

POLICY ON WHISTLE BLOWING

1. PREAMBLE

The Department of Cooperative Governance and Traditional Affairs is committed to the fight against fraud and corruption in the workplace. However, one of the key obstacles faced in the fight against fraud and corruption is the fact that individuals are often intimidated to speak out or “blow the whistle” on corruption and unlawful activities they observe occurring in the workplace.

The Public Service Code of Conduct requires the public servants to report fraud, corruption, nepotism, maladministration and any other act which constitutes an offence or which is prejudicial to the public interest to the appropriate authorities.

Raising an alarm on any suspected form of fraud, corruption etc, will work towards a culture of openness, accountability and transparency.

2. DEFINITIONS

In this policy unless the context otherwise indicates: -

“**Employee**” means any person-

- (a) Excluding an independent contractor, who works for another person or for the state and who receive, any remuneration; and
- (b) Other who in any manner assists in carrying on or conducting the business of an employer

“**Employer**” means -

- (a) Who employs or provides work for any other person who remunerates or expressly or tacitly undertakes to remunerate that other person; or
- (b) Who permits any person in any manner to assist in the carrying on or conducting of his, her or its business, including any person acting on behalf of or on the authority of such employer.

“**Protected disclosure**” or “**disclosure,**” means a disclosure made in terms of this policy or the Act;

“**the Act**” means the Protected Disclosure Act, 2000 (Act 26 of 2000);

“**Whistle blower**” means a person who has made a disclosure in terms of this policy or the Act;

“**occupational detriment**”, in relation to the working environment of an 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 in terms of condition of employment or retirement which is altered or kept altered to his or her disadvantage;
- (f) being refused, 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 in paragraphs (a) to (g) above or
- (i) being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security;

3. PURPOSE OF POLICY

- (a) To encourage whistle blowing around suspected impropriety within the Department.
- (b) To protect those who have blown the whistle against any form of occupational detriment; and
- (c) To provide for procedures in which an employee can disclose information regarding improprieties in the workplace.

4. AUTHORISATION

The policy is authorised by the Public Service Code of Conduct mandated in the Constitution .

5. REGULATORY FRAMEWORK

The policy derives its mandate from the following legislation or prescripts: -

- 5.1 Protected Disclosures Act, (No. 26 of 2000);
- 5.2 Promotion of Access to Information Act, (No. 2 of 2000);
- 5.3 A guide for Public Sector Accountability implementing the protected Disclosures Act;
- 5.4 Prevention and Combating of Corrupt Activities Act, (No. 12 of 2004);
- 5.5 Public Finance Management Act, (No. 1 of 1999)

6. POLICY FRAMEWORK

6.1 RESPONSIBILITY OF THE EMPLOYER

The Department commits itself to a culture that promotes openness. This must be done by: -

- 6.1.1 Educating, training, workshopping employees about the events which constitute fraud, corruption and malpractice and the effect they have to the Department;
- 6.1.2 Involving employees, listening to their concerns and encouraging the appropriate use of the process of whistle blowing as outlined in this policy;
- 6.1.3 Conducting an investigation on any allegations of fraud, corruption and mismanagement;

- 6.1.3 Conducting an investigation on any allegations of fraud, corruption; and
- 6.1.5 To ensure strict and proper implementation of this policy.

6.2 PROTECTED DISCLOSURE

- 6.2.1 Any employee who has a reasonable belief that there is corruption, fraud or malpractice relating to any of the matters listed in clause 7.3, may make a disclosure in terms of the procedure outlined in this policy.
- 6.2.2 The employee who makes a disclosure as contemplated in clause 6.2.1 above must not be driven by malice, bad faith or personal gain in making such a disclosure.
- 6.2.3 The disclosure referred to above may be made against any form of fraud, corruption or malpractice or likelihood of such being committed by any manager, another staff member a group of staff, the employee's own section or different section in the Department.
- 6.2.4 A disclosure made in terms of this policy and the Act is a protected disclosure provided that it fully complies with the requirements of the Act.

6.3 PROCEDURE FOR DISCLOSURE

- 6.3.1 An employee may make a disclosure to any of the following: -
 - (a) A legal practitioner or a person whose occupation involves the giving of legal advice, as contemplated in section 5(a) of the Act;
 - (b) The Head of Department;
 - (c) The MEC for Local Government ;
 - (d) The Public Protector;
 - (e) The Auditor-General;
 - (f) Supervisor of such an employee;
 - (g) To the Departmental hotline number;
- 6.3.2 The disclosure may be verbal but it should preferably be in writing provided that the employee puts his or her name in the written disclosure.
- 6.3.3 The employee is entitled to choose any of the persons mentioned in clause 6.3 to whom the disclosure may be made.
- 6.3.4 Once a disclosure is received, it will be forwarded to the Directorate: Internal Audit for investigation.
- 6.3.5 The whistle blower must be informed if the progress made in the investigation as well as the final outcome of the case.

6.4 PROTECTION OF A WHISTLE BLOWER

6.4.1 An employee who has made a disclosure in terms of this policy or the Act may not be subjected to any form of occupational detriment by his or her employer.

6.4.2 If the whistle blower so wishes, his or her identity may be kept confidential and will not be disclosed without the employee's consent.

6.5 CONTRAVENTIONS

6.5.1 An employee who makes a disclosure in bad faith or who makes an allegation without having reasonable grounds for believing it to be true may be subjected to disciplinary action.

6.5.2 Any person who subjects an employee in any form of occupational detriment on account or partly on account of having made a protected disclosure may be subjected to disciplinary action.

6.5.3 Any person who contravenes or fails to comply with any provision of this policy may be subjected to disciplinary action.

7. SCOPE OF APPLICATION

7.1 This policy applies to all employees of the Department, including interns and learners.

7.2 The policy does not apply to personal grievances, which are dealt with in terms of the existing procedures on grievance, discipline and misconduct.

7.3 The policy covers all genuine concerns raised, but not limited to: -

7.3.1 Financial misconduct;

7.3.2 Failure to comply with a legal obligation;

7.3.3 Health and safety risks;

7.3.4 Environmental damage;

7.3.5 Criminal offence;

7.3.6 Unfair discrimination;

7.3.7 Corruption and misconduct; or

7.3.8 Attempt to conceal any of the above matters deliberately.

8. PROCEDURES FOR AMENDMENT OF THE POLICY

8.1 The amendment of the policy shall be done in accordance with the changing legal frameworks and shall be subjected to approval by the Head of Department

8.2 The Head of Department has the discretion to deviate from any clause in this policy where needs arise.

9. MONITORING, EVALUATION AND REPORTING

9.1 The Department through its delegated structures shall monitor and evaluate the effectiveness and of the implementation and report to the Head of Department on annual basis.

APPROVED/NOT APPROVED

MR. S NGUBANE
ACTING: HEAD OF DEPARTMENT
DATE: _____