



**small business
development**

Department:
Small Business Development
REPUBLIC OF SOUTH AFRICA

DEPARTMENT OF SMALL BUSINESS DEVELOPMENT

Whistle Blowing Policy

Contents

1. DEFINITIONS.....	3
2. INTRODUCTION.....	5
3. PURPOSE OF THE POLICY	7
4. LEGISLATIVE MANDATE.....	7
5. SCOPE OF POLICY	8
6. WHO IS AFFECTED BY THE POLICY.....	8
7. WHO CAN RAISE CONCERNS	9
8. PROCEDURE FOR RAISING CONCERNS.....	9
9. HANDLING DISCLOSURES.....	10
10. REDRESS.....	10
11. PROTECTION AGAINST OCCUPATIONAL DETRIMENT.....	11
12. MANAGEMENT COMMITMENT	12
13. CONFIDENTIALITY	12
14. OWNERSHIP	13
15. RECOMMENDATION AND APPROVAL	13

1. DEFINITIONS

“ THE ACT”	means the Protected Disclosure Act of 2000
“ THE POLICY’	means the Whistle Blowing Policy
“ DEPARTMENT”	means Department of Small Business Development
“DISCLOSURE “	<p>Means any disclosure of information regarding any conduct of an employer, or employee of that employer, made by an employee who has reason to believe that the information concerned shows or tends to one or more of the following:</p> <ul style="list-style-type: none"> (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 and safety of an individual has been, is being or 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 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
“ EMPLOYEE”	means any person employed by the Department
“ EMPLOYER”	means any persons who employs or provides works for any other person and who remunerate or expressly or tacitly undertakes to remunerates that other person

“IMPROPRIETY”	means any conduct which falls within any of the categories referred to definition of “disclosure” , irrespective of whether or not the impropriety occurs or occurred in the Republic of South Africa or elsewhere
“ PROTECTED DISCLOSURE”	for the purpose of this policy it means any disclosure made in compliance with the requirements of this Policy
“ WHISTLE BLOWING”	means reporting of fraud and corruption and any other illegal activity which has the potential to harm the department
“ WHISTLE BLOWER “	means a person who expose fraud, corruption and or any illegal activity happening the department
“ OCCUPATIONAL DETRIMENT”	means being subjected to any disciplinary action or any form of harassment as a result of blowing whistle
“ HOTLINE”	means telephone number administered by the Public Service Commission for reporting fraud and corruption

2. INTRODUCTION

- 2.1. The Department of Small Business Development (DSBD) is committed to working towards a culture of openness and transparency.
- 2.2. DSBD is further committed to the fight against Fraud and Corruption, whether the perpetrators are internal or external, as stipulated in DSBD Fraud Prevention and Anti-Corruption Policy and Strategy.
- 2.3. DSBD fully subscribes to the provisions of the Protected Disclosures Act, 2000 (Act No.26 of 2000), which requires the implementation of a whistle-blowing mechanism and the protection of employees who disclose information regarding unlawful or irregular conduct by the employer or other employees in the employ of the employer.
- 2.4. DSBD employer and employee has a responsibility to disclose criminal and any other irregular conduct in the workplace; and
- 2.5. DSBD employer has a responsibility to take all necessary steps to ensure that employees who disclose such information are protected from any reprisals as a result of such disclosure.
- 2.6. This Policy is developed based on principles objects of the Protected Disclosures Act, which encourage employees to disclose employees to disclose any acts of misconduct without fear of any recriminations or reprisals.
- 2.7. Section 2 of the Protected Disclosure Act clearly defines the "objects of the Act" as Follows:
 - 2.7.1. To protect an employee from being subjected to an occupational detriment on account of having made a protected disclosure.
 - 2.7.2. To provide for remedies in connection with any occupational detriment suffer
 - 2.7.3. To provide for procedure in terms of which an employee can, in responsible manner, disclose information regarding improprieties by his or her colleagues, other stakeholders and employers
 - 2.7.4. This policy is developed based on the principles objects of the protected

Disclosure Act, which encourage employees to disclose any acts of misconduct without fear of any recriminations or reprisals

2.8. The Department also recognizes that it is obliged to systematically manage and regularly review and follow up on all reported allegations for fraud and corruption in terms of the Prevention and Combating of Corruption Activities Act (12 of 2004).

