

GAUTENG PROVINCE
HUMAN SETTLEMENTS
REPUBLIC OF SOUTH AFRICA

WHISTLE BLOWING POLICY

THREE YEAR

Period:

2016/2017 – 2018/2019

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DEFINITIONS

1. **AFCU:** means the Anti Fraud and Corruption Unit of the Department.
2. **Corruption:** means corruption as defined in the Prevention and Combating of Corrupt Activities Act (12 of 2004):

Chapter2: Offences in respect of corrupt activities, Part 1: General offence of corruption.

“Any person who, directly or indirectly-

- (a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person: or
- (b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that person or for the benefit of another person in order to act personally or by influencing another person so to act, in a manner:-
- (c) that amounts to the-
 - (i) illegal, dishonest, unauthorized, incomplete or biased:
or
 - (ii) misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation:
(ii) that amounts to:-
 - (a) the abuse of a position of authority:
 - (b) a breach of trust: or
 - (c) the violation of a legal duty or a set of rules:

- (iii) designated to achieve an unjustified result: or
- (iv) that amounts to any other unauthorized or improper inducement to do or not do anything is guilty of the offence of corruption”.

3. **Department:** means the Department of Human Settlements – Gauteng Provincial Government.

4. **Disclosure/Whistle Blowing:** means any disclosure of information regarding any conduct of an employer, or an employee of that employer, made by any employee who has reason to believe that the information concerned shows or tends 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 a 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;
 - (f) Unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No, 4 of 2000); or
 - (g) That any matter referred to in paragraphs (a) to (f) has been, is being or is likely to be deliberately concealed

5. **Employee:** means
- (a) Any person, excluding independent contractor, who works for the Department and who receives, or is entitled to receive any remuneration; and
 - (b) Any other person who in any manner assists in carrying on or conducting the business for the employer.
6. **Employer:** means the Head of Department for the Gauteng Provincial Department of Human Settlements or any other person delegated to act on his/her behalf.
7. **Fraud:** means any behavior or actions by a public servant, other person or entity to fool others into providing a benefit that would not normally accrue to the public servant, other person or entity.
8. **HOD:** Head of Department: Gauteng Department of Human Settlements.
9. **Impropriety:** means any conduct which falls within any of the categories referred to in paragraphs (a) to (g) of the definition of "disclosure/whistle blowing".
10. **MEC:** Member of the Executive Council, Gauteng Department of Co-operative Governance and Traditional Affairs and Human Settlements.
11. **Occupational detriment:** in relation to the working environment of the employee means:
- (a) Being subjected to any disciplinary action.
 - (b) Being dismissed, suspended, demoted, harassed or intimidated.
 - (c) Being transferred against his or her will.
 - (d) Being refused transfer or promotion.

- (e) Being subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage.
- (f) Being refused a reference or being provided with an adverse reference, from his or her employer.
- (g) Being denied appointment to any employment, profession or office.
- (h) Being threatened with any of the actions referred to paragraphs (a) to (g) above.
- (i) Being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security”.

11. **Good faith:** Good faith is evident when the report is made without malice or consideration of personal benefit and the employee has a reasonable basis to believe that the report is true; provided, however, 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.

1. Introduction

- 1.1 South Africa's transition to democratic rule has been characterized by high levels of crime, including widespread corruption. Several initiatives have been undertaken to promote accountability and fight corruption within the public sector.
- 1.2 These efforts include legislation such as the Promotion of Access to Information Act No.2 of 2000 and the Protected Disclosures Act No. 26 of 2000, as well as hosting anti-corruption conferences (in November 1998, April 1999 and October 1999). Resolutions taken at the National Anti-Corruption Summit in April 1999 made specific reference to, developing encouraging and implementing whistle-blowing mechanisms, which include measures to protect employees from victimization where they expose corruption and unethical practices.
- 1.3 During February 2001 the Protected Disclosures Act which protects Bona fide whistleblowers came into force. One of the key obstacles faced in the fight against corruption is the fact that individuals are often too intimidated to speak out or blow the whistle on corrupt and unlawful activities they observe occurring in the workplace, although they may be obliged to in terms of their conditions of employment.
- 1.4 Under the Public Service Code of Conduct, public servants in the course of their official duties shall report to the appropriate authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes an offence, or which is prejudicial to the public interest.
- 1.5 The whistle blowing policy is therefore a mechanism meant to protect employees from occupational detriment when they report acts of fraud and corruption.

