



Whistleblowing First Responder Guide

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Whistleblowing First Responder Guide

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“Many see whistleblower as a derogatory term for a disloyal employee, but we’ve found that the whistleblower is often forced to go outside [the organization], either by fear, inaction, or both.” – Dr Patricia Harned, CEO, Ethics & Compliance Initiative (Businesswire, 2012)

Purpose of this Guide

The content of this guide is based on an understanding of the needs of individuals in Civil Society Organisations (CSOs) who are the first responders to whistleblowing reports.

The purpose of this guide is to assist First Responders (FRs) regarding:

- How to respond to and handle situations where a whistleblower reports wrongdoing or illegal activity;
- Questions to ask whistleblowers;
- Legal framework for the protection of whistleblowers; and
- Organisations to whom reports could be referred.

How to use this guide

Part 1 provides important information about relevant terms that will contribute to the FR's ability to assist whistleblowers. FRs can read and familiarise themselves with the contents of this guide in advance. When interacting with whistleblowers, keep the quick reference page at hand to help guide the process.

Part 2 provides practical steps for interaction with whistleblowers. Not only are the 'do's' explained, but also what FRs should not do. Three different modes of reporting are discussed - please refer to the mode most relevant to you.

Part 3 contains the questions that every FR should ask whistleblowers to ensure that they obtain as much information as possible about the wrongdoing and those involved in it. Doing so will assist those people who will have to investigate the allegations of the whistleblower.

Part 4 lists the pieces of legislation related to the protection of whistleblowers. Short summaries about the essence of these Acts are provided for reference purposes.

Part 5 provides a list and contact numbers of referral organisations in South Africa. This section is intended to assist FRs with referring whistleblower reports or whistleblowers to the appropriate entity.

First responder process at a glance

First point of contact

Make time or avail yourself
Introduce yourself

Face-to-face contact

Find a safe space
(A quiet place where interruptions are unlikely to occur. Provide also some tissues and water.)

Make the whistleblower feel at ease

Listen intently

Allow the whistleblower to speak

Take notes

Store these notes securely and keep it confidential!



Contact by telephone

If you must transfer the call, inform the whistleblower that you will be doing it

Listen intently and with compassion

Allow the whistleblower to speak

Take notes

Store these notes securely and keep it confidential!



E-mail contact

Acknowledge receipt of the email

Ask if s/he wants to meet in person

Ensure that you understand the content of the e-mail before your respond

Set boundaries in respect of frequency of e-mail communication

Forward the e-mail(s) only on a need-to-know basis



Ask the right questions.
Clarify vague statements.

Enquire about his/her expectations.

Direct the whistleblower on the next steps.

Caution the whistleblower against the use of social media.



Don't become emotional.
Don't become too involved.
Don't give legal advice.
Don't give psychological advice.

Don't tell anyone in the office about the report.



Individuals who are, or who are contemplating becoming a whistleblower, are often frustrated, stressed, traumatised and confused. This is not surprising as they are subjected to enormous pressures by their employer, colleagues, family and friends. In many instances they have run out of funds and are at their wits end. They therefore display unusual behaviour and could come across as unreasonable, demanding or rude. This is not a reflection on you and you should not respond to this at all.

Questions to ask

Caution against your questioning sounding like an interrogation. Use an empathetic tone and converse with the whistleblower in a natural way.

1. Who committed the alleged wrongdoing?
2. What happened?
3. When did this occur? Is it ongoing?
4. Where did this happen?
5. Is there a disciplinary case against you?
6. Who else may have seen or heard this as a witness?
7. Have you reported this in your organisation, or discussed this with anyone? If so, to whom did your report it, who did you tell, when did you tell them and why?
8. How has this affected you?
9. Is there any electronic or physical evidence about this wrongdoing?
10. Do you have any other information that might be helpful for an investigation?



