

GAUTENG PROVINCE

HUMAN SETTLEMENTS
REPUBLIC OF SOUTH AFRICA

FINANCIAL DISCLOSURE & DECLARATION OF INTEREST POLICY

2016/2017-2018/2019

Definition & terms

“**Accounting Officer**” means the Accounting Officer as defined in the Public Finance Management Act of 1999, namely the Head of Department of Gauteng Human Settlements Department.

“**CFO**” means to the Chief Financial Officer of the Gauteng Department of Human Settlements

“**Civility**” means a gift that constitutes of non-alcoholic liquid refreshments and food offered to someone as it is considered to be polite and appropriate (If any form of entertainment is added, it would be labelled “hospitality”).

“**Code of Conduct**” means Chapter 2 of the Public Service Regulations of 2001, as amended, The Code of Conduct for Public Service.

“**Conflict of interest**” means a conflict between the public duties and private interests of a public servant, in which the public servant has private interests which could improperly influence the performance of his/her official duties and responsibilities

“**Corruption**” means any offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 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".

"DPSA" means the Department of Public Service and Administration

"Department" means the Gauteng Department of Human Settlements;

"Designated employee" means:

(a) any member of SMS or

(b) any other person in terms of section 36 (3) of the Public Finance Management Act, 1999 (Act No.1 of 1999), as approved or instructed by the relevant treasury to be the accounting officer of a national department, organisational component, provincial administration or provincial department

"eDisclosure" means an electronic system used by members of the Senior Management Service (SMS) in the Public Service to disclose their financial interests. It replaces the conventional paper-based form. The system maintains a data base of the financial disclosures known as register of designated employee's interests.

"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

"Entity" includes any sole proprietorship, partnership, trust, company or association, irrespective of whether the entity is incorporated or registered under any law;

"Ethics Officer" means an employee of the Department duly appointed to responsible for day-to-day-work related to the ethics management programme in the Department.

"Executive Authority" refers to the MEC of Human Settlements & COGTA, except with regard to the appointment and other career incidents of a head of department, in which case it means the executing authority as contemplated;

“Family members” in relation to any person, means his or her parent, sister, brother, child or spouse—

- (a) including a person living with that person as if they were married to each other, namely a spouse or life partner;
- (b) whether such relationship results from birth, marriage or adoption;
- (c) including any other relative who resides permanently with that person; and
- (d) including any other relative who is of necessity dependent on such person;

“Financial disclosure” means the financial disclosure as contemplated in Chapter 3 of the Public Service Regulations of 2001, as amended, Financial Disclosure of Members of the Senior Management Services and certain other employees.

“Financial interests” mean the registrable interests as contemplated in Regulation D of Chapter 3 of the Public Service Regulations of 2001, as amended, Financial Disclosure of Members of the Senior Management Services and certain other employees.

“Good governance” has eight major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimised, and that the interests of the most vulnerable in society are given attention.

“Head of Department/HOD” means the Accounting Officer of the Department as defined above.

“Hospitality” can be food, drink, entrance to events, accommodation or entertainment provided free of charge or heavily discounted and for which no direct or indirect contractual obligation are implied. For example: Complimentary tickets for soccer, festivals, flights and accommodation etc.;

“Non-designated employee” refers to any employee appointed on salary level 1 to 12 who are not approved or instructed in terms of section 36 (3) of the Public Finance Management Act, 1999 (Act No. 1 of 1999) by the relevant treasury to be the Accounting Officer of a national department, organizational component, provincial Administration or provincial department.

“Private benefits” includes, but not limited to, favours, donations, grants and sponsorships that directly or indirectly benefit the public servant;

“Retainership” means retainership as contemplated in Chapter 3 of the Public Service Regulations of 2001 as amended.

“Sponsorship”- Refers to either cash and/or in-kind fee paid on behalf of an employee to attend an event or enrol with any institution for academic or any other purpose.

“SMS member” means Senior Management Services as defined in the Public Service Regulations and the SMS Handbook.

