



Policy Statement

This Policy is intended to create an open, transparent and safe working environment where employees feel protected when making confidential disclosures about serious wrongdoing or misconduct, to appropriate authorities listed in this Policy.

Scope

This Policy applies to all Public Sector employers and employees.

Serious wrongdoing includes, but is not limited to:

- Serious misconduct or unethical behaviour
- Serious breaches of Government policies or legislation
- Unlawful or corrupt use of public money or resources
- Gross negligence or mismanagement
- Malpractice or maladministration
- Conduct that poses a serious risk to public health, safety or the environment
- Any conviction for a criminal offence or for an attempted criminal offence
- Attempts to suppress or conceal any information relating to any of the above

Exclusions:

This Policy does not apply to disclosures made as a result of an investigation and inquiry.

Principles

The Public Service Act 2009 provides the following values Public Servants must adhere to:

Honesty	acting honestly, being truthful, and abiding by the laws of the Cook Islands
Impartiality	providing impartial advice, acting without fear or favour, and making decisions on their merits
Service	serving the people well through faithful service to the Government of the Cook Islands
Respect	treating the people, the Government of the Cook Islands, and colleagues with courtesy and respect
Transparency	taking actions and making decisions in an open and transparent way
Accountability	being able to explain the reason for actions taken, and taking responsibility for those actions
Efficiency and Effectiveness	achieving good results for the Cook Islands in an economical way

Legislation and Regulations

Public Service Act 2009, Employment Relations Act 2012, Ministry of Finance and Economic Management Act 1995-96, Public Expenditure and Review Committee and Audit Act 1995-96, Crimes Act 1969, Ombudsman's Act 2008, and Commission of Inquiry Act 1966, Income Tax Act 1997 and other relevant legislation.

Definitions

Agency means any public service department, instrument, or agent of the Government and includes a body corporate or organisation that is wholly owned or controlled by the Crown

Confidentiality means to limit or restrict access to information

Conflict of interest where an individual's perceived or real objectivity is impaired and can lead to the individual making a decision or taking action in their official capacity to derive personal benefit or favour others

Disclosure the act of revealing or exposing new or secret information not previously known

Employee means any person who is an employee of the Public Sector

Employer means the Public Service Commissioner and Heads of Agencies or their delegated authority

Frivolous means not having any serious purpose, value or merit

Maladministration means deliberate or accidental improper, illegal, or negligent behaviour

Malicious means intending or intended to do harm

Malpractice means deliberate improper, illegal, or negligent professional behaviour

MFEM stands for Ministry of Finance and Economic Management - Government's financial administrator

Misconduct means unacceptable or improper behaviour

Mismanagement means managing ineptly, incompetently or dishonestly

Official Information in this Policy means any information owned, produced for or by, or is controlled by the government and employees

Disclosure for the purposes of this Policy is a disclosure of information made in good faith or reasonable belief of perceived misconduct or wrongdoing

Public Service Commissioner means the Public Service Commissioner appointed under Article 73 of the Constitution and Section 5 of the Public Service Act 2009

Vexatious means action without sufficient grounds to cause annoyance to another individual

Whistleblower a current or past employee who reports misconduct or serious wrongdoing

Misconduct or serious wrongdoing can be a past act, ongoing, or in the planning stage

Procedures

Employers are responsible for administering this Policy. The employer is responsible for ensuring all policies are easily accessible to employees however, the onus lies with the employee to read, understand, familiarise and comply with this and any other relevant Government policies. Any person who breaches this Policy may have committed an act of misconduct and may be subject to disciplinary action and/or dismissal.

Disclosures ('Whistle blowing')

Agencies face risks that may negatively impact on their operations and service delivery, the safety and health of individuals, and the reputation of Government. Agencies must be proactive in preventing and mitigating these risks as early as possible. Protected disclosures or whistle blowing supports employees to speak up about misconduct or serious wrongdoing in the workplace to mitigate risks to other individuals, the Agency and Government.