Caution whistleblowers that their lives might change (if it has not already). But ensure that you do not frighten them by categorically stating, e.g., they will lose their jobs.

“The world needs whistleblowers. No democracy can survive without people who act when they see something going on that is wrong”
– Johann van Loggerenberg



Part 1: Important to know

What is a First Responder?

A FR is an individual who a whistleblower approaches to make a protected disclosure about the illegal or otherwise unethical conduct of another party, be it an organisation or an employee of such organisation.

What is whistleblowing?



Whistleblowing can be defined as the disclosure of information by an individual or individuals about a perceived wrongdoing in an organisation, or the risk thereof, to people or institutions who the whistleblower believes will be able to act (Transparency International, Groenewald, 2020:4). Your organisation was thus chosen because the whistleblower believes that you will take action on the information they provide to you.

What is not whistleblowing?

Reporting personal grievances does not constitute whistleblowing unless the particular case is in the public interest. A grievance is defined as any feeling of discontent, unfairness, or injustice which employees may have in respect of their work conditions, against a manager or supervisor, or a fellow worker. Such issues should be reported through an organisation's human resources grievance processes (Labour Guide, n.d.).

What is retaliation?

Some whistleblowers will report that they have been retaliated against because they blew the whistle on wrongdoing in their organisation. As FR it would thus be beneficial to know what retaliation is to enable you to assist the whistleblower in this regard.

Retaliation or victimisation is a generic classification for all negative consequences experienced because of whistleblowing. It is a form of punishing an employee for reporting misconduct in the organisation.

The following forms of retaliation are generally used to victimise whistleblowers:

- Adjusting job duties that impact the whistleblower negatively (e.g., no longer having decision-making/signing powers)

- Blacklisting (a sector- or industry-wide agreement, formal or informal, that prevents an individual from finding alternative employment)
- Bullying or harassment (e.g., receiving harassing calls or emails)
- Civil claim arising from breach of confidentiality requirements of the organisation
- Demotion
- Disciplinary charges (usually for something arbitrary)
- Dismissal (for no obvious valid reason)
- Employer refusing to provide a reference, or provides an adverse reference if the whistleblower applies for another job
- Hostility (e.g., shaming the employee, especially publicly, engaging in emotional, verbal, or physical abuse or unfair and intimidating scrutiny)
- Non-promotion when promotion was due
- Social isolation or ostracization
- Suspension
- Terms or conditions of employment or retirement are altered to the whistleblower's disadvantage
- Threats to the life of the whistleblower or the lives of family members of the whistleblower
- Transfer against the will of the employee
- Unfair or inappropriate treatment that forces the whistleblower to resign
- Unfair performance evaluation
- Violence (e.g., being shot at, assaulted, or physically harmed in another way)

The list is non-exhaustive.

What is occupational detriment?

The South African Protected Disclosure Act (as amended) defines occupational detriment as the threat or the carrying out of any of the following actions that have an adverse impact on the employment status of employees because they made a protected disclosure:

Actions that constitute 'occupational detriment'

Any disciplinary action	Refusal of transfer or promotion
Dismissal, suspension, demotion, harassment, or intimidation	Disadvantageous alteration of a term or condition of employment or retirement
Transfer against employee's will	Denial of appointment to any employment, profession, or office
Refusal of or provision of an adverse reference	Subjection to civil claim for the alleged breach of a duty of confidentiality arising from the disclosure of a criminal offence or a contravention or failure to comply with the law
AND / OR	
"being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities, work security and the retention or acquisition of contracts to perform work or render services."	

Source: Protected Disclosures Amendment Act (Act 5 of 2017)

What is a disclosure?

