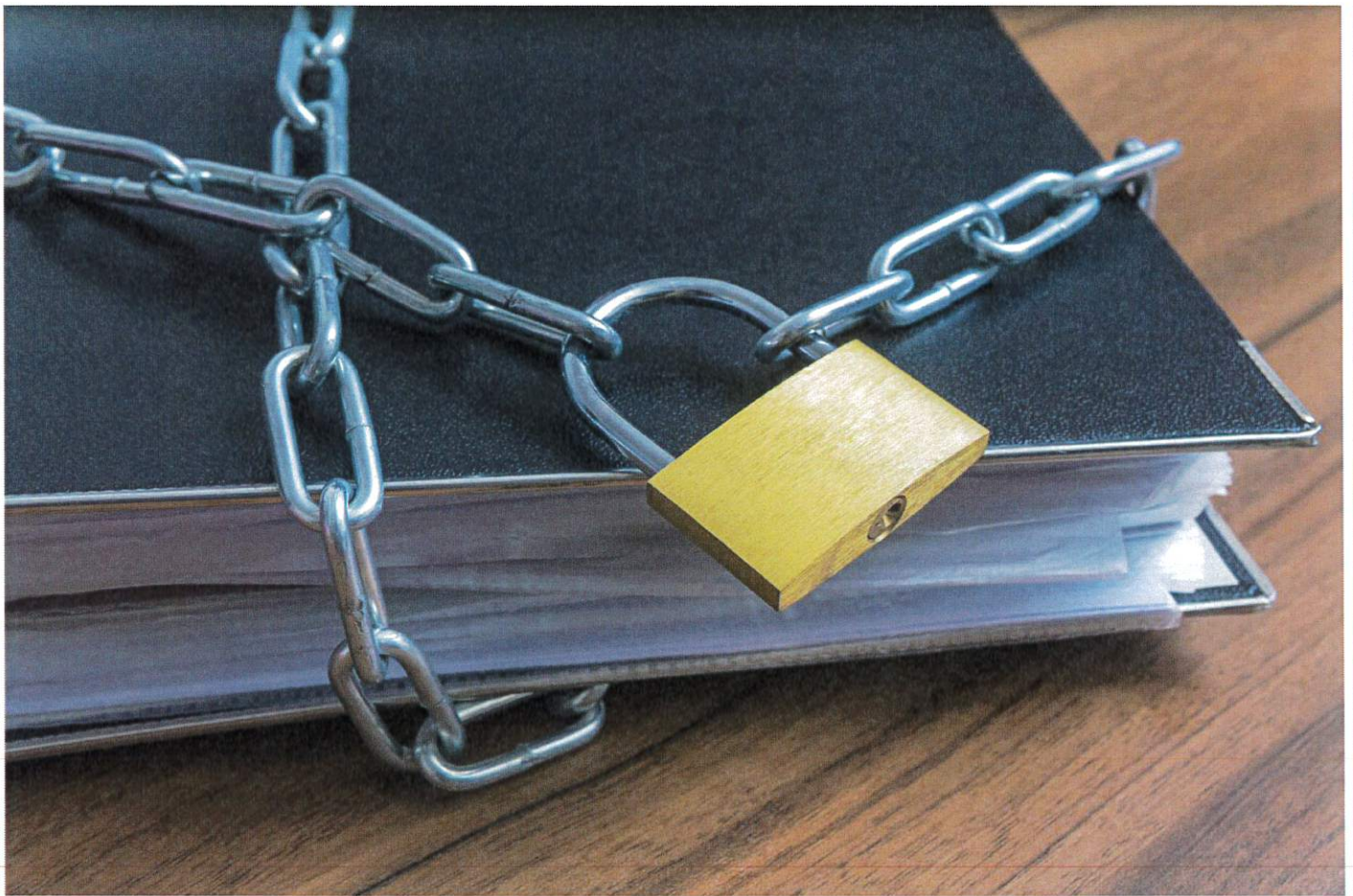




TEF PROTECTED DISCLOSURE PROCEDURAL GUIDELINES

APPROVED BY:

ENDORSED BY:
DR CAREY WALLACE

EFFECTIVE DATE



Title:	Tourism Enhancement Fund Protected Disclosure Procedural Guidelines
Endorsed By:	Dr Carey Wallace, Executive Director
Approved By:	Integrity Commission
Effective Date:	December 1, 2023
Related Policies/ Legislation:	Protected Disclosures Act 2011

TOURISM ENHANCEMENT FUND

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"These procedures are to outline the system that has been established for the employees of TEF to report improper conduct or occupational detriment."