2. Purpose

- 2.1 To establish a framework within which Human Settlements manages whistle blowing.
- 2.2 The purpose of this policy is to ensure that all the employees of the Department observe high standards of conduct in executing Departmental business and observe the rules of ethics in the conduct of their duties and responsibilities. All employees of the Department are required to practice honesty and integrity in fulfilling their responsibilities and comply with all applicable laws and regulations.
- 2.3 The Department is committed to high standards of ethical, moral and legal business conduct. In line with this commitment, and government's commitment to open communications, this policy aims to provide an avenue for employees to raise concerns and reassurance that they will be protected from reprisals or victimizations for blowing the whistle.

The Whistle Blowing Policy is intended to protect employees if they raise concerns such as concerns regarding as an example, but not limited to:

- Unlawful activity
- Incorrect financial reporting
- Activities that are not in line with the Department's policy, including Ethics Policy and Code of Conduct; or
- Activities, which otherwise amount to serious improper conduct.

3. Objectives of the policy

3.1 The objective of this policy is to:

3.1.1 Strive to create a culture which will facilitate the disclosure of information, in a responsible manner, by employees relating to impropriety and other irregular and unlawful conduct in the workplace. This will be done by providing clear guidelines for the disclosure of such information and protection against reprisals as a result of such disclosure.

3.1.2 Encourage and enable staff to raise concerns within the Department rather than overlooking a problem or blowing the whistle to inappropriate channels.

3.1.3 Furthermore the policy aims to:-

3.1.3.1 Provide avenues for staff to raise concerns and receive feedback on any action taken;

3.1.3.2 Inform staff on how to take the matter further if they are dissatisfied with the response; and

3.1.3.3 Reassure staff that they will be protected from reprisals or victimization for blowing the whistle in good faith

3.1.3.4 Inform staff of the investigative proceedings regarding any reported matter and the outcomes thereof, on a need to know basis, subject to the approval by the HOD.

3.2 The policy will also serve as a means of mitigating the risk of damaging the Department's reputation by employees disclosing wider unfounded public disclosures through wrong channels.

3.3 Outlines governance and responsibility of those involved in managing instance whistle blowing.

4. Legislative and regulatory framework

4.1 This policy has been drafted within the following regulatory framework:

4.1.1 The Constitution of the Republic of South Africa Act No. 108 1996, Section 195, Public Administration (basic values and principles governing public administration).

4.1.2 Protected Disclosure Act No. 26 of 2000

4.1.3 Public Service Commission: Whistle Blowing: A Guide for Public Sectors Managers Promoting Public Sector Accountability; Implementing the Protected Disclosure Act

4.1.4 Heads of Department Forum Resolutions, 12 September 2007.

5. Scope of the Whistle Blowing Policy

5.1 This policy applies to all acts of impropriety, fraud, corruption, or suspected irregularities of this nature involving any employee of the Department. There are existing grievance procedures in place to enable employees of the Department to raise grievances relating to their employment conditions. This policy is intended to cover concerns raised by employees that fall outside the scope of grievance procedures.

5.2 The policy covers all genuine concerns raised by employees including but not limited to the following:-

5.2.1 Financial misconduct

5.2.2 Health and safety risk

5.2.3 Environmental damage

5.2.4 Unfair discrimination

5.2.5 Fraud, Corruption and misconduct

5.2.6 Threats and intimidation directed at whistle blowers

5.2.7 Any conduct that impact adversely on the image and integrity of the Department

5.2.8 Misuse of funds or assets abuse of authority

6. The Policy

6.1 Protected Disclosures Act

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 discrimination or reprisals.

6.2 This Policy Protects:

6.2.1 Any employee, who legitimately and in good faith discloses an alleged violation of departmental policy, fraud and corruption, commission or possible commission of criminal offense, by any person with supervisory authority over the employee or any other person working for the Department who has authority to investigate, discover or terminate conduct prohibited by policy.

