

VERSION 1

WHISTLE BLOWING POLICY

DEPARTMENT OF
TRANSPORT AND COMMUNITY SAFETY

LIMPOPO
PROVINCIAL GOVERNMENT
REPUBLIC OF SOUTH AFRICA



TABLE OF CONTENTS

ACRONYMS AND ABBREVIATIONS..... 3

DEFINITIONS..... 3

1. INTRODUCTION AND BACKGROUND..... 7

2. PURPOSE AND OBJECTIVES..... 7

3. LEGAL FRAMEWORK..... 8

4. POLICY STATEMENT..... 9

5. SCOPE OF APPLICATION..... 9

6. POLICY PRONOUNCEMENT..... 10

7. PROCEDURE FOR A PROTECTED DISCLOSURE..... 10

8. HOW THE COMPLAINT WILL BE DEALT WITH..... 14

9. REMEDIES..... 16

10. ROLES, RESPONSIBILITIES AND POWERS..... 17

11. CREATING AWARENESS..... 19

12. POLICY PROVISION..... 19

13. REVIEW AND TERMINATION OF THE POLICY..... 19

14. DEFAULT..... 19

15. INCEPTION DATE..... 20

16. ENQUIRIES..... 20

ANNEXURE B: PROTECTED DISCLOSURE POLICY FRAMEWORK FORM A..... 21

ACRONYMS AND ABBREVIATIONS

1. HOD – Head of Department
2. MANLAB – Management and Labour
3. MEC – Member of Executive Council
4. SAPS – South African Police Service

DEFINITIONS

1. **Accounting Authority** – Member of Executive Council
2. **Accounting Officer** - Head of Department
3. **Risk and Security Management** - a unit established within the Department to promote integrity within the department in line with National and Provincial Anti-Corruption strategy
4. **Anti -Fraud and Corruption Unit** - a unit designated by the Accounting Officer for the prevention, detection and investigation of fraud and corruption and the implementation of anti-corruption strategies contained in relevant and applicable legislation policies and guidelines
5. **Designated Officer** – an Anti-Fraud and Corruption Deputy Director
6. **Disclosure** - any disclosure of information regarding any conduct of an employer or an employee of that employer, made by any employee who has a reason to believe that information concerned shows or tend to show one or more of the following:
 - (a) That a criminal offence has been committed, is being committed or is likely to be committed.
 - (b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject
 - (c) That miscarriage of justice has occurred, is occurring or is likely to occur
 - (d) That the health or safety of an individual has been, is being or is likely to be endangered
 - (e) That the environment has been, is being or is likely to be damaged

- (e) The environment has been, is being or is likely to be damaged
- (d) The health or safety of an individual has been, is being or is likely to occur
- (c) A miscarriage of justice has occurred, is or is likely to occur
- to which that person is subject
- (b) A person has failed, is failing or is likely to fail to comply with any legal obligation committed
- (a) A criminal offence has been committed, is being committed or is likely to be

10. Improper conduct means that –

- (b) The Office of the Premier, means the Premier such portfolio
 - (a) A Provincial Department, the member of the Executive Council responsible for
- 9. Executing Authority** means in relation to -

8. Employer means - Department of Transport and Community Safety

- (b) Any other person who in any manner assists in carrying on or conducting the business of the employer
- (a) A person who works for the Department of Transport and Community Safety and who receives, or is entitled to receive remuneration; or

7. Employee means -

- (j) That any matter referred to above has been, is being or is likely to be deliberately concealed
- (i) Any act of misconduct as outlined in Resolution No.2 of 1999 as amended: Disciplinary Code and Procedures for Public Service
- (h) Contravention of the Public Service Code of Conduct
- (g) That an improperly, malpractices, mal-administration of mismanagement has been/ is being or likely to be committed
- (f) Unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act 2000 (Act No. 4 of 2000)