A disclosure refers to any information about any conduct by an employer or an employee of that employer that intends to show that:

- A criminal offence has, is, or is likely to be committed
- There has, is, or is likely to be a failure to comply with a legal obligation
- A miscarriage of justice has, is, or is likely to occur
- The health and safety of a person has, is being, or is likely to be endangered
- The environment has been, is being, or is likely to be damaged
- Unfair discrimination is taking place (either in terms of Chapter II of the Employment Equity Act or the Promotion of Equality and Prevention of Unfair Discrimination Act)

Any matter related to the above list has, is, or is likely to be deliberately concealed by an organisation.



Part 2: First point of contact

You have been contacted by a whistleblower in person, telephonically or via email.

What should you and should you not do now?



Face-to-face contact

What to do:

- **Make time or avail yourself.**
 - If you cannot immediately attend to the whistleblower, inform him/her accordingly, but also state that you will assist them as soon as possible. The whistleblower has come this far and will be discouraged if s/he is turned away.
- **Introduce yourself (the whistleblower may choose not to provide his/her name at this point – accept and respect this decision).**
 - Knowing who s/he is talking to will comfort the whistleblower and put them at ease. Be cognisant of the fact that not all whistleblowers want to reveal their identity.
- **Make the whistleblower feel at ease.**
 - Be friendly and welcoming. Offer something to drink to make the whistleblower feel at ease and comfortable. And build trust!
- **Find a safe space to speak with the whistleblower.**
 - A space that is not too noisy and has a door that can close will provide a sense of security to the whistleblower.
- **Request that cell phones not be answered during the meeting.**
 - Interruptions are distracting, can lead to feelings of irritation or frustration and do not promote cohesion.
- **Listen intently and with compassion.**
 - The whistleblower has probably reported the wrongdoing to several people with no action being taken. All they want is someone who takes them seriously and listens to what they say.





- **Allow the whistleblower to speak as long as s/he needs to speak.**
 - Whistleblowers often experience crammed up feelings and thoughts because they have been milling the information around and around in their heads. These feelings and thoughts are likely to be shared with you.



- **Ask permission to record the interview.**

Explain to the whistleblower that, although you will be taking notes, recording the conversation will help you to be accurate in your report. Emphasise that the recording will remain confidential and only be made available to the investigator. Encourage the whistleblower to also record the conversation. By doing so s/he would not only have record of having reported the wrongdoing, but can also use it in future in possible legal proceedings.



- **Take notes.**
 - Explain that you need to take notes, but try to maintain as much eye contact as possible to demonstrate your interest and to encourage the whistleblower to talk. Remember to store these notes securely and keep it confidential!



- **Ask the right questions.**
 - Whistleblowing reports can sometimes be vague which can seriously hamper further investigations into the matter. Basic information is required to facilitate investigations (see Part 3).
- **And ask them again if answers are vague or not forthcoming.**
 - It might be that the whistleblower does not have the answers to all your questions. And that is okay. But it could also be that what they are reporting is not factual, or malicious. Repeating questions about simple facts could expose a “fake” or malicious whistleblower.

- **Enquire about his/her expectations.**
 - The whistleblower approached you / your organisation with a specific goal in mind. It could be that s/he just wanted another ear or shoulder to cry on, it could be that they are desperate to get legal assistance or have their case investigated. Knowing their expectations will assist you with determining the next step.
- **Direct the whistleblower on the next steps.**
 - The whistleblower has reported his/her case to you with the hope that action will be taken (see in Part 1, page 5 'What is Whistleblowing?'). It is thus only fair to explain what the next steps in the process will be and what s/he can expect. Be, however, clear that your organisation would not be involved going forward (if this is indeed the case).
- **And lastly, caution the whistleblower against the use of social media.**

Not only does information remain forever on social media, but it also shows where the whistleblower is at a given time, who his/her family members are, their lifestyle, etc. Staying clear of social media will contribute to their safety and that of their families.