1. Problem Statement

The Disclosure & Declaration of Financial Interests has been one tool developed by government to manage conflict of interest and to promote and entrench the culture of transparency and accountability within the public service. According to the Fact Sheet on the Financial Disclosure Framework for the 2011/2012 Financial Year¹ "the Financial Disclosure Framework is aimed at preventing conflicts of interest by requiring SMS members to disclose their financial interests". The Fact Sheet further state that SMS members in the Public Service are entrusted with public funds and, therefore, need to maintain the highest standard of professional ethics and that their integrity must be beyond reproach as they ought to lead by example.

The Framework was initially only applicable to Heads of Departments but since 2000/01 it had been applied to all senior managers. The average rate of disclosures was 80% but the Commission wanted a rate of 100%. The Stakeholder Engagement Session Report, Gauteng Province, of the Public Service Commission state that the Department has achieved 100% compliance on submission of financial disclosure by SMS members during 2012/2013 and 2013/2014 financial year².

Some recommendations by the Commission in the Stakeholder Engagement Session Report were that the Portfolio Committees should closely monitor the status of compliance with the Financial Disclosure Framework and that the Executive Authority should strengthen the implementation of the Financial Disclosure Framework (i.e. Remunerative Work Outside the Public Service, Appointment of Ethics Officers).

The Financial Disclosure Framework for Senior Management Service is an important initiative that was put in place to promote good governance in the Public Service. Since its inception, the Financial Disclosure Framework was implemented in a phased manner. Implementation started with managers at level 15 & 16 during April 2000. In May 2001, the Financial Disclosure Framework was extended to all members of the Senior Management Service. In terms of the

¹ Fact Sheet on the Financial Disclosure Framework for the 2011/2012 Financial Year

² Stakeholder Engagement Session, Gauteng Province, 08 October 2014 page 6.

Financial Disclosure Framework, members of the Senior Management Service are required to disclose their financial interests annually to relevant Executive Authority. The object of this practice is to promote open and accountable government by identifying any conflict of interest.

Disclosures are not meant to be punitive or prevent government personnel from advancing their future ambitions, but it assists in ensuring accountable, transparent public service.

In its 2006 Report on Managing Conflict of Interest in the Public Service³, the Public Service Commission (PSC) stated the following:

“The first step in managing conflict of interest is to identify the areas of risk, and to describe the kinds of conflicts of interest that are likely to occur. Some examples of these are:

- ✓ *Financial and economic interests;*
- ✓ *Interacting regularly with the private sector;*
- ✓ *Family or private businesses;*
- ✓ *Involvement in secondary employment that potentially conflicts with an officia’s public duties;*
- ✓ *Contracting and procurement; (supply chain management)*
- ✓ *Providing subsidies, financial assistance, concessions or other relief to those in need.*

The report further state involvement of employees in disclosure of their financial interest at level lower than SMS in high-risk business area (such as supply chain) will ensure better coverage of relevant conflicts of interest risks and assist such employees to analyze their own circumstances to enable them to identify and report conflicts of interest as they arise.

In this regard, this policy is aimed at managing conflicts of interests for officials below the level of SMS who are in business units exposed to fraud, corruption and ethics risks.

³ Report on Managing Conflicts of Interests in the Public Service, Public Service Commission 2006 page-37-38.

2. Introduction

The Public Services leaders & employees have the duty to create & maintain a professional environment that is infused with values of accountability, efficiency, transparency and professionalism. In addition to these values, we must also strive towards integrating values of honesty, trust, justice and fairness in our daily work ethic.

Ethics management seeks to promote acceptable behaviour and the right attitude in performing entrusted duties.

In 1997 government introduced the Code of Conduct for the Public Service. The Code sets standards for ethical conduct in the public service. This Code is supported by the Financial Disclosure Framework that requires senior officials to declare their financial interests annually.

In 2002, Cabinet approved the Public Service Anti-corruption Strategy. The strategy represents the blue-print of anti-corruption work in the public service. This strategy has been customised for practical implementation in most national and provincial departments.