2.9. The policy identifies the processes and tools for the reporting or disclosing any allegations of fraud and corruption without fear of any recriminations, reprisals or victimization Not only does it wish to minimize its risks to fraud and corruption but also maximize its opportunities for zero fraud and corruption environment. In doing so, the following are to be considered:

2.9.1. Harassment/ Victimizations- The Department acknowledges the fact that the decision to report a concern can be difficult one to make, not least because of fear of reprisal from those responsible for the irregularity. The Department will not tolerate harassment or victimization and shall protect whistle blowers.

2.9.2. Confidentiality – The Department will take all necessary steps to protect an individual's identity when he/she raises a concern and does not want his/her identity to be disclosed. It must be appreciated, however, that the investigation process may reveal the source of the information and a statement by the employee may be required as part of the evidence.

2.9.3. Anonymous Allegations- Department of Small Business Development encourages employees and members of the public to make disclosures through the internal channels or anonymously with the Public Service Commission (PSC). However, concerns expressed anonymously may be difficult to investigate as evidence may not be obtained from anonymous whistle blowing; nevertheless, they will be followed up by the Department in terms of the Fraud Investigation Procedure. The decision to follow up will, however, be applied by taking into account the following:

2.9.3.1. The seriousness of the issue raised;

2.9.3.2. The credibility of the concern; and

2.9.3.3. The likelihood of confirming the allegation.

2.9.4. Untrue Allegations or Malicious Whistle Blowing- All employees and other parties shall be discharged from making allegations, which are false and made with malicious intentions. Where such malicious or false allegations are discovered, the person who made the allegations will be subjected to disciplinary action or other appropriate action in the case of external parties. This is because officials or other parties that make false allegation must understand the implications in terms of resources and costs of undertaking investigations.

3. PURPOSE OF THE POLICY

- 3.1. To provide a mechanism by which staff members are able to raise concerns with the appropriate line management, or specifically appointed persons within DSBD, where they have reasonable grounds to believe that there is fraud and corruption within DSBD, and not attract reprisal or victimization for such disclosures of information.
- 3.2. In terms of the Protected Disclosure Act, employees can blow the whistle on fraud and corruption within DSBD without the fear of being victimized or suffering any occupational detriment as defined by the Act. Staff members are encouraged to raise concern responsibly through the procedure laid down in this policy document.

4. LEGISLATIVE MANDATE

- 4.1. Section 8 of the bill of rights in the Constitution of the Republic of South Africa, 1996 (Act 106 of 1996)
- 4.2. Public Finance Management Act (PFMA), Act 1 of 1999 as amended by Act 29 of 1999
- 4.3. Prevention of organized Crime Act (Act 121 of 1998) (POCA)
- 4.4. Treasury Regulation chapter 4
- 4.5. Promotion of Equality and Prevention of Unfair Discrimination Act (Act 4 of 2000)
- 4.6. Protected Disclosure Act 26 of 2000
- 4.7. Prevention and Combating of Corrupt Activities Act 12 of 2004
- 4.8. Promotion of Administrative Justice Act No 3 of 2000
- 4.9. Promotion of Access to Information Act No 2 of 2000

4.10. Batho Pele principles

4.11. Code of conduct

4.12. Public Service Regulation Act

5. SCOPE OF POLICY

5.1. The policy is applicable to DSBD employees and deals with concerns raised relating to, amongst others, fraud, corruption, unethical conduct, financial misconduct and malpractice within DSBD.

5.2. The Policy does not apply to personal grievances, which will be dealt with under existing procedures on grievance, discipline and misconduct.

5.3. If however, during the investigation, any concern raised in relation to fraud and corruption issues appears to the investigator to be relating more to grievance or discipline, then the grievance procedures will be applied.