Things needed to create a safe space

- A quiet place where interruptions are unlikely to occur
- Tissues and water



Things that undermine a safe space

- Fishbowl type offices or open shared spaces
- Voice recorders
- Cell phones that are not on silent
- Too many people (the whistleblower, you and maybe a colleague, are more than sufficient)
- Interruptions by other people (this will make the whistleblower even more nervous than s/he already is)

Do not:

- **Become emotional.**
 - It is easy to feel strong emotions when whistleblowers tell their stories. But becoming emotional will not be beneficial to your own mental health or that of the whistleblower. Showing empathy will suffice.
- **Become too involved.**
 - It is not your responsibility to become part of the whistleblower's long and often, arduous, journey. You are providing a listening ear. At this point that is enough.
- **Interrupt the whistleblower.**
 - Other than interruptions being rather rude, it does not promote effective communication and can cause people to lose their train of thought.
- **Create expectations or make promises.**
 - It is human to want to try to fix everything for the whistleblower. One can therefore easily make promises and create expectations that might be difficult to fulfil. Stay clear from this natural tendency and let the process evolve naturally.
- **Provide your personal contact details.**
 - You are the FR and not the case handler. Once you have provided your personal contact details the whistleblower might be inclined to bombard you with requests about progress on his/her case, further pleas for assistance, etc. It will put you in a difficult situation because you most probably won't have such information. And, a word of caution, this can become emotionally draining.
- **Give legal advice.**
 - There are a myriad of legal pitfalls facing the whistleblower. Providing legal advice without having expert knowledge in this regard, may affect the whistleblower's case negatively.

- Give psychological advice.
 - Of course, one wants to comfort the whistleblower and that sometimes involves sharing one's wisdom. But again, rather leave this to the professionals who would be able to help him/her to learn to cope with stressful situations and uncertainties.
- Give or offer to pay for transport, groceries, airtime, etc.
 - Whistleblowers often find themselves in dire financial situations because of, for example, having lost their jobs. It is not your responsibility, however, to assist them financially. There are organisations who will do so (see Part 5).
- Tell everyone in the office about the report.
 - Telling all and sundry about the content of the report and/or the identity of the whistleblower might put him/her in danger. Only share the report details with those people that need to know it to enable them to act. This is called the need-to-know principle.



"Need-to-know basis" refers to a principle of information sharing in which access to sensitive or confidential information is limited to individuals who have a specific, justifiable need for the information to perform their job duties or other authorised activities.



Telephonic contact

What to do:



- Make time or avail yourself.
 - If you cannot immediately attend to the whistleblower inform him/her accordingly, but also ask him/her for their contact details and call back at a prearranged time. If the whistleblower feels uncomfortable to provide their contact details, ask that s/he calls you back at a certain time.



- Introduce yourself (the whistleblower may choose not to provide his/her name at this point – accept and respect this decision).
 - Knowing who s/he is talking to will comfort the whistleblower and put them at ease. Be cognisant of the fact that not all whistleblowers want to reveal their identity.



- Make the whistleblower feel at ease.
 - Let your voice be friendly and welcoming. And build trust!
- If you must transfer the call, inform the whistleblower that you will be doing it, why you are transferring the call and to whom.



- Informing the whistleblower about the aforementioned will put him/her at ease. Not doing so might make the whistleblower doubtful about whether s/he did the right thing to contact your organisation.



- Listen intently and with compassion.
 - The whistleblower has probably reported the wrongdoing to several people with no action being taken. All they want is someone who takes them seriously and listens to what they say.



- Allow the whistleblower to speak as long as s/he needs to speak.
 - Whistleblowers often experience crammed up feelings and thoughts because they have been milling the information around and around in their heads. These feelings and thoughts are likely to be shared with you.



- Ask permission to record the interview.
 - Explain to the whistleblower that, although you will be taking notes, recording the conversation will help you to be accurate in your report. Emphasise that the recording will remain confidential and only be made available to the investigator. Encourage the whistleblower to also record the conversation. By doing so s/he would not only have record of having reported the wrongdoing, but can also use it in future in possible legal proceedings.