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1. Statement of support

The Board and Management of the Tourism Enhancement Fund are committed to ensuring the highest standards of integrity, transparency and accountability, and maintaining the maximum level of professionalism and ethical behaviour by all members of the organisation. As such, we are committed to the provisions of the Protected Disclosures Act, 2011 and have endorsed these 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.


Hon. Godfrey Dyer
Chairman

8/10/23
Dated


Dr. Carey Wallace
Executive Director

10-Nov-2023
Dated

2. Object of the Act

The object of the Protected Disclosures Act, 2011 (the Act) is to encourage and facilitate the making by employees of specified disclosures of improper conduct in the public interest; to regulate the receiving, investigating or otherwise dealing with disclosures of improper conduct; to protect employees who make specified disclosures from being subjected to occupational detriment; to protect the confidentiality of the employee making the disclosure and any statement given, or document, information or thing provided; and to grant immunity from civil or criminal proceeding or any disciplinary proceeding to a person who makes a protected disclosure, or receives, investigates or otherwise deals with a protected disclosure.

3. Purpose of the Procedures

In order to be compliant with the Protected Disclosure Act and to maintain the standards listed above, the TEF strives to provide an environment whereby employees, who have suspicions about any improper conduct to include breach of law (e.g. criminal offence, malpractice, impropriety etc.), conduct that is likely to result in miscarriage of justice, threaten or damage the environment, can report the improper conduct without any fear of repercussion, victimisation or other negative consequences in their employment for making the disclosure.

These procedures outline the system that has been established for employees of the Tourism Enhancement Fund to report improper conduct or occupational detriment. The procedures outlined in this policy also describe the timely and impartial investigating and reporting mechanism in place to deal with protected disclosures.

4. Definitions

- 4.1 **Disclosure** - revelation of information made by an employee, regarding any conduct of an employer of that employee or another employee of the employer, where the 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.
- 4.2 **Designated Authority** - the Designated Authority is an individual or entity designated by the Minister of Justice with the responsibility for monitoring compliance with the Act. The Minister has designated the Integrity Commission to be the designated authority.
- 4.3 **Designated Officer** - the individual appointed by the employer and conferred with the requisite authority to receive, take steps to investigate or otherwise deal with disclosures. The designated officer is also responsible for keeping the employee updated on the status of the investigation of the disclosure.
- 4.4 **Employee** – is any person:
- a) who works or has worked for another person and receives, has received, or is entitled to receive, any remuneration for work done;
 - b) who in any manner assists or has assisted in the carrying on or conduct of the business of an employer, without any entitlement to receive remuneration or reward; or
 - c) who is, or was, engaged or contracted under a contract for services to do work for another person, or any agent of the person.
- 4.4.1 Employees who disclose information are protected under the Protected Disclosures Act, 2011. The discloser's role is one of a reporting party. They are not investigators or finders of fact, nor do they determine appropriate corrective actions that may be warranted.
- 4.5 **Grievance and Disciplinary Panel** – a panel recognised and established by the organisation to address grievance, staff related and disciplinary issues.
- 4.6 **Improper Conduct** - improper conduct are:
- a) criminal offences;
 - b) failure to carry out a legal obligation;
 - c) conduct that is likely to result in a miscarriage of justice;
 - d) gross mismanagement, impropriety or misconduct in the carrying out of any activity that involves in the use of public funds;
 - e) conduct that tends to show unfair discrimination on the basis of gender, race, place of origin, social class, colour, religion or political opinion;
 - f) endangerment to health or safety of a person;
 - g) conduct that is likely to threaten or damage the environment;
 - h) acts of reprisal against or victimisation of an employee; and
 - i) willful concealment of improper conduct described in (a) to (h) above.

4.7 Occupational Detriment – any act or omission that results in an employee, in relation to his employment, being:

- a) subject to disciplinary action;
- b) dismissed, suspended, or demoted;
- c) harassed, intimidated or victimised;
- d) transferred against his will;
- e) refused transfer or promotion;
- f) subject to a term or condition of employment or retirement from employment, that is altered to his disadvantage;
- g) provided with an adverse reference;
- h) denied appointment to any employment, profession or office;
- i) threatened with any of the actions specified in (a) to (h); or
- j) otherwise adversely affected in respect of his employment, profession or office, including employment opportunities and job security.

4.8 Good Faith - is evident when the report is made without malice or consideration of personal benefit and the discloser has a reasonable basis to believe 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. Good faith is lacking when the disclosure is known to be malicious or false.