- (f) Unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No 4 of 2000)
- (g) Any matter referred to in paragraphs (a) to (f) has been, is being or is likely to be deliberately concealed; irrespective of whether or not –
- i. The improper conduct occurs or occurred in the Republic of South Africa or elsewhere; or
 - ii. The law applying to the improper conduct is that of the Republic of South Africa or another country
- 11. Occupational detriment** in relation to the working environment of an employee, means being –
- (a) Subjected to any disciplinary action
 - (b) Dismissed, suspended, demoted, harassed or intimidated
 - (c) Transferred against his or her will
 - (d) Refused transfer or promotion
 - (e) Subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage
 - (f) Refused a reference, or being provided with an adverse reference, from his or her employer
 - (g) Denied appointment to any employment, profession or office
 - (h) Threatened with any actions referred to paragraph (a) to (g) above; or
 - (i) Otherwise adversely affected in respect of his or her employment profession or office, including employment opportunities and work security.
- 12. Protected Disclosure** - any disclosure as defined in item 6
- 13. Whistle-blowing** – the act of informing the public or someone in authority about alleged dishonest or illegal activities (misconduct) occurring in a government department, a public or private organization, or a company.
- 14. Corruption** – means any conduct or behavior where a person accepts, agrees or offers any gratification for him/her or for another person for purpose of acting

16. Grievance – means a dissatisfaction regarding an official act or omission by the employer which adversely affects an employee in the employment relationship, excluding an alleged unfair dismissal.

15. Fraud – is unlawful and intentional making of a misrepresentation which causes dishonesty or illegally. Such behavior also includes the misuse of material or information, abuse of a position of authority, breach of trust or violation of duty. actual and or potential prejudice to another. The use of term is in its widest possible meaning and is intended to include all aspects of economic crime and acts of dishonesty. In other words, fraud can be described as any conduct or behavior of which a dishonest representation and/or appropriation forms an element.

1. INTRODUCTION AND BACKGROUND

One of the key obstacles in the fight against corruption is the fact that without legal protection, officials are often too intimidated to blow the whistle on corrupt activities they observe in the workplace. Although they have the duty to report in terms of the employment code of conduct, employees are mostly afraid of being victimized or intimidated.

In the fight against corruption, government enacted the Protected Disclosures Act No 26 of 2000 to make provision in terms of which employees who disclose information of unlawful or corrupt conduct by their employer or fellow employees are protected from occupational detriment. This legislation is effective corporate governance tool in the fight against corruption, to encourage employees to report wrongdoings and also to promote safe, accountable and responsive work environment in both public and private sector.

2. PURPOSE AND OBJECTIVES

The policy is intended to-

- 2.1. Strive to create a culture which will facilitate the disclosure of information by employees relating to criminal and other irregular conduct in the workplace in a responsible manner by providing clear guidelines for the disclosure of such information and protection against reprisals as a result of such disclosure.
- 2.2. Promote the eradication of criminal and other irregular conduct within the Department.
- 2.3. Encourage and enable employees to raise concerns within the Department rather than overlooking a problem or blowing the whistle in inappropriate channels.
- 2.4. Furthermore, the policy aims to: -

- a) Provide avenues for employees to raise concerns and receive feedback on any action taken.
- b) Inform employees on how to take the matter further if they are dissatisfied with the response.
- c) Reassure employees that they will be protected from reprisals or victimization for blowing in good faith.
- d) Reassure employees that concerns raised through procedures laid down in this policy will be appropriately and objectively dealt with.

3. LEGAL FRAMEWORK

- (a) The Constitution of the Republic of South Africa, Act No. 2 of 1994
- (b) Protected Disclosures Act, 2000 (Act No. 26 of 2000)
- (c) Practical Guidelines for Employees issued in terms of section 10 of the Protected Disclosures Act, 2000 (Act No. 26 of 2000)
- (d) Whistle-blowing Guide for Public Sector Managers provided by the Department of Public Service Administration
- (e) Public Service Act, 1994 (Proclamation No. 103 of 1994) and Regulations made in terms thereof
- (f) Rules for dealing with grievances in the Public Service as published in Government Gazette No. 25209 of 25 July 2003
- (g) Disciplinary Code and Procedures for the Public Service as contained in the Public Service Bargaining Council Resolution 2 of 1999 as amended
- (h) Public Finance Management Act, 1999 (Act No.1 of 1999) and Treasury Regulations
- (i) Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004)
- (j) Labour Relations Act (Act 66 of 1995 as amended)
- (k) Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No 4 of 2000)
- (l) The National Public Service Anti-Corruption Strategy adopted by cabinet in 2002,
- (m) The Promotion of Access to Information Act (Act 2 of 2000)