- **Take notes.**

- Explain that you need to take notes and therefore the whistleblower might sometimes have to repeat certain information, or allow you to catch-up on your notes. Remember to store these notes securely and keep it confidential!



- **Ask the right questions.**

- Whistleblowing reports can sometimes be vague which can seriously hamper further investigations into the matter. Basic information is required to facilitate investigations (see Part 3).

- **And ask them again if answers are vague or not forthcoming.**

- It might be that the whistleblower does not have the answers to all your questions. And that is okay. But it could also be that what they are reporting is not factual, or malicious. Repeating questions about simple facts could expose a “fake” or malicious whistleblower.

- **Enquire about his/her expectations.**

- The whistleblower approached you / your organisation with a specific goal in mind. It could be that s/he just wanted another ear or shoulder to cry on, it could be that they are desperate to get legal assistance or have their case investigated. Knowing their expectations will assist you with determining the next step.

- **Direct the whistleblower on the next steps.**

- The whistleblower has reported his/her case to you with the hope that action will be taken (see Part 1, page 4 ‘What is Whistleblowing?’). It is thus only fair to explain what the next steps in the process will be and what s/he can expect. Be, however, clear that your organisation would not be involved going forward (if this is indeed the case).

- And lastly, caution the whistleblower against the use of social media.
Not only does information remain forever on social media, but it also shows where the whistleblower is at a given time, who his/her family members are, their lifestyle, etc. Staying clear of social media will contribute to their safety and that of their families.

Do not:

- **Become emotional.**
 - It is easy to feel strong emotions when whistleblowers tell their stories. But becoming emotional will not be beneficial to your own mental health or that of the whistleblower. Showing empathy will suffice.
- **Become too involved.**
 - It is not your responsibility to become part of the whistleblower's long and often, arduous, journey. You are providing a listening ear. At this point that is enough.
- **Interrupt the whistleblower.**
 - Other than interruptions being rather rude, it does not promote effective communication and can cause people to lose their train of thought.
- **Put the whistleblower on hold unnecessarily or for an unreasonable time.**
 - It took courage to call – being on hold might deter the whistleblower or cause them further stress.
- **Create expectations or make promises.**
 - It is human to want to try to fix everything for the whistleblower. One can therefore easily make promises and create expectations that might be difficult to fulfill. Stay clear from this natural tendency and let the process evolve naturally.

- **Provide your personal contact details.**
 - You are the FR and not the case handler. Once you have provided your personal contact details the whistleblower might be inclined to bombard you with requests about progress on his/her case, further pleas for assistance, etc. It will put you in a difficult situation because you most probably won't have such information. And, a word of caution, this can become emotionally draining.
- **Give legal advice.**
 - There are a myriad of legal pitfalls facing the whistleblower. Providing legal advice without having expert knowledge in this regard, may affect the whistleblower's case negatively.
- **Give psychological advice.**
 - Of course, one wants to comfort the whistleblower and that sometimes involves sharing one's wisdom. But again, rather leave this to the professionals who would be able to help him/her to learn to cope with stressful situations and uncertainties.
- **Give or offer to pay for transport, groceries, airtime, etc.**
 - Whistleblowers often find themselves in dire financial situations because of, for example, having lost their jobs. It is not your responsibility, however, to assist them financially. There are organisations who will do so (see Part 5).
- **Tell everyone in the office about the report.**
 - Telling all and sundry about the content of the report and/or the identity of the whistleblower might put him/her in danger. Only share the report details with those people that need to know it to enable them to act. This is called the need-to-know principle.



"Need-to-know basis" refers to a principle of information sharing in which access to sensitive or confidential information is limited to individuals who have a specific, justifiable need for the information to perform their job duties or other authorised activities.



E-mail contact

What to do:

- Acknowledge receipt of the email as soon as possible.



- The whistleblower has contacted you and is probably anxiously waiting for some communication from you. By not responding, even if it is just saying that you have received the email and will revert as soon as possible, could cause them more stress, anxiety and even self-doubt.