4.9 Prescribed Persons – the Prescribed Persons as outlined in the Protected Disclosure Act are:.

- a) Auditor-General
- b) Bank of Jamaica
- c) Bureau of Standards
- d) Children's Advocate
- e) Commissioner of Police
- f) Director of Public Prosecutions
- g) Electoral Commission of Jamaica
- h) Fair Trading Commission
- i) Financial Services Commission
- j) Independent Commission of Investigations
- k) Integrity Commission
- l) Tax Administration Jamaica
- m) National Environment and Planning Agency
- n) Office of Utilities Regulation
- o) Political Ombudsman
- p) Public Defender

5. Safeguards

- 5.1 **Protection** - The Protected Disclosures Act, 2011 is designed to protect employees of TEF who disclose such concerns from victimisation, harassment, intimidation or suffering any other form of occupational detriment relating to his employment provided that the disclosure made to the designated authority, or the designated officer is made:
- a) in good faith;
 - b) about another colleague/employee/employer of the same organisation;
 - c) and must be in the public's interest.
- 5.1.1 If an employee is dismissed as a consequence of seeking to make, making or intending to make a report, the employee shall be treated as being unjustifiably dismissed.
- 5.1.2 If an employee suffers occupational detriment at or about the same time as he/she makes a protected disclosure, the occupational detriment shall be presumed to be a result of the report made unless the employer/supervisor shows that the action is justified.
- 5.1.3 The designated officer shall not be liable to any civil or criminal proceedings or any disciplinary proceedings by reason of having made, received, investigated or otherwise dealt with that disclosure in accordance with the Protected Disclosure Act.
- 5.2 **Unconfirmed Allegations** - If an individual 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 individual should exercise due care to ensure the accuracy of the information disclosed.

6. Confidentiality

- 6.1 The Tourism Enhancement Fund will treat all disclosures in a confidential and sensitive manner. The TEF will take all reasonable steps to protect the identity of an employee who has made a disclosure and to treat all such disclosures, statements given, information or thing provided to the designated officer as being secret and confidential. The entity recognises that maintenance of confidentiality is crucial in ensuring that reprisals are not made against the persons who have made disclosures under the Act.
- 6.2 **Exceptions** - a person may disclose any statement given or document or information or thing provided in the furtherance of an investigation or any or disciplinary proceedings. However, the identity of the person who made the disclosure may not be disclosed.

7. Roles and Responsibilities

- 7.1 **Employee** - Employees are encouraged to disclose known or suspected incidences of improper conduct or detrimental action in good faith and in the public's interest in accordance with the

Protected Disclosures Act, 2011. Employees should also support those who have made a legitimate disclosure and should refrain from activities that could be perceived to be victimisation, harassment or reveal the identity of the persons who have made disclosures.

7.2 Designated Officer - shall have the authority to:

- a) make the necessary arrangements for a disclosure to be made privately and discretely and if necessary, away from the workplace;
- b) be the contact point for general advice about the operation of the Protected Disclosures Act 2011 and these procedures;
- c) put in writing any disclosure received orally within twenty-four hours of its receipt;
- d) take all steps to ensure that the identity of the person who makes a disclosure is kept confidential;
- e) determine whether a disclosure meets the criteria of a protected disclosure under the Act and conducting an impartial investigation into the allegation;
- f) recommend the referral of disclosures based on the subject matter, the seriousness of its nature or if it prejudices national security, defence or international relations to the appropriate authority;
- g) give an update to the person who made the disclosure within thirty (30) days and in intervals of thirty (30) days thereafter;
- h) forward an investigation report and all evidence gathered to the Executive Director for action; and
- i) make monthly reports to the Designated Authority on the status of the investigations into disclosures received.

7.3 Employer - The Executive Director has the responsibility of ensuring that employees are aware of these procedures and that the designated officers are accessible and have the requisite training to carry-out their function. The Executive Director is responsible for approving and monitoring the investigation plan and investigation into allegations of improper conduct. However, s/he may delegate this task to a senior officer or assign a nominee. The Executive Director is also responsible for ensuring that persons who have made a disclosure and the Designated Authority are kept up-to-date with the progress of the investigations, the findings, recommendations and any subsequent actions taken.

7.4 Grievance and Disciplinary Panel – The Disciplinary Panel of the Tourism Enhancement Fund, which has as its members, the Executive Director/Employer Representative, Manager, Human Resources and Administration and a staff representative, has the responsibility to review the findings of the designated officer and approve the actions necessary to correct the improper conduct reported.