- 6.2.2 Any employee who legitimately and in good faith files, causes to be filed, testifies, participates in, or otherwise assists in a proceeding filed under employment laws or labour laws or laws regarding fraud and corruption.
- 6.2.3 Any employee who legitimately and in good faith provides information, causes information to be provided, or otherwise assists in an investigation regarding any conduct which the employee reasonably believes constitutes fraud, corruption or maladministration, when the information or assistance is provided to or the investigation is conducted by law enforcement, regulatory authorities, legislature or the Department's AFCU; or
- 6.2.4 Any employee who in good faith submits any complaint to the Audit Committee, regarding financial statements disclosures, accounting, and internal accounting controls, auditing matters or violations of department's Code of Conduct and Ethics Policy or other Corporate Governance policies in accordance with the procedures set out herein.

If an employee legitimately and in good faith engages in any of the activities listed above, the Department will not discharge, demote, suspend, threaten, harass or otherwise discriminate or retaliate against him or her in terms or conditions of employment because of that activity. However, since such allegations of impropriety may result in serious personal repercussions for the target person or entity, the employee making the allegations of impropriety should have reasonable and probable ground before reporting such impropriety and should undertake such reporting in good faith, for the best interests of the Department and not for personal gain or motivation. In this regard, it is noted that each and

every employee of the Department is obliged to maintain confidentiality of all confidential information of the Department.

A protected disclosure may be made in the following manner:

- In person
- In writing
- Telephonically

6.3 Who can raise a concern?

6.3.1 Any member of staff who has a reasonable belief that there is corruption or misconduct relating to any of the protected matters specified in the Protected Disclosure Act may raise a concern under the procedure to be detailed below.

6.3.2 Concerns must be raised without malice, in good faith and not for personal gain and the individual must reasonably believe that the information disclosed, and any allegations contained in it, are substantially true.

6.3.3 The concerns raised may relate to a Manager, another member of staff, a group of staff, the individuals own section or a different section of the Department.

6.3.4 The perpetrator can be an outsider (member of the public or any other person not employed by the Department), an employee, a manager, a customer or an ex-employee or a service provider. You may even be aware of a system or procedure in use to defraud the Department or beneficiaries.

6.4 How to raise a concern internally?

6.4.1 **Step one:** The first step will be for the employee to raise the concern with his/her immediate supervisor/ manager. This may be done verbally or in writing.

6.4.2 **Step two:** If for whatever reason, the employee feels unable to raise the concern with his/her manager or feel that the matter is so serious that he/she cannot discuss it with any one in his/her business unit, the employee can approach the Director: Anti Fraud & Corruption Unit as per below information:

**Anti-Fraud and Corruption Unit
Bank of Lisbon Building
Cnr. Sauer and Market Street
2nd Floor
(011) 355-4229 (tel)
(011) 355-4327 (fax)**

Where a concern relates to a very sensitive issue or high profile such that it cannot be reported telephonically or by fax for security reasons, employees can call the AFCU and the necessary arrangement will be made to allow employee to raise his/ her concern.

6.4.3 **Step three:** If the above steps have been followed but the employee still have the concern or if an employee thinks that the concern is so serious that he/she cannot discuss it with any of the above, he/she must contact the Head of Department and Human Settlements.

6.4.4 Should an employee exhaust these internal mechanisms or where an employee has substantial reason to believe that there would be a cover-up or that evidence will be destroyed or that the matter might not be handled properly, he/she may raise the matter in good faith with a Member of the Executive Council (MEC) for Co-operative Governance and Traditional Affairs and Human Settlements.

6.4.5 Should an employee exhaust these internal mechanisms or where an employee has substantial reason to believe that there would be a cover-up or that evidence will be destroyed or that the matter might not be handled properly, he/she may report the matter in good faith to the following:

- National Anti-Corruption Hotline number (toll free) 0800 701 701.
- Office of the Auditor-General
- Presidential Hotline
- Premier Hotline
- Office of the Public Protector

6.4.6 The AFCU recommends that the employees should have the following information before raising their concern. This will ensure that the AFCU has sufficient information to initiate an investigation:

- **Introduction:** The employee should indicate from the onset whether he/she wants his/her identity to be revealed or not. The contact details should also be provided for feedback, follow up and further clarity.