Disclosures can:

- Ensure Agencies operate ethically, effectively and efficiently
- Enable Agencies to prevent, mitigate or address operating risks appropriately
- Enable critical information to get to people who need to know and can address issues
- Enhance the reputation of Agencies and Government, and public trust in the Service
- Minimise costs and compensation from accidents, investigations, and litigation
- Deter serious wrongdoing such as:
 - Fraud or mismanagement of public money or resources
 - Misuse or abuse of government resources or assets
 - Leaking official information to unauthorised persons or the media
 - Creating danger or hazards in the workplace
 - Offering, taking or soliciting bribes or gifts
 - Giving misleading information or misreporting performance
 - Dumping damaging material in the environment
 - Medical negligence in public health services
 - Intentional cruel and violent behaviour or neglect of people in care or prisons

Reporting Misconduct or Serious Wrongdoing

Making a disclosure (whistle blowing) takes courage and must be made in good faith to call to attention misconduct or serious wrongdoing.

Appropriate people within the Agency include:

- Direct Manager, Supervisor Team Leader;
- Human Resource Manager;
- Divisional Manager or Direct Report to the Head of Agency; or
- Head of Agency

Where the employee perceives misconduct or serious wrongdoing by a Head of Agency, the disclosure can be made to an appropriate authority.

An appropriate authority includes the:

- Public Service Commissioner
- Ombudsman
- Director of Audit or Public Expenditure Review Committee
- Anti-Corruption Committee
- Solicitor General
- Police Commissioner
- Private Sector Professional Bodies with the power to discipline their members

Employer Obligations

Employers must:

1. Receive and investigate disclosures

- Establish procedures within the Agency to receive and investigate disclosures
- Ensure procedures are widely circulated within the Agency and employees are aware of these
- Ensure employee disclosures are treated with the utmost confidentiality by all parties
- Safeguard employees who make a disclosure or refer one to an appropriate authority from:
 - Victimisation or coercion;
 - Harassment or threats;
 - Being put at risk or disadvantaged; or
 - Being subjected to salary reduction or a reduction in responsibilities
- Instigate an inquiry or investigation to substantiate the disclosure/s made

The seriousness of the disclosure will determine whether this will be an internal inquiry or referred to an appropriate authority for inquiry.

2. Act on investigation outcomes

- Take appropriate action for proven misconduct or serious wrongdoing
- Retain all information relating to the investigation regardless of the outcome
- Notify the whistle blower of the outcome of the inquiry or investigation – where possible
- Take appropriate action if the disclosure made was malicious, frivolous or vexatious

Employers or an Appropriate Authority can use investigation procedures provided in the Code of Conduct Policy or OPSC Investigations Guide.

3. Assist with any investigation from a complaint against him/her

- Abstain from interfering with the investigation
- Provide evidence as required
- Act as a Good Employer

Employers who deliberately victimise, threaten, coerce, harass, put employees at risk, or fail to protect employees - may be investigated for misconduct. Proven acts of misconduct may lead to disciplinary action, personal grievance charges by an employee, or criminal charges being laid.

Employee Obligations

In serving the public interest, employees are entrusted as a fundamental part of their duties with access to a wide range of official information. They are required to treat this information responsibly and with discretion and in confidence consistent with the Public Service values and Code of Conduct.

Disclosures should NOT be:

- Malicious and reckless accusations
- Motives with the intent to disrupt a workplace or cause serious harm to other individuals
- Vexatious, frivolous, or deliberately misleading

All disclosures must be made in good faith and with utmost confidentiality to appropriate people within the Agency or an appropriate authority.

Employees do not need to disclose their identity. However, if it is proven that an employee has made a malicious disclosure and knowing it as untrue, their identity may not be protected and they may be subject to disciplinary action.

Other provisions

All documentation relating to the administration of this Policy must be retained for audit purposes.

All records must be kept for at least seven years and only accessible by the employer and/or authorised staff. After the seven year period, the Agency may destroy or archive the documentation in adherence with Government official information management policies.

The Office of the Public Service Commissioner is responsible for reviewing and updating this Policy and associated documents annually.

Associated Documents

Code of Conduct Policy
Risk Management Policy
Employment Disputes Policy
OPSC Investigations Guide

Other information

For policy queries contact the Office of the Public Service Commissioner on phone (682) 29 421
or email: pscinfo@cookislands.gov.ck