8. Appointment of Designated Officers

The following Officers have been appointed as designated officer(s) in compliance with the Protected Disclosures Act, 2011. They have been given the responsibility and authority to receive and investigate disclosures of improper conduct by the employees of the **Tourism Enhancement Fund**:

Tanisha Cunningham
Corporate Secretary
Tourism Enhancement Fund
60 Knutsford Boulevard,
Kingston 5

Tel.: 876-908-5969

Cell: 876-894-4428

Email: tanisha.cunningham@tef.gov.jm

Hillet Martin-McFarlane

Internal Auditor

Tourism Enhancement Fund

60 Knutsford Boulevard,

Kingston 5

Tel.: 876-908-5970

Cell: 876-433-6455

Email: hillet.martin-mcfarlane@tef.gov.jm

9. The Reporting System

10.1 At the TEF, all disclosures of improper conduct must be made confidentially to the designated officers outlined above. Where possible the disclosure should be made on the Protected Disclosure Form (Form PDA1 - Appendix 1) which is available on the TEF's website, on the intranet and in each department. Disclosures made orally will be recorded on the same form within twenty-four (24) hours of receipt by the designated officer.

10.2 Alternatives

10.2.1 A disclosure can be made to a Minister if the employer of the person making the disclosure was appointed under a law by the Minister or is a public body whose members were appointed by the Minister.

10.2.2 A disclosure can also be made to a Prescribed Person (defined in Section 4) if the employee believes that the subject matter of the improper conduct disclosed falls within their portfolio.

10.2.3 A disclosure can be made directly to the Designated Authority where there is a reasonable fear:

- a) of occupational detriment; or
- b) that the evidence of the improper conduct will be destroyed.

10.2.4 A report can also be made directly to the Integrity Commission if:

- a) no action was taken on an earlier disclosure made to the designated officer; or
- b) the complaint is regarding the designated officer.

- 10.2.5 Disclosures on matters that prejudice national security, defense or international relations must be made to the Minister with portfolio responsibility or the Prime Minister or to both.

10. Receiving and Assessing

- 10.1 Upon the receipt of a disclosure the designated officer should make an assessment as to whether the subject matter of the disclosure meets the criteria established as being a protected disclosure under the Act. All disclosures received must be entered into a Protected Disclosures Log (Form PDA2 – Appendix 2) which is to be kept by the designated officer.
- 10.2 If the subject matter disclosed is found to be better dealt with by another person/entity, frivolous, of a nature not sufficiently important or the circumstance has changed, and it is decided that no investigation is warranted; then the designated officer should convey the decision taken to the person who made the disclosure in writing within fifteen (15) days of the decision.

11. Investigation and Feedback

- 11.1 Upon deciding that an investigation is warranted, the designated officer should prepare an investigation plan detailing the steps to be taken in the investigation, inclusive of witnesses who may have to be interviewed and resources required. The investigation plan should be forwarded to the Executive Director for approval.
- 11.2 On approval of the investigation plan the designated officer should commence the investigation forthwith. The investigation should be done fairly and the rights of the person who made the disclosure and any other witnesses protected.
- 11.3 The employee who made the disclosure should be updated on the status of the investigation within thirty (30) days of receipt of the disclosure and at intervals of thirty (30) days thereafter.
- 11.3.1 A Protected Disclosures Summary Report (PDA3 – Appendix 3) should be completed at the end of each month and forwarded in print and electronically to the Designated Authority.
- 11.4 On completion of the investigation the designated officer should forward to the Executive Director a report containing:
- a) the allegation disclosed;
 - b) findings of the investigation;
 - c) conclusion; and
 - d) recommendations of the steps to be taken to correct the improper conduct.
- 11.5 All evidence gathered during the investigation should be documented and included in the report.

12. Action to be taken after the Investigation

- 12.1 The Executive Director, on receipt of the completed report from the designated officer should at the earliest time convene a meeting of the Grievance and Disciplinary Panel to review the findings and recommendations of the investigation. The Grievance and Disciplinary Panel must agree the course of actions to be taken which may include:
- a) Preventing the improper conduct from continuing or recurring in the future.
 - b) Bring disciplinary proceedings against the person responsible for the improper conduct or referring the matter to the appropriate person/authority for further consideration.
 - c) Reporting any actions taken to the employee who made the disclosure and to the Designated Authority.
- 12.2 The Grievance and Disciplinary Panel in arriving at its determination should ensure that the rules of natural justice as indicated in Section 22(1)(a)(b)(c) and (d) of the Labour Relations Code are adhered to.