Corruption proliferates under conditions where ethics infrastructure is weak and ineffective. It thus becomes imperative to incorporate an ethical dimension into management frameworks to ensure that management practices are consistent with the values and principles the public service aspires to achieve.

The management of ethics goes beyond the prevention of fraud, corruption and misconduct. It aims to promote an ethical culture that infuses all decisions in an organisation as well as the way people interact with each other. One of the critical aspects of promoting ethical behaviour in the workplace is the disclosure of financial interest by employees.

3. Purpose

The purpose of this policy is to provide a policy prescript on financial disclosure and declaration of interest for SMS members and all employees in high-risk business areas of the Department.

3.1. Policy objectives

The objectives of this Policy are:

1. To ensure compliance to policy in terms of Financial Disclosure and Declaration of Financial Interest for both designated & non-designated officials employees;
2. To provide procedures for Financial Disclosure and Declaration of Financial Interest.
3. To outline the process for dealing with actual disclosure and declarations of interest.
4. To outline measures to be taken if compliance to the policy is not adhered to.

4. Scope of the policy

This policy is applicable to designated & non-designated employees of the Gauteng Department of Human Settlements. Compliance is expected from the following employees of the Department;

- 4.1 Senior Management Services Members, all members of the Senior Management Services.
- 4.2 Supply Chain Management employees, all employees.
- 4.3 Bid Committee members. Bid Committees are the Bid Specification Committee, Bid Evaluation Committee and the Bid Adjudication Committee.
- 4.4 Chief Construction Project Managers.

This policy is also applicable to any other employees of the Department as identified by the Department of the Public Service and Administration (DPSA) Directives or Circulars or Executive Authority in line with his/her delegated duties

5. The Constitution, Legislative and policy framework

The following legislation is applicable to this policy

- 5.1 The Constitution of the Republic of South Africa (1996);
- 5.2 Public Service Act of 1994 as amended;
- 5.3 Prevention and Combatting of Corrupt Activities Act (2004);
- 5.4 Protected Disclosure Act 26 of 2000;
- 5.5 Prevention of Organised Crime Act;

- 5.6 Public Service Regulations, 2016;
- 5.7 Senior Management Service (SMS) Handbook
- 5.8 National Treasury Regulations of March 2005, 16A Supply Chain Management;
- 5.9 National Treasury's Code of Conduct for Supply Chain Practitioners; and
- 5.10 National Treasury Practice Note No. 7 of 2009/2010 SCM – Declaration of Interest: Amendment and augmentation of Standard Bidding Document (SBD4).

6. Key policy principles

6.1. Disclosure of financial interest by designated & non-designated

6.1.1. An employee must, in the prescribed manner, disclose to the Accounting Officer all his or her financial interests including all—

1. Shares, loan accounts or any other form of equity in a registered private or public companies and other corporate entities recognised by law:

- (i) The number, nature and nominal value of shares of any type in any public or private company and its name; and
- (ii) Other forms of equity, loan accounts, and any other financial interests owned by an individual or held in any other corporate entity and its name.

2. Income-generating assets:

- (i) A description of the income-generating asset;
- (ii) The nature of the income; and
- (iii) The amount or value of income received.

1. Trusts:

- (i) The name of the trust, trust reference or registration number as provided by the Master of the High Court, and the region where the trust is registered;
- (ii) The purpose of the trust, and your interest or role in the trust; and
- (iii) The benefits or remuneration received (these include fees charged for services rendered).

4. Directorships and partnerships:

- (i) The name, type and nature of business activity of the corporate

entity or partnership; and

- (ii) If applicable, the amount of any remuneration received for such directorship or partnership.

5. Remunerated work outside the employee's employment in her or his department:

- (i) The type of work;
- (ii) The name, type and nature of business activity of the employer;
- (iii) The amount of the remuneration received for such work; and
- (iv) Proof of compliance with section 30 of the Act must be attached.