- **Background:** State the nature of corruption/fraud/maladministration.
- **Location:** Place of occurrence (Joburg, Ekurhuleni, Tshwane, West Rand/Sedibeng).
- **Duration:** How long the acts of corruptions have been perpetrated.
- **Perpetrator(s):** Names of all the people involved.
- **Procedure or system:** Outline the system used by perpetrator(s) to commit acts of corruption, for example, money is collected from beneficiaries to be allocated houses.
- **Personal interest:** The employee should state if he/she has personal interest in the matter.

6.5 Process of dealing with a concern

6.5.1 All matters referred to the Head of Department for investigation of allegations of fraud and corruption or any other impropriety mentioned in this policy will be investigated by the AFCU.

6.5.2 Upon receiving the report with the allegations, the AFCU will register the complaint and open a file with a reference number for the case. An assessment will be made based on available information as to what action should be taken for example an internal inquiry or formal investigation or the matter be referred to the relevant law enforcement agency such as the SAPS.

6.5.3 The allegations reported will be acknowledged, either telephonically or in writing depending on the circumstances, within 7 (seven) working days

6.5.4 The AFCU will give an indication of how the matter will be dealt with and an indication of the proposed time frame for finalizing the investigation. If the decision is made not to investigate the allegations, the reasons will be provided.

7. Policy Safeguards: this policy safeguards the following:

7.1 Harassment and or Victimization

7.1.1 The Department acknowledges the fact that the decision to report a concern can be a difficult one to make, not least because of fear of reprisal from those responsible for the irregularity or unlawful conduct.

7.1.2 The Department will not tolerate harassment or victimization for reporting concerns under this policy and will take reasonable steps to protect employees when they raise a concern in good faith. Any act of harassment or victimization should be reported to the Head of Department, alternatively to the Director: Anti Fraud and Corruption Unit.

7.1.3 This however does not mean that if an employee is already the subject of disciplinary or other Departmental corrective action, that action will be halted as a result of their whistle blowing, whether or not such is in relation to the same facts.

7.2 Confidentiality

7.2.1 The Department will take every effort to protect an employee's identity when he/she raises a concern and does not want his/her identity to be disclosed. If the employee puts such a request i.e. his/her identity to be kept confidential, the Department will not disclose the identity.

7.2.2 It must be appreciated, however, that the investigation process may require to reveal the source of the information in an instance where a statement by the employee may be required as part of the evidence.

7.2.3 If the above situation arise where the Department is unable to resolve the concern without revealing your identity. The Department will engage the employee concerned on how to proceed.

7.2.4 The Department has developed the Whistle Blowing Policy, the policy is aimed at protecting the whistle blower against victimization.

7.3 Anonymous allegations

7.3.1 This policy encourages employees to put their names to allegations because appropriate follow-up questions and investigations may not be possible unless the source of information is identified.

7.3.2 Concerns raised anonymously will be explored appropriately, but consideration will be given to:

- The seriousness of the issue raised;
- The credibility of the concern; and

- The likelihood of confirming the allegation from credible sources.

7.4 Bad faith or false allegations

7.4.1 Employees or other parties must understand the implications (resources and costs) of undertaking investigations and should therefore guard against making allegations, which are false and made with malicious intent.

7.4.2 Employees who make allegations in bad faith or malice may be subjected to disciplinary action.

7.5 Independent advise and external contacts

7.5.1 If an employee prefers to report an incident of alleged fraud and corruption to an independent body rather than to follow the procedure stipulated under 6.4 above, the employee can report such incidents to the National Anti-Corruption Hotline number (0800 701 701).

7.5.2 The Department recognizes that there may be circumstances where an employee may wish to report matters to outside regulatory bodies such as the Public Protector and the Auditor General. Employees are also encouraged to use this service to report an incident of alleged fraud and corruption, rather than not reporting at all.

7.6 If an employee is dissatisfied

If an employee is dissatisfied with the response provided, he/she must remember that he/she can approach other levels and bodies detailed in this policy. While it cannot be guaranteed that all matters will be responded to, in the way an employee might wish, the matter will be handled fairly and properly.