13. Preventing Detrimental Actions

- 13.1 The Tourism Enhancement Fund is committed to the protection of the person who makes a protected disclosure from detrimental actions or reprisals for having made the disclosure. The TEF believes that the best way to empower our employees who are considering or who have made disclosures is to endorse their rights that are guaranteed under the Protected Disclosure Act, 2011. Under the Act the employee has the following rights:
- a) An employee shall not be subjected to any occupational detriment on the basis that the employee seeks to make, has made, or intends to make, a protected disclosure.
 - b) An employee who is dismissed as a consequence of seeking to make, making or intending to make a protected disclosure shall be treated as being unjustifiably dismissed.
 - c) Where an employee suffers occupational detriment at or about the same time that he makes a protected disclosure, the occupational detriment shall be presumed to be a consequence of the protected disclosure, unless the employer shows that the act that constitutes the occupational detriment is otherwise justified.

14. Collating and Publishing Statistics

- 14.1 The designated officer should maintain a secure log of the disclosures received in the Protected Disclosures Log, (PDA2 – Appendix 2).

14.1.1 This log records the following:

- a) Date the disclosure was received;
- b) Disclosure Number - This number for instance could be arrived at by first using the abbreviation of the entity, followed by the last two numerals of the year and then three digits for numerical count. For example, if TEF's first disclosure was made in 2023, the disclosure number would be TEF23001. The second case in the same year would be TEF23002 and so on.
- c) Summary of the improper conduct disclosed.
- d) Date referred where applicable.
- e) Date of completion of the report which on that date should be forwarded by the designated officer to the Executive Director.
- f) The decision taken as a result of the recommendations made by the designated officer.

14.2 The designated officer must make monthly reports to the Designated Authority of the status of the disclosures received using the Protected Disclosure Summary Report (PDA3 – Appendix 3).

14.2.1 The report includes the:

- a) Entity's Name.
- b) Date of the report.
- c) Date the disclosure was received.
- d) Summary of the improper conduct.
- e) Summary of the action taken during the period.
- f) Number of days since an update was given to the person who made the disclosure (the discloser).
- g) Date and name of entity to which referral made where applicable.
- h) Date of completion of the investigation report.
- i) Decision taken as a result of the recommendations of the designated officer

14.3 Statistics from the records/data may be published however no information must be published that would lead to the identification of the person who made the disclosure.

15. Criminal Offences

15.1 A person commits an offence if s/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.

15.1.1 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 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.

15.2 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 or to imprisonment for a term not exceeding three months.

15.3 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.

15.4 A person who contravenes the confidentiality requirement as noted above commits an offence and is liable upon summary conviction in a Parish Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

16. Anonymous Disclosures

16.1 Nothing in these procedures prevents any person from making an anonymous disclosure of improper conduct. In the case of anonymous disclosures basic information such as the name and employer of the person making the disclosure may not be known. Basic information would be necessary to guarantee that the person(s) making the protected disclosure are protected by the Act. The subject matter of the disclosure should however be examined.

16.2 **Anonymous disclosures are not covered under these procedures.**

18. Appendices

Form - PDA1

12 |

Name of Alleged Party of improper Conduct	
Time and Place of Improper Conduct	
Name of Witness	Name of Witness
Address of Witness	Address of Witness
Brief Description of Witness	Brief Description of Witness
Previous Disclosure/s Made (State about whom and to whom the disclosure was made)	
Are you still employed at the TEF? ☐ Yes ☐ No	

I make this disclosure in good faith and in the public interest. I believe it to be true and accurate to the best of my knowledge and I know that I would be liable for prosecution if this disclosure contains any statement that I know to be false or misleading.

Signature of Discloser

Date

Name of Witness

Signature of Witness

Date

Name of Witness

Signature of Witness

Date



PROTECTED DISCLOSURE LOG
Protected Disclosure Act, 2011 – Procedural Guidelines
Form – PDA2

Entity: Tourism Enhancement Fund

Date Received	Disclosure Number	Summary of Improper Conduct Disclosed	Date and Entity of Referral	Date Closed	Decision Taken



PROTECTED DISCLOSURE SUMMARY REPORT
Protected Disclosure Act, 2011 – Procedural Guidelines
Form – PDA3

Entity: Tourism Enhancement Fund

Date of Report: _____

Period of Report: _____

Date Received	Disclosure Number	Summary of Improper Conduct Disclosed	Actions Taken (Brief Description)	Days Since last Notification to the Discloser	Date and Entity of Referral	Date Closed	Decision Taken