- These concerns indicated in the act, are the following: -
- a) That criminal offence has been committed, is being committed or is likely to be committed.
 - b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject.
 - c) That the miscarriage of justice has occurred is occurring or is likely to occur.

The policy applies to all employees of the Department of Transport and Community Safety. There are existing grievance procedures in place to enable employees of the department to raise grievances relating to their employment. This policy is intended to cover concerns that fall outside the scope of grievance procedures.

5. SCOPE OF APPLICATION

The Department of Transport and Community Safety is committed to achieving the highest standard of service, openness, accountability and ethical standards in all its practices. In line with that commitment, the department encourages employees to raise matter of concerns responsibly through procedures laid down in this policy. To endorse the commitment, the department has designed procedures for dealing with cases of whistle blowing that protect individual and ensures that the matter is fully and vigorously investigated.

4. POLICY STATEMENT

- (n) Public Service Bargaining Council Resolution 14 of 2002
- (o) Public Service Bargaining Council Resolution 1 of 2003
- (p) Administrative Justice Act (Act 3 of 2000)
- (q) Basic Conditions of Employment Act, 1997
- (r) Departmental delegations (Financial and Human Resource management)
- (s) Code of Conduct for Public Servants
- (t) The Financial Intelligence Centre Act (FICA) (No. 38 of 2001)

e) That the health and safety of an individual has been, is being or likely to

be endangered.

f) That the environment has been, is being or likely to be damaged.

g) Unfair discrimination as contemplated in the Promotion of the Promotion

of Equality and Prevention of Unfair Discrimination Act, No.4 of 2000.

h) That any matter referred to in paragraphs (a) to (f) has been, is being or likely to

be deliberately concealed.

This policy is developed based on the principle objects of the Protected Disclosures Act, which encourages employees to disclose any acts of misconduct without fear of any recriminations or reprisals.

6. POLICY PRONOUNCEMENT

The implementation of this policy will be guided by Batho Pele Principles, Code of Conduct for public servants and any other piece of legislation.

7. PROCEDURE FOR A PROTECTED DISCLOSURE

7.1. INTERNAL DISCLOSURE

7.1.1. Disclosure to employer

An employee who has a concern regarding improper conduct of the employer or other employees must – If the allegation is serious and it is /has been committed by any other employee within the department, such an employee may contact the:

(a) Office of the MEC (Executing Authority)

(b) Head of the Department (Accounting Officer)

(c) Anti-fraud and Corruption Unit (Designated Officer)

The following are the departmental contact details to be utilized:

Wats App facilities: 0828044740

Email: fraud@dtcs.limpopo.gov.za

Walk in disclosures at the following office:

Department of Transport
Phamoko Towers

Corner Church and Bodenstein Street

Polokwane

Office no 27, 33 and 34 (Seventh Floor)

Designated officer

Mr Gordon Horn (Deputy Director: Anti-Fraud and Corruption Unit)

Tel: 015 295 1088

Cell: 082 8044 740

Email: horng@dtcs.limpopo.gov.za

7.2. EXTERNAL PROTECTED DISCLOSURE

An employee may also choose to make a protected disclosure to Public Protector, Auditor-General or Public Service Commission where the whistle-blower makes the disclosure in good faith and the employee reasonably believes these bodies would usually deal with the kind of problem that the whistle-blower wants to talk about. There is no requirement that the concern should first have been raised with employer.

