

PROVINCE OF THE EASTERN CAPE



Department of Rural Development and Agrarian Reform

Investigations policy

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Definition of Terms and abbreviations

Accounting officer: The Head of the Department (DRDAR)

An employee or member of staff is someone who is:

- Employed on a permanent basis;
- On a fixed term or temporary contract of employment;
- On secondment to the Department.

DRDAR: Department of Rural Development and Agrarian Reform

Fraud: is defined as an unlawful and intentional making of a misrepresentation which causes actual or potential prejudice to another. The attempted fraud is treated as seriously as accomplished fraud.

Investigation: Is the process of establishing the facts or evidence about the alleged act or omission.

Investigating office/officer: any office or individual who is vested with authority to conduct investigations on behalf of the Department

Stakeholders: Individuals/clients/organisations who receive services from the Department or those who do business with DRDAR.

1. Introduction

This Investigation policy is a guide to best practice and is mandatory in every situation. It ensures consistency in the investigation of departmental cases. Investigations are to be conducted in accordance with this policy to the extent possible. However, the circumstances of a particular investigation – for example, the need to preserve evidence before notifying a subject may necessarily affect the application of the policy to the specific circumstances of a case.

Departmental Labour Relations, Fraud and Anti-corruption, Internal Audit units and any committee commissioned by the Head of the Department or relevant authority have the mandate to investigate all reports of alleged wrongdoing relevant to their line function involving staff members and allegations of fraud and corruption against DRDAR, whether committed by staff members or other persons, parties or entities, deemed to be detrimental to the Department.

This policy is meant to inform investigation participants, the subject(s) of an investigation and other stakeholders about the investigative process, and guide the investigative process to ensure that investigation activities are conducted thoroughly, objectively and effectively, in accordance with professional standards and best international practice.

2. Objectives

- 2.1. To establish facts relevant to an allegation in order to enable the relevant office to initiate necessary actions, including disciplinary actions.
- 2.2. To establish the facts relevant to an allegation of any misconduct in order to enable responsibility manager to take necessary actions.
- 2.3. To gather evidence relevant to a decision on whether referral of cases to relevant statutory bodies or national law enforcement authorities for criminal investigation and prosecution is appropriate.
- 2.4. To establish facts relevant to an allegation against external stakeholders/clients in order to enable the Accounting Officer or delegated person to make decisions on prohibition and other appropriate sanctions that may exist.

- 2.5. To assist the Department gather information that can be utilised to improve service delivery and corporate governance.

3. Regulatory framework

- 3.1. Constitution of the Republic of South Africa Act, No 108 of 1996
- 3.2. Public Service Act, No. 103 of 1994
- 3.3. Public Finance Management Act, No. 1 of 1999 as amended
- 3.4. Criminal Procedure amendment Act, No. 51 of 1977 as amended
- 3.5. Special Investigative units and special tribunals Act No. 74 of 1996
- 3.6. Code of ethics for Eastern Cape Public Service, 2008
- 3.7. Prevention and combating of corrupt activities, Act No. 12 of 2004
- 3.8. Basic conditions of Employment Act, No. 75 of 1997
- 3.9. Labour Relations Act, No. 66 of 1995
- 3.10. Supply Chain Management prescripts
- 3.11. DRDAR fraud prevention and anti-corruption policy 2015
- 3.12. Promotion of equality and prevention of unfair discrimination Act, No. 4 of 2000
- 3.13. Promotion of access to information Act, No. 2 of 2000
- 3.14. Promotion of Administrative Justice Act, No. 3 of 2000
- 3.15. DRDAR SHERQ policy 2015
- 3.16. Veterinary and Para-vet Act No.19 of 1982
- 3.17. Engineering profession Act No.46 of 2000
- 3.18. Private Security Industry Regulation Act No. 56 of 2001

4. Principles, values and philosophy

The principles include the following:

- 4.1. Investigating Officer must examine and determine the authenticity of allegations of deviations from the rules, ethics and policies of the Department.
- 4.2. The Investigating Officer must maintain objectivity, impartiality and fairness throughout the investigative process and conduct his/her activities competently and with the highest levels of integrity.
- 4.3. The Investigative Officer must perform his/her duties independently from anyone including those in authority and must also be free from improper influence and fear of retaliation.