6. Consultancies and retainerships:

- (i) The nature of the consultancy or retainership of any kind;
- (ii) The name, type and nature of business activity of the client concerned; and
- (iii) The value of any benefits received for such consultancy or retainership.

7. Sponsorships:

- (i) The source and description of direct financial sponsorship or assistance;
- (ii) The relationship between the sponsor and the employee;
- (iii) The relationship between the sponsor and the department; and
- (iv) The value of the sponsorship or assistance.

8. Gifts and hospitality from a source, other than a family member:

- (i) A description, value and source of a gift;
- (ii) The relationship between the giver and the employee;
- (iii) The relationship between the giver and the department; and
- (iv) A description and the value of any hospitality intended as a gift in kind.

9. Ownership and other interests in immovable property:

- (i) A description and extent of the land or property;
- (ii) The area in which it is situated;
- (iii) The purchase price, date of purchase and the outstanding bond on the property; and
- (iv) The estimated market value of the property.

10. Vehicles:

- (i) A description (make and model) of the vehicle;
- (ii) The registration number of the vehicle; and
- (iv) The purchase price, date of purchase and the outstanding amount owing on the vehicle.

6.2. Declaration of Interest: Family members:

6.2.1 Regarding awards to close family members of persons in the service of the state, the National Treasury Practice Note No. 7 of 2009/2010 SCM – Declaration of Interest: Amendment and augmentation of Standard Bidding Document (SBD4) stipulate that:

“16A8.4 If a supply chain management official or other role player, or any close family member, partner or associate of such official or other role player, has any private or business interest in any contract to be awarded, that official or other role player must –

- (a) disclose that interest; and
- (b) withdraw from participating in any manner whatsoever in the process relating to that contract.

16A8.5 An official in the supply chain management unit who becomes aware of a breach of or failure to comply with any aspect of the supply chain management system must immediately report the breach or failure to the accounting officer or accounting authority, in writing.

6.3. Declaration of Interest: Employee doing business with the state:

In terms of the Public Service Regulations 13 (c) *“An employee shall not conduct business with any organ of state or be a director of a public or private company conducting business with an organ of state, unless such employee is in an official capacity a director of a company listed in schedule 2 and 3 of the Public Finance Management Act”*

The policy principle is therefore that no application or declaration of interest regarding an employee of the Department doing with the state will be accepted or processed for consideration as doing business with the state is prohibited.

7 Disclosure of designated employees' interests

- 7.1 SMS members, except for a Head of Department shall, not later than 30 April of each year, disclose to the relevant Head of Department, in a form prescribed for this purpose by the Minister of Public Service and Administration, particulars of all his or her interests (listed in 6.1.1 above) in respect of the period 1 April of the previous year to 31 March of the year in question.
- 7.2 The Head of Department shall, not later than 30 April of each year, disclose to the Executive Authority (MEC), in the form prescribed for this purpose by the Minister of Public Service and Administration, particulars of all his or her interests in respect of the period 1 April of the previous year to 31 March of the year in question.
- 7.3 Any person who assumes duty as a designated employee on or after 1 April in a year shall make such disclosure within 30 days after assumption of duty in respect of the period from 1 April to date of disclosure.
- 7.4 The Executive Authority shall ensure that the disclosure of interests by designated employees is submitted electronically to the Public Service Commission.
- 7.5 The Executive Authority shall submit to the Public Service Commission a copy of the form submitted to him/her—
- (a) Not later than 31 May of the year in question;

8. Guidelines for Disclosure of Financial Interests of employees

- 8.1 The following guidelines are to be followed for disclosure of financial interest:
- 8.1.1 An employee whose spouse, partner, business associate or close family member, stand to acquire any direct benefit from a contract concluded with their department, must disclose in writing full particulars of the benefit to the Ethics Officer and withdraw from participating in any manner whatsoever in the process relating to that contract.

8.1.2 The Ethics Officer(s) of the department to scrutinise, assess and analyse the disclosure forms of all employees of the department.