(a) The Public Protector

The Public Protector is a high level independent official who receives complaints against government agencies or officials and investigates improper prejudice suffered by a complainant for example as a result of abuse of power. Mal-administration, dishonesty or improper dealings with regard to public money, improper enrichment and receipt of improper advantages can also be investigated

The PSC derives its mandate from sections 195 and 196 of the Constitution, 1996. The PSC is tasked and empowered to, amongst others, investigate, monitor, and evaluate the organization and administration of the public service. This mandate also entails the evaluation of achievements, or lack thereof of government programs. The PSC also has an obligation to promote measures that would ensure effective and efficient performance within the public service and to promote values and principles of public administration as set out in the Constitution, throughout the public service.

(c) PUBLIC SERVICE COMMISSION (PSC)

0001	(012) 426 8000(tel)	(012) 426 8257 (fax)
PRETORIA	(015) 283 9300 (tel)	(015) 283 9400 (fax)
Private Bag X 446	0700	
Private Bag X9339	POLOKWANE	

The contact details for the Auditor-General: -

The Auditor-General who is also a high level independent body must audit and report on the financial statements of all national and provincial state departments and administrations, all municipalities and any other institution or accounting entity required by national or provincial legislation to be audited by the Auditor General.

(b) The Auditor General

0001	(012) 366 7000/0800112040(tel)	(012)362 3473 (fax)
PRETORIA	(015)295 5712/5699/5956(tel)	(0150 295 2870(fax)
Private Bag X 677	0700	
PO Box 4533	POLOKWANE	

The contact details for the Public Protector: -

At the request of Cabinet, the PSC has also been managing the National Anti-Corruption Hotline (NACH) for the public service since September 2004. The Hotline, which is toll-free and operates 24 hours a day and seven days a week, provides members of the public as well as public servants with an easily accessible instrument to report corruption in the public service.

The hotline is strictly for reporting cases of corruption, and does not cater for service delivery complaints - unless these involve corruption as well.

Contact details for the National Anti-Corruption Hotline

Toll Free Number: 0800 701 701 (National Anti – Corruption Hotline)
Fax: 0800 204 965 toll free number

Email: Integrity@publicservicecorruptionhotline.org.za

SMS facilities:39772

Contact details for the Public Service Commission:

**Private Bag X121
PRETORIA**
**Private Bag X9543
POLOKWANE**

**0001
0700**

Tel No: (012) 352 1196/7(tel) (015) 291 4783/5 (tel)
Fax No (012) 325 8382 (fax) (015)291 4683 (fax)

When an employee is unsure of which procedure to use and he or she desires to obtain independent advice at any stage, the employee may contact –

- His or her personal legal advisor
- His or her labour organization

8. HOW THE COMPLAINT WILL BE DEALT WITH

- 8.1. The action taken by the Department will depend on the nature of the concern. The possible actions to the matters raised may, among other possible action be: -
- (a) Investigated internally by the Anti-fraud and Corruption unit
 - (b) Investigated by external forensic firms /Consultant
 - (c) Referred to the SAPS or other relevant law enforcement agency.
- 8.2. In order to protect individuals and the Department, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take.
- 8.3. Some concerns may be resolved by agreed action without the need for investigation.
- 8.4. The Department will acknowledge the concern raised within **seven days** of the date of receipt to whistle blowers who have identified themselves and informing them whether further investigations will take place, and if not, why not.
- 8.5. The amount of contact between the body investigating the issues and the persons raising the concern will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, further information will be sought from the individual.
- 8.6. The Department accepts that employees need to be assured that the matter has been properly addressed. However, the progression of investigations will be handled in a confidential manner and will not be disclosed or discussed with any persons other than those who have a legitimate right to such information. This is important in order to avoid damaging the reputation of suspected persons who are subsequently found innocent of wrongful conduct

8.6.1. Confidentiality

The department will take all necessary steps to protect an individual's identity when he/she raises a concern and does not want their identity to be disclosed.

