basis)
- Persons seconded to the Ministry
- People concerned in the Ministry's management
- People who do voluntary work for the Ministry

If any of the above employees come forward and voluntarily make a protected disclosure because they genuinely believe on reasonable grounds that the information of wrongdoing is true, or likely to be true, their disclosure will be investigated and they will be protected under the provisions within the act.

Application – How to make a Protected Disclosure

The full process on how to make a protected disclosure is described within the Protected Disclosures Guidelines.

Protected disclosure are to be reported to any Senior Manager listed within the Protected Disclosure guidelines, these managers have been nominated by the Secretary for Education to hopefully ensure any employee feels safe enough to report.

Following any disclosure an assessment of the disclosure will occur and the employee who reported the disclosure will be formally acknowledged. A Terms of Reference will be developed to seriously examine the allegations of wrongdoing and decide whether a full investigation is warranted.

Natural Justice requires any respondent of wrongdoing the opportunity to respond to evidence or findings at an appropriate time, in accordance with all relevant legal considerations. This, however, is undertaken in a way to protect the notifying employee's confidentiality (where possible), safety and future career within the Ministry.



Manager Guidelines: Protected Disclosure Policy

Templates: Name and link to document

Other relevant documents:

Document Control

Date approved:		Next review date:	
Policy Owner:	Chief People Officer	Content Owner:	Manager Specialist Capability, People Capability

Appendix Two

Supporting
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PROTECTED DISCLOSURE GUIDELINES

Description

The purpose of the policy is to encourage people to report serious wrong doing and provide protection for employees who want to make a protected disclosure (whistle blow).

This guideline outlines the process for making a protected disclosure and other relevant information to assist Ministry managers and staff.

Associated Policy

Code of Conduct Policy
Fraud Policy

Scope

Employees and contractors of the Ministry can make a protected disclosure under the Act about serious wrongdoing in or by the Ministry. For the purposes of this policy, an employee includes:

- Current and former employees (permanent, fixed term, or casual) of the Ministry
- Contractors (engaged on a contract for services basis)
- Persons seconded to the Ministry
- People concerned in the Ministry's management
- People who do voluntary work for the Ministry

If any of the above employees come forward and voluntarily make a protected disclosure because they genuinely believe on reasonable grounds that the information of wrongdoing is true, or likely to be true, their disclosure will be investigated and they will be protected under the provisions within the act.

Protected disclosure

A protected disclosure is a disclosure made by an employee or contractor about serious wrongdoing in or by the Ministry. With protected disclosures the reporting employee believes on reasonable grounds that the information they are providing is true or likely to be true, and they wish to disclose this information in order for the serious wrongdoing to be investigated. Employees and contractors making disclosures in accordance with the Protected Disclosures Act 2000 will be protected against retaliatory or disciplinary action, and will not be liable for civil or criminal proceedings related to the disclosure.

Where concern exists by management, employees, and/or contractors, that concern should be assessed for its potential as a protected disclosure.

Serious wrongdoing as defined by the Act

'Serious wrongdoing', for the purposes of this policy, and as defined in section 3 of the Act includes any of the following:

- Unlawful, corrupt or irregular use of public funds or the resources of a public sector organisation (or)
- An act, omission or course of conduct:
 - a) that constitutes a serious risk to public health or safety, or the environment (or)
 - b) that constitutes a serious risk to the maintenance of law, including the prevention, investigation, and detection of offences, and the right to a fair trial that constitutes an offence or by a public official that is oppressive, improperly discriminatory, grossly negligent or that constitutes gross mismanagement

Principles

The Protected Disclosures Act 2000 requires government departments to establish procedures and provide information and guidance to employees and contractors wishing to report serious wrongdoing within their department. We are also wanting to ensure that we promote trust and confidence through transparency and accountability that will whistle blowers should be encouraged.