8.1.3 An employee to forward his or her disclosure form to the Ethics Officer.

8.1.4 An employee to disclose every time there is a change of status or there is a potential or actual conflict of interest as opposed to annually as is currently required.

8.1.5 The Head of Department be assigned the responsibility to oversee the approval of disclosure reports for non-designated members or non-SMS members compiled by the Ethics Officer.

8.1.6 The Ethics Officer will submit the declaration of interests to the Head of Department for submission to the Public Service Commission.

8.1.7 The disclosure form of the Head of Department will be forwarded to the Executive Authority for submission to the Public Service Commission.

9. Failure to disclose interests

Any designated & non-designated stated employee who-

9.1 Fails to disclose an interest in terms of this policy; or

9.2 When disclosing an interest in terms of this policy, wilfully provides incorrect or misleading or fraudulent information,
is guilty of misconduct.

10. Enforcement

10.1 Any employee who fails to comply with the requirements and provisions of this policy will be subject to appropriate disciplinary action as envisaged in the Public Service Regulations 2016 and other applicable prescripts.

10.2 The Member of the Executive Council or the Head of Department or Senior Manager delegated with such authority by the Head of Department shall immediately take appropriate disciplinary steps against any employee who fails to comply with provisions of this policy.

11. Management Tools

The following management tools will be put in place to properly manage the implementation of the financial disclosure and declaration of interest policy:

- 11.1 The Ethics Office will issue financial disclosure notification to all designated (SMS) and non-designated during last quarter (February or March) of the financial year. This will serve a reminder for compliance to financial disclosure framework by all employees required to disclose their interests.
- 11.2 All designated and non-designated employees who require assistance with regards to their disclosure and declaration of interest can contact the Ethics Office for support.
- 11.3 All SMS members shall disclose their financial interest electronically (eDisclosure) as provided for by the DPSA.
- 11.4 Non-designated officials shall complete forms manual which will be available on the Department's intranet, electronically, or by hand from the Ethics Office.

12. Monitoring

- 12.1 In terms of the National Treasury Practice Note No. 7 of 2009/2010 SCM – Declaration of Interest: Amendment and augmentation of Standard Bidding Document (SBD4) in as far as family members of officials doing business with the Department or their failure to disclose the same in Bid documents:

“16A9.2 The accounting officer or accounting authority –

(a) may disregard the bid of any bidder if that bidder, or any of its directors –

(i) have abused the institution's supply chain management system

(ii) have committed fraud or any other improper conduct in relation to such system; or

(iii) have failed to perform on any previous contract; and

(b) must inform the relevant treasury of any action taken in terms of paragraph (a).”

- 12.2 Ethics Office shall be responsible for the monitoring of this policy in the Department.

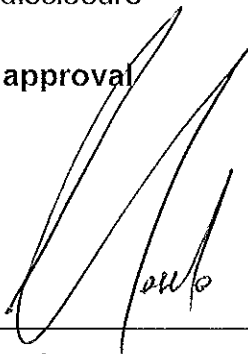
13 Policy review

This policy shall be reviewed in every three years, unless otherwise required by the change in national and provincial legislative framework or change in policy and strategy, or determination and directive issued by the Department of Public Service and Administration dealing with financial disclosure and declaration of interest or as instructed by the Accounting Officer and/or the Executive Authority of the Department.

14 Date of Effect

This policy will be effective from the date that the approval is granted by the Executive Authority of the Department, and replaces any existing policy on financial disclosure

15. Policy approval



Ms. Matilda Gasela

Head of Department: Department of Human Settlements

Date: 03 FEBRUARY 2017

Recommended	<input checked="" type="checkbox"/>	Not recommended	<input type="checkbox"/>
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Mr. SP Mashatile, MPL

MEC: Cooperative Governance and Traditional Affairs & Human Settlements

Date: 13/02/2014

Approved	<input checked="" type="checkbox"/>	Not Approved	<input type="checkbox"/>
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