- 4.4. The staff of the Investigating Office must disclose to an appointed authority timeously of any actual or potential conflicts of interest.
- 4.5. Appropriate procedures will be put in place to investigate allegations of misconduct on the part of any staff member of an Investigative Office.
- 4.6. The Investigating Officer must take reasonable measures to protect as confidential any non-public information associated with the investigation.
- 4.7. Investigative findings must be based on facts and related analysis of evidence obtained.
- 4.8. The Investigating Officer must make recommendations that are derived from its investigation findings to the organization's management.
- 4.9. All investigations conducted by the Investigating Officer are *quasi-administrative* in nature.
- 4.10. Investigations may also be conducted to establish facts about an incident that does not necessary warrants disciplinary steps.
- 4.11. If the matter to be investigated involves the Accounting Officer, such a matter must be referred to the relevant office (Executing Authority and Office of the Premier).
- 4.12. In cases where an employee is suspended to enable the Department to carry out investigation without interference from the alleged employee, such must be done and completed within the stipulated timelines as reflected in the disciplinary code and procedure and SMS handbook.

5. Scope of applicability

This policy is applicable to all departmental employees, stakeholders and those who do business with the Department.

6. Implementation procedures

- 6.1. Investigations may be conducted by the Department under the following circumstances or be referred to relevant statutory bodies or institutions for intensive investigations or prosecution in a case of criminal/forensic investigations.
 - 6.1.1 Fraud
 - 6.1.2 Corruption
 - 6.1.3 Theft

- 6.1.4 Misuse of state property (DRDAR resources)
- 6.1.5 Failure to comply with financial disclosure requirements
- 6.1.6 Improper recruitment
- 6.1.7 Retaliation against whistle-blowers
- 6.1.8 Sexual exploitation and sexual abuse
- 6.1.9 Assault and threat
- 6.1.10 Workplace harassment
- 6.1.11 Abuse of authority
- 6.1.12 Failure to comply with local laws/abuse of privileges and immunities
- 6.1.13 Professional misconduct
- 6.1.14 Non-management of under performance
- 6.1.15 Any other misconduct, but not limited to wilful, reckless or grossly negligent disregard of applicable rules, regulations, DRDAR policies and administrative instructions.

6.2 Stages of the Investigation

6.2.1. Stage 1

- (a) Any investigation must first be authorised by the Accounting officer.
- (b) There must be a just reason/complaint for the investigation to commence.
- (c) Anonymous complaints/allegations/incidences will also be investigated if there is a good ground upon which to begin an investigation.
- (d) Investigation can also be commissioned in instances where there is no complaint as means to be proactive or improve administration and service delivery.

6.2.2. Stage 2

- (a) An appointment letter must be issued by the Accounting Officer or delegated authority.
- (b) Those units with investigation mandate must obtain mandate and scope of investigation for each investigation from the Accounting Officer
- (c) No unauthorised personnel should conduct any investigation without approval from the Accounting Officer.

6.2.3. Stage 3: Conduct of the interviews

- (a) The interviewee must be invited for the interview in writing, clearly stating that it is a fact finding process not a disciplinary hearing.
- (b) The interview time and the venue must be agreed by both parties.
- (c) The interviewee must be informed about his/her relevant constitutional rights as outlined in the Labour Relations Act.
- (d) The interviewee must be made aware that any statement, minutes of meetings etc. could be used in a disciplinary hearing should one be necessary. (Anonymity may be possible if there is a genuine and real fear of reprisal).
- (e) Interviewees must be given an opportunity to have a representative present on advisory basis if they wish.
- (f) Where a formal statement is required, it must be dated, signed and given to the interviewee for comment and correction.
- (g) All interviews shall be electronically recorded.

6.2.4. Stage 4

- (a) The front cover of the report and the introduction should clearly specify the objectives of the investigation.
- (b) Once the investigation has been completed the report must be submitted to the Accounting Officer or any delegated authority.
- (c) Upon the submission of the report to the Accounting Officer or delegated authority, the investigation is deemed finalised or closed.

7. Dispute Management

- a) Disputes of any nature in respect of the investigative process must be addressed to the Accounting Officer.

8. Roles and responsibilities

7.1. Accounting officer

- 7.1.1. To commission the investigation and issue appointment letters
- 7.1.2. To receive and consider the investigation report
- 7.1.3. Hand over the report to the relevant business unit for implementation.

7.2. Investigating officer

7.2.1. Investigate allegations/incidents and formulate findings and the recommendations.

7.2.2. Submit the report to the Accounting Officer or delegated authority

7.3. Responsibility manager

7.3.1. Facilitate the implementation of the investigation report within seven working days of receipt unless there is valid reason for the delay.

8. Resource implications

Where funding is needed to outsource to professional investigative bodies, such must be budgeted for.

9. Policy review

This policy framework will be reviewed after 3 years or when a need arises due to change of mandate of the Department and service delivery environment.

10. Recommendations and approvals

Comments.....
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CHIEF OPERATIONS OFFICER

28/03/2018

DATE

Approved / ~~Not Approved~~.....
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HEAD OF DEPARTMENT (DRDAR)

28/03/2018

DATE