8.6.2. Anonymous reporting

In view of the protection offered to employees raising a concern, the Department encourages employees to put their names to the disclosures. Concerns expressed anonymously are difficult to investigate; nevertheless, they will be followed up by taking into account the following: -

- a) seriousness of the issue raised
- b) credibility of the concern
- c) likelihood of confirming the allegation

An employee making the disclosure anonymously needs to give as much information as possible in order to improve the possibility of both a successful investigation and prosecution. When reporting an allegation, he or she is required to clearly state/provide the following:

- a) Which alleged wrongdoing are you reporting
- b) Where and when (dates and times, if available) the alleged wrongdoing took place
- c) Who, how much was involved in the alleged wrongdoing
- d) How the individual or which firm committed the act
- e) Why was the offence committed

Anonymous reporting means that you must not reveal your identity when reporting unethical or illegal conduct. The person who is reporting anonymously is responsible for protecting his or her anonymity.

8.7. Untrue Allegations

8.7.1. Employees are discouraged from making allegations which are false and made with malicious intentions. Where such malicious, vexatious, or false allegations are discovered, the person who made the allegations will be subjected to a disciplinary action, or other appropriate action in the case of external parties.

8.8. Urgent matters

8.8.1. In urgent matters, where the **Designated Officer** reasonably believes that it is likely that evidence relating to the **improper conduct** will be concealed or destroyed, the designated officer may deviate from the procedure in this and take appropriate steps to bring the disclosure to the attention of the employer or **Executing Authority**.

9. REMEDIES

- (a) An employee may not be subjected to any **occupational detriment** by his or her employer on account of having made a **protected disclosure**.
- (b) An employee who is subjected or may be subjected to any **occupational detriment** because of a **protected disclosure** made by him or her may –
- i. Approach internal Labour Relations unit
 - ii. Any court having jurisdiction, including the Labour Court
 - iii. Pursue any other process allowed or prescribed by law.
- (c) When an employee is –

iv. Subjected to any **occupational detriment**, on account of making a **protected disclosure**, it is regarded as an unfair labour practice and the matter may in terms of the **procedure** of the Labour relation Act, 1995 (Act No. 66 of 1995) be referred for conciliation or to the Labour Court for a hearing.

v. Dismissed on account of making a **protected disclosure**, the dismissal is regarded as an automatically unfair dismissal in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995).

(d) An **employee** who has made a **protected disclosure** and who reasonably believes that he or she may be adversely affected on account of making the **protected disclosure**, must at his or her request and if reasonably possible be transferred from the post or position occupied by him or her to another post or position in the same division or another division of his or her **employer** or where the **employee** is employed by an organ of state, to another organ of state.

(e) The terms and conditions of employment of an **employee** transferred in as indicated in paragraph (d) must not be less favorable than the terms and conditions applicable to the **employee** immediately before his or her transfer.

(f) A transfer of an **employee** in paragraph (e) must be done with the written consent of the **employee**.

10. ROLES, RESPONSIBILITIES AND POWERS

10.1. The Designated Officer must –

- (a) Act as a neutral person on matters of disclosure and must assist employees
- (b) Provide advice to employees who are considering making a disclosure
- (c) Receive, record and review the disclosures of improper conduct from employees
- (d) Ensure that procedures are in place to manage instances of improper conduct
- (e) Make recommendations to the Accounting Authority or Accounting Office on how to address or correct the disclosure
- (f) Monitor the type and disposition of disclosures
- (g) Prepare an annual report for the Accounting Authority or Accounting Officer on all disclosures made in terms of this policy.

- blowing within the Department.
- 10.2. Executive Management:** provide strategic direction regarding the whistle blowing within the Department.
- 10.3. Executive Authority:** approves the policy.
- 10.4. Accounting officer**
- (a) Oversee the implementation of the policy
- (b) Recommend approval of the policy to Executive Authority
- (c) Appoint an external investigator when necessary
- 10.5. Risk Management Committee**
- (a) Monitor the mitigation of risks related to fraud and corruption within the department.
- (b) Monitor implementation of the policy.
- (c) Recommend mitigation plan to prevent fraud and corruption.
- 10.6. Anti-fraud and corruption Unit**
- (a) Promote whistle blowing and awareness with a view of combating and preventing fraud and corruption in the department.
- (b) Investigate cases reported by whistle blowers and report to the relevant internal and external, stakeholders through the Accounting Officer.
- (c) Protection of information and anonymity of the whistle blower in line with the Protected Disclosure Act.
- (d) Develop whistle blowing procedures for the department.
- (e) Implementation and review of the policy.
- 10.7. Line managers:** must ensure that all received allegations of fraud and corruption are forwarded to the HOD /MEC /Designated Officer.
- 10.8. Ethics committee:** is responsible for providing strategic direction and oversight to the ethics management programme and assess the state of ethics in the department.