Conditions for disclosure

Before making a protected disclosure, you should be sure the following conditions are met:

- The information is about serious wrongdoing in or by the Ministry
- You believe on reasonable grounds that the information is true, or likely to be true
- You wish to disclose the information so the wrongdoing to be investigated
- You wish the disclosure to be protected

All protected disclosures are to be made and managed in accordance with the following principles:

Principle	What does this mean?
Acting in good faith	You must believe on reasonable grounds that the information you disclose is true or likely to be true.
Maintaining organisational integrity	Individuals who make a protected disclosure know their actions are valued and their concerns will be fully and fairly investigated and any necessary action taken.
Complying with the principles of natural justice	Investigations must comply with the principles of natural justice. These include: <ul style="list-style-type: none">• Freedom from bias on the part of the person making the decision/judgement; and• A transparent and fair process
Everyone whom a protected disclosure is made to/referred to must use their best endeavours to protect the discloser's identity.	Anyone who knows about the disclosure or its investigation must use their best endeavours not to reveal information leading to the identity of the discloser(s) unless: <ul style="list-style-type: none">• The discloser consents in writing or,• The referring person reasonably believes that disclosure of the identifying information is essential:<ul style="list-style-type: none">a) To effectively investigate the allegations; orb) To prevent serious risk to public health or public safety or the environment; orc) Having regard to the principles of natural justice (please refer to the definitions as outlined below)
The need to know	The protected disclosure will only be communicated to people whom are essential to its proper investigation.
Managed in a timely way	All concerns reported need assessed and acted on in a timely way, risk to people involved needs accessed from the time the concern is first raised.

Training and awareness

All employees of the Ministry need to know who they can talk to if they are concerned.

Informal <i>I can ask a question or speak privately to someone I trust in the organisation. I can raise a question in an open forum, such as at a team meeting or staff talk.</i>	Through the Line <i>I can discuss an issue or make a formal complaint to a manager or supervisor.</i>	Directly to the Secretary of Education <i>I can raise any concerns about possible wrongdoing directly with the Secretary of Education</i>	Protected Disclosures <i>I can talk to a designated impartial person within the organisation who is independent of the possible wrongdoing. I can also talk to a range of external authorities about a protected disclosure in certain circumstances.</i>
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To meet the state sector model standards for training and awareness in reporting protected disclosures, the following will be available to staff:

- The Protected Disclosures Policy and Guidelines will be available on the Ministry's intranet and can be sent to managers through myhrservices@education.govt.nz
- On-line compliance training for protected disclosures will be a requirement for all Ministry staff in inductions, regular two yearly refreshers, and when following any changes to the policy or guidelines
- The Ministry will provide on-line training to all managers on receiving and dealing with conflicts complaints, public interest disclosures, and on identifying red flags
- Staff can raise concerns: Informally to someone they trust; directly to their line manager; or possible wrong doing directly to the Secretary for Education; alternatively, all Ministry staff (including managers that have had a potential protected disclosure raised to them) can directly go to the designated staff (listed later in this guide), who have been designated the responsibility for managing protective disclosures within the Ministry

Process for reporting a protected disclosure

A disclosure must be sent or reported to the Chief People Officer; the Chief Financial Officer; or the Chief Internal Auditor, who have been nominated by the Secretary for Education under the provision of Section 11 of the Protected Disclosures Act 2000. It is critical to the Ministry that employees and contractors feel safe enough to report any disclosures openly; however, if this is not the case employees can make anonymous disclosures to any of the above nominees via internal mail.

If you believe on reasonable grounds that all three of these people is or may be involved in the serious wrongdoing, or has a relationship or association with the wrongdoer that means it is not appropriate to make the disclosure to them, then you can send your disclosure directly to the Secretary for Education.

As soon as a disclosure is reported:

- An assessment is made to the risk to the people involved (including: reprisals, repercussions, or adverse impacts) and appropriate measures and support is put in place to protect these people
- An assessment is made to the risk to the organisation and any reports of serious criminal activity will immediately be reported to the police or the Serious Fraud Office
- Take immediate remedial action if required, including: Transfers, or other physical protection if applicable
- The employee/contractor who reported will be advised who from the Ministry will commutate with them to keep them up-to-date and answer any of their concerns or questions
- The employee/contractor who reported will be advised who from the Ministry will be available to support them during the process, if different from the above
- **NOTE - The experience of the person who raised the complaint needs to be measured throughout the process and recorded. This support will be provided by an appropriate person depending on the complaint and in most cases will be the part of the person's management structure supported by People Capability.**

On receipt of a disclosure, the Chief People Officer; the Chief Financial Officer; or the Chief Internal Auditor; or Secretary for Education must:

- Immediately write to the employee/contractor making the disclosure, acknowledging that a protected disclosure has been received
- Develop a Term of Reference, if appropriate, for the investigation and provide to employee who has made the disclosure as soon as practical (The TOR should include the decision maker of investigation findings and how decisions will be reached,)
- **Within 20 working days**, seriously examine the allegations of wrongdoing and decide whether a full investigation is warranted (ensuring they are or out-source investigators are skilled, experienced and independent from the matter)
- Any person implicated in a report of wrongdoing will be with the information about the investigation and the opportunity to respond to evidence or findings at an appropriate time, in accordance with all relevant legal considerations.