8. The Mandate of AFCU

8.1 The AFCU of the Department assume responsibility to investigate all allegations of fraud and corruption impacting or having the potential to impact on the Department. The AFCU reports its findings and recommendations to the HOD for approval and implementation.

8.2 The AFCU has a mandate of creating of awareness amongst employees and this comprises of education and communication informing employees on an ongoing basis on what constitutes fraud and corruption;

8.3 Encouraging employees to blow the whistle on fraud and corruption.

8.4 The above is not the exhaustive list or activities of what the AFCU does.

9. Communication

The Anti-Fraud and Corruption Unit is responsible for the overall communication of the whistle blowing policy.

10. Management's responsibility

- 10.1 It is the responsibility of the Senior Management to ensure that all employees, are made aware of, and receive appropriate training and education from AFCU with regard to the Whistle Blowing Policy.

11. Policy Implementation

11.1 Audit

- 11.1.1 Periodic audits will be conducted by the Directorate: Corporate Governance of the Department when deemed necessary or as required, to ensure appropriate application and compliance.

11.2 Reporting

- 11.2.1 A quarterly report with a number of complaints received under this policy and their outcome shall be placed before Management and Risk Management Committee.
- 11.2.2 Non-Compliance with this policy or any applicable regulatory requirement through any deliberate or negligent act or omission, including allowing staff or offices, either expressly or impliedly not to comply with this policy will be considered serious.

11.3 Review and Amendments

- 11.3.1 This policy is subject to annual review when necessary by the AFCU, to ensure that it is aligned to prevailing resolutions, regulations and legislation.

11.3.2 No amendment (s) may be made to any section of this policy without such amendment (s) first being approved by the Head of Department.

11.3.3 The Head of Department has a right to amend and modify this policy in whole or in part, at anytime.

11.4 Policy approval



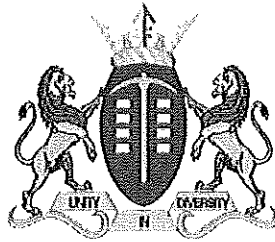
Ms. Matilda Gasela

Head of Department: Department of Human Settlements

Date: 03 FEBRUARY 2017

Approved

Not Approved



GAUTENG PROVINCE

HUMAN SETTLEMENTS
REPUBLIC OF SOUTH AFRICA

Personal Note from the Accounting Officer:

Whistle Blowing Policy: 2016/17 to 2018/19 Period


The Public Service Code of Conduct, public servants in the course of their official duties shall report to the appropriate authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes an offence, or which is prejudicial to the public interest. The whistle blowing policy is therefore a mechanism meant to protect employees from occupational detriment when they report acts of fraud and corruption using the procedure prescribed by the Department and the Protected Disclosure Act of 2000.

I Matilda Gasela in my capacity as the **Head Department of Human Settlements**, here by confirm that I would;

1. Strive to create a culture which will facilitate the disclosure of information, in a responsible manner, by employees relating to impropriety and other irregular and unlawful conduct in the workplace. This will be done by providing clear guidelines for the disclosure of such information and protection against reprisals as a result of such disclosure.
2. Encourage and enable staff to raise concerns within the Department through the responsible units rather than overlooking a problem or blowing the whistle to inappropriate channels.
3. In line with principles outlined in the Whistle Blowing Policy, provide avenues for staff to raise concerns and receive feedback on any action taken;

4. Inform staff on how to take the matter further if they are dissatisfied with the response; and
5. Reassure staff that they will be protected from reprisals or victimization for blowing the whistle in good faith
6. Though the implementation of the policy ensure the mitigation of the risk associated with employees disclosing wider unfounded allegations publicly through wrong channels.
7. Continuously promote the Public Service Code of Conduct which encourages public servants in the course of their official duties to report to the appropriate authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes an offence, or which is prejudicial to the public interest.

Signed:

A handwritten signature in black ink, appearing to read 'Matilda Gasela', written over a horizontal line.

Ms. Matilda Gasela

Head of Department: Department of Human Settlements

Date: 03 FEBRUARY 2017