Any employee who contravenes the provisions of this policy which may lead to violation of the Public Service Code of Conduct or other policies, that employee shall be charged with misconduct and the necessary disciplinary measures should be taken against him or her. Any party who has a contractual relationship with the department and contravenes the provision of this policy will be dealt with in terms of the penalty clause of the agreement entered into by and between him/her and the department.

14. DEFAULT

The policy will be reviewed every 36 months based on the comments and inputs from the stakeholders and it will be terminated upon the inception of the new policy.

13. REVIEW AND TERMINATION OF THE POLICY

This policy does not replace the processes as outlined in the Grievance rules Where in the course of the investigation concern raised in accordance with the above appears to the investigator to be more appropriately related to a grievance or disciplinary procedure, those procedures will be utilized.

12. POLICY PROVISION

See **Annexure B** for the Protected Disclosure form.

11.3. Employees are therefore encouraged to report fraud and corruption activities affecting the Department either through telephones or emails and their information will be treated confidentially as prescribed by this policy.

11.2. It is the responsibility of all Heads of Departments and managers to ensure that all employees, are made aware of, and receive appropriate education with regard to the Whistle Blowing Policy Version 1.

11.1. In order for the policy to be sustainable, it must be supported by a structured education, communication and awareness programme.

11. CREATING AWARENESS

The inception date of this policy will be within 30 days after the approval by the Executive Authority.

15. INCEPTION DATE

Enquiries regarding this policy should in the first instance be directed to Office of the HOD: Risk & Anti-Fraud Corruption Unit.

~~RECOMMENDED/NOT RECOMMENDED~~

ACCOUNTING OFFICER _____

DATE 19/3/21

~~APPROVED/NOT APPROVED~~

MEMBER OF EXECUTIVE COUNCIL _____

DATE 30/03/2021

ANNEXURE B: PROTECTED DISCLOSURE POLICY FRAMEWORK FORM A

INFORMATION OF EMPLOYEE	
FULL NAMES AND SURNAME	
IDENTITY NUMBER	
RESIDENTIAL ADDRESS	
POSTAL ADDRESS	
CONTACT NUMBERS	
OFFICE:	
HOME:	
CELL:	

I would like to make a protected disclosure to:

THE EMPLOYER			
THE EXECUTING AUTHORITY			
THE PUBLIC PROTECTOR	I WOULD LIKE TO BE ASSISTED TO IN THIS REGARD		
THE ACCOUNTANT GENERAL	I WOULD LIKE TO BE ASSISTED TO IN THIS REGARD		
A LEGAL ADVISOR			

Please make a mark in the relevant box

FOR OFFICE USE:

DISCLOSURE MADE TO THE EMPLOYER:

	DID THE EMPLOYEE REQUEST ANY ASSISTANCE TO REFER THE DISCLOSURE?
--	--

OFFICE USE:
DISCLOSURE TO PUBLIC PROTECTOR OR ACCOUNTING OFFICER

	WAS A MEETING ARRANGED WITH THE EXECUTING AUTHORITY?
	DOES THE EMPLOYEE COMPLY WITH REQUIREMENTS OF 6.2.1 OF POLICY

OFFICE USE:
DISCLOSURE MADE TO THE EXECUTING AUTHORITY:

	THE EMPLOYEE COMPLIES WITH DEFINITION OF "EMPLOYEE"
	THE DISCLOSURE COMPLIES WITH THE DEFINITION OF "DISCLOSURE"
	IS A PRELIMINARY INVESTIGATION NECESSARY?
	TO WHICH BODY MUST THE MATTER BE REFERRED?