- Keep the employee/contractor making the disclosure regularly informed of the progress of the investigation through a dedicated support person and management

Once the investigation is completed:

- The Decision Maker will reach their decision, taking into account all the Ministry's policies and guidelines
- The designated nominee will acknowledge all parties involved and if a person has been disadvantaged, a procedure is put in place to remedy any apology

All protected disclosure investigation reports will be centrally and confidentially filed with Strategic Planning and Governance.

The Chief Internal Auditor needs to ensure all reports and disclosures are included in the Ministry's risk management programmes and reporting, including any internal or external risk and assurance committees.

All protected disclosures allegations, investigations, and internal process are debriefed and internally reviewed for continuous improvement.

External disclosures

In the event a Ministry employee or contractor is approached by an employee of another organisation wishing to report a serious wrongdoing to the Secretary for Education, the Ministry employee or contractor may refer them if appropriate to the Secretary for Education, by giving either the appropriate telephone number and/or address. The Ministry employee or contractor must not discuss any issues relating to the alleged serious wrongdoing with them or with any other party unless they wish to make their own protected disclosure under the Act.

Keeping people safe

Keeping discloser's safe will be a priority to the Ministry. As a result of the, standard and tailored support will be available on a case by case basis to ensure the Ministry is taking all reasonable steps to support the staff member(s) that is disclosing information.

Protection is offered to disclosers who act in good faith as set out in the table below:

Type of protection	What it means
Immunity from civil and criminal proceedings (As a result of disclosing information that may otherwise have restrictions or prohibitions placed in its disclosure.) Note: this protection does not apply to employees who make disclosures in breach of legal professional privilege or complicit in the wrong doing.	If making a protected disclosure involves breaching the Ministry's confidentiality requirements, the discloser is protected from civil or criminal claims or prosecutions; and disciplinary action for breach of confidentiality requirements. It also protects the whistle blower against defamation. If a discloser disclosed more broadly than the provisions of the Act or this policy and guidelines e.g. to the media, the disclosure to the media would not be a protected disclosure and immunity would not apply.
Confidentiality	Every person to whom a protected disclosure is made or referred must use his or her best endeavours not to disclose information that might identify the person who made the protected disclosure unless— <ul style="list-style-type: none"> • That person consents in writing to the disclosure of that information; or

	<ul style="list-style-type: none"> The person who has acquired knowledge of the protected disclosure reasonably believes that disclosure of identifying information— <ol style="list-style-type: none"> Is essential to the effective investigation of the allegations in the protected disclosure; or Is essential to prevent serious risk to public health or public safety or the environment; or Is essential having regard to the principles of natural justice. <p>Where confidentiality cannot be retained, the organisation will communicate with person who raised complaint and provide any appropriate support.</p>
Employment/Workplace	Employees can take a personal grievance if the Ministry takes any action against them for making a protected disclosure. Any retaliation by managers or staff against a discloser may result in disciplinary action.
From Victimisation	The Human Rights Act 1993 protects individuals (and their relatives and associates) from victimisation as a result of making (or encouraging) a protected disclosure, or has given information or evidence arising out of a disclosure (see relevant legislation).
External escalation	In some rare situations an employee/contractor can raise a disclosure with a Minister of the Crown or Ombudsman, employees/contractors should seek independent legal or HR advice before escalating externally.

The Ministry will treat all wrongdoing concerns seriously, in confidence, with protections as far as is reasonably possible; however, these protections are not applicable to disclosers who knowingly make false allegations or act in bad faith or the information you are disclosing is protected by legal professional privilege.

The Ministry will communicate effectively with others outside the organisation that may need to be informed or be provided with support. This could include union delegates, where appropriate.



Manager Guidelines: Protected Disclosures Guidelines

Templates: Name and link to document

Other relevant documents:

Document Control

Date approved:		Next review date:	
Policy Owner:	Chief People Officer	Content Owner:	Manager Specialist Capability, People Capability