5.4. Examples of issues covered by the policy include the following:

5.4.1. Financial misconduct

5.4.2. Health and safety

5.4.3. Environmental damage

5.4.4. Unfair discrimination

5.4.5. Corruption

5.4.6. Fraud

5.4.7. Bribery

5.4.8. Occupational detriment

5.4.9. Attempts to conceal or suppress any information relating to any of the above paragraphs (5.4.1) to (5.4.9).

6. WHO IS AFFECTED BY THE POLICY

6.1. The policy applies to all DSBD employees.

6.2. The policy will not be applicable to Entities reporting to the DSBD (known as sefa and seda) as they are autonomous, and will thus be subject to their own internal governance systems.

6.3. However, the Director General of DSBD may request the Chief Audit Executive (CAE)

of any entity to provide information regarding any investigation flowing from a whistleblower report.

7. WHO CAN RAISE CONCERNS

- 7.1. Any member of staff who has a reasonable belief that there is corruption and fraud relating to any of the matters referred to in clause 5.4
- 7.2. Concerns must be raised in good faith and without malice, and not for personal gain, and the person disclosing information must reasonably believe that the information disclosed and any allegations contained therein, are substantially true.
- 7.3. The issues raised may be relating to a manager, another staff member, a group of staff within the individual's section or division or another section or division of DSBD. The perpetrator could be an official, manager, customer, a former employee or service provider or a claimant of incentives.

8. PROCEDURE FOR RAISING CONCERNS

- 8.1. Concerns may be raised with the Chief Audit Executive (CAE) on 012 394 41757/ NButhlezi@dsbd.gov.za, Risk and Ethics Officer on 012 394 1622/ QRamaboa@dsbd.gov.za, the Director Legal Services on 012 394 1877/ PPaideya@dsbd.gov.za or your line manager, either verbally or in writing. Employees are however encouraged to raise their concerns in writing.
- 8.2. In the view of the employee, the matter is of such serious nature that he or she cannot raise it with any of the above officials, he or she can raise it with the Director-General on 012 394 1433/ DG@dsbd.gov.za or to Minister on 012 394 5820/ Minister@dsbd.gov.za or through the National Anti-Corruption Hotline (NACH) using the toll free number – 0800 701 701.
- 8.3. Should the employee exhaust all the internal mechanisms, or where the employees has substantial reason to believe that there could be concealment of the investigation or that evidence could be destroyed, or that the matter might not be handled properly, he or she may raise the matter, in good faith, with a member of the Cabinet; or the Public Protector; or the Auditor –General.
- 8.4. An employee may still, if needing independent advice, contact his or her personal legal advisor, labour organization

9. HANDLING DISCLOSURES

- 9.1. On receipt of a disclosure, the Risk and Ethics Manager, Chief Audit Executive and Director: Legal will initially assess what action would be appropriate in dealing with the matter.
- 9.2. DSBD will acknowledge receipt of the concern within 7 working days of receipt thereof. An indication of how DSBD will deal with the matter will be provided if requested. DSBD will advise the disclosing employee of who will be dealing with the matter and his or her contact details, and whether further assistance of the disclosing employee may or will be needed. Should the DSBD decide not to investigate the matter, reasons will be provided to the disclosing employee.
- 9.3. Any whistle blowing matter received internal or through National Hotline referred to the department shall be investigated and completed within 40 days.
- 9.4. Employees must note that the DSBD may not be able to tell them in all cases of the precise action that is or will be taken, where this would infringe on a duty of confidence owed to another person.
- 9.5. In an event that an official provides a report to a manager to action then the manager must acknowledge receipt of the report. The Director General might delegate to any other person or appoint an external service provider to investigate.
- 9.6. A failure by the manager to act upon receiving such a report, especially if such failure led to the reporting official suffering any form of occupational detriment, shall be subjected to disciplinary action.

10. REDRESS

- 10.1. Disclosure may not necessarily be dealt with in the manner in which the disclosing party wishes them to be dealt with, but the DSBD will handle disclosure in a fair, equitable and proper manner.
- 10.2. Should a disclosing employee not be satisfied with the DSBD's response, he or she may report the matter to another level or body as referred to in this policy in 8.2. and 8.3 above

11. PROTECTION AGAINST OCCUPATIONAL DETRIMENT

- 11.1. The DSBD management is committed to the provisions of this policy, and will thus ensure that employees who make disclosures in terms of this policy will not be penalized, victimized or subjected to any form of occupational detriment for so doing.
- 11.2. The Act defines occupational detriment to include being dismissed, suspended, demoted, transferred against their will, harassed or intimidated, refused a reference, as a result of the disclosure.
- 11.3. This policy shall extend such definition to include proven or tangible victimization such as, but not limited to, inconsistent disciplinary action against the disclosing official, or unfair performance management to reflect poor performance, as a result of the disclosure.
- 11.4. An employee who raises a concern in good faith in terms of the policy (also referred to as a "whistle-blower").
- 11.5. The protection granted in terms of this policy will not be extended to employees who have been found to have raised false accusations maliciously. An employee who makes allegations without having reasonable grounds for believing the allegation to be true may be subjected to disciplinary action.
- 11.6. Conversely, any official found to have subjected an employee to any form of occupational detriment for the reason that they raised a valid concern in terms of this policy shall be subjected to disciplinary action.
- 11.7. In such cases where a whistle-blower has a well-founded apprehension of victimization, management must take all reasonable steps to protect the whistle-blower, which may include using job rotation as an interim solution.
- I. The Labour Relations, Risk and Ethics Management Unit and Internal Audit unit must communicate on a regular basis with each other to detect whether cases of disciplinary action such as suspension correspond with whistle-blowers as recorded in the register of cases reported for investigation.
 - II. Grievances lodged relating to alleged unfair performance management should also be compared against cases involving whistle-blowers as recorded in the register of cases reported for investigation, to establish if the grievance supports a case for victimization in terms of this policy.

12. MANAGEMENT COMMITMENT

- 12.1. The DSBD is committed to encouraging a culture that promotes openness, and this will be demonstrated as follows –
- 12.1.1. The policy will be made accessible to all the DSBD employees, via the intranet, DSBD Blitz, and induction programme.
- 12.2. The Risk and Integrity Management within the Office of the Director General will conduct awareness sessions with DSBD employees on what constituted fraud, corruption and malpractice and its effect on DSBD, while the Labour Relations unit will conduct awareness campaigns on the Public Service Code of Conduct.
- 12.3. The Risk and Integrity Management together with Internal Audit will present to the Risk and Ethics Management Committee the number of fraud and corruption matters reported and the outcomes thereof.
- 12.4. DSBD subscribes to the National Anti-Corruption Hotline (NACH) administered by Public Service Commission (PSC) for all public institutions. The hotline number is **0800 701 701**.
- 12.5. In line with the prescripts of the Promotion of Administrative Justice Act (known as PAJA), all decisions relating to discipline or performance assessment of individuals, as well as decisions relating to cases under investigation, must be recorded in writing. This will encourage transparency as well as encourage retention of documentary evidence if needed.
- 12.6. Management at all levels must be adequately trained to understand how to deal with cases involving whistle-blowers, to ensure that the risk of victimization is constantly managed.
- 12.7. Management must ensure consistent application of rules, and action must be taken regardless of the rank of officials alleged to have committed misconduct.

13. CONFIDENTIALITY

- 13.1. Concerns raised through NACH are made in confidence, and employees are not required to disclose their identities.

13.2. It is recognized that employees may also wish to raise concerns in terms of this policy in confidence. The employee must in such cases indicate their desire that his/her identity be protected.

13.3. Should it be necessary that an employee's name be revealed in order to resolve the matter, such as in a court of law, the employee concerned will be approached on how the matter will be handled.

13.4. Whistle Blowers are guaranteed anonymity in terms of the provision of this policy and in accordance to the Protected Disclosure Act.

14. OWNERSHIP

14.1. The Risk and Ethics Management unit within the department will administer this policy.

14.2. The policy will be every three years, or at any time that circumstances warrant such review.

15. POLICY REVIEW

15.1. This Policy shall be reviewed every three years and amended when necessary.

16. RECOMMENDATION AND APPROVAL

The DSDB Whistle Blowing Policy is duly hereby recommended for the approval of the Acting Director General.

Recommendation/s approved

YES




Lindokuhle Mkhumane
Department of Small Business Development
Acting Director-General

.....

LINDOKUHLE MKHUMANE
ACTING DIRECTOR-GENERAL
DEPARTMENT OF SMALL BUSINESS DEVELOPMENT
DATE:..12.November.2020.....