- Ask if s/he wants to meet in person at your office and if so, arrange a time that suits the whistleblower and yourself (then follow the steps under Face-to-Face contact).



- Not all whistleblowers would want to meet in person, and that could be the reason why they sent an email. However, it could also be that the whistleblower only wanted to make initial contact with the aim of telling their story in person. Give them the opportunity to make this decision.

- If the whistleblower does not want to meet in person, ensure that you understand the content of the e-mail before your respond.



- E-mail communication is not always clear and to the point. There might be many words in the email, but not necessarily specific points that can be actioned. Sift through the e-mail and establish what exactly is required of you or what it is that is being reported. Only then can you respond effectively.

- Ask the right questions.



- Whistleblowing reports can sometimes be vague which can seriously hamper further investigations into the matter. Basic information is required to facilitate investigations (see Part 3).

- **And ask them again if answers are vague or not forthcoming.**
 - It might be that the whistleblower does not have the answers to all your questions. And that is okay. But it could also be that what they are reporting is not factual, or malicious. Repeating questions about simple facts could expose a “fake” whistleblower.
- **Set boundaries in respect of frequency of e-mail communication.**
 - The whistleblower has now found someone who is listening and that provides a lot of comfort. However, your role as FR is to listen initially and then hand the case over to the appropriate authority who will assist further. Remind the whistleblower of this should you receive daily or weekly e-mails from him/her.
- **Enquire about his/her expectations.**
 - The whistleblower approached you / your organisation with a specific goal in mind. It could be that s/he just wanted another ear or shoulder to cry on, it could be that they are desperate to get legal assistance or have their case investigated. Knowing their expectations will assist you with determining the next step.
- **Forward the e-mail(s) only on a need-to-know basis.**
 - Access to whistleblowing reports should be restricted to only those people who can act going forward. When reports are sent to too many people the chances of the information being, for example, leaked to unauthorised parties, or the identity of the whistleblower becoming known, increases. This could, in turn, lead to (further) victimisation of the whistleblower.
- **Direct the whistleblower on the next steps.**
 - The whistleblower has reported his/her case to you with the hope that action will be taken (see Part 1, page 4 ‘What is Whistleblowing?’). It is thus only fair to explain what the next steps in the process will be and what s/he can expect. Be, however, clear that your organisation would not be involved going forward (if this is indeed the case).

Do not:

- **Become emotional.**
 - It is easy to feel strong emotions when whistleblowers tell their stories. But becoming emotional will not be beneficial to your own mental health or that of the whistleblower. Showing empathy will suffice.
- **Become too involved.**
 - It is not your responsibility to become part of the whistleblower's long and often, arduous, journey. You are providing a listening ear. At this point that is enough.
- **Forward the e-mail to others without the written consent of the whistleblower.**
 - Forwarding the e-mail to others might put the whistleblower in danger because of his/her identity becoming known. If the whistleblower, however, gives permission while being aware of the implications, you can go-ahead. Remember the need-to-know principle though!
- **Allow the whistleblower to harass and bombard you with e-mails.**
 - Now that s/he has found a listening ear it may happen that the whistleblower wants to inform you of every thought they may have about the case. You have done your part. Any further communication from the whistleblower should be handled by the professionals.
- **Create expectations or make promises.**
 - It is human to want to try to fix everything for the whistleblower. One can therefore easily make promises and create expectations that might be difficult to fulfil. Stay clear from this natural tendency and let the process evolve naturally.
- **Provide your personal contact details.**
 - You are the FR and not the case handler. Once you have provided your personal contact details the whistleblower might be inclined to bombard you with requests about progress on his/her case, further pleas for assistance, etc. It will put you in a difficult situation because you most probably won't have such information. And, a word of caution, this can become emotionally draining.

- **Give legal advice.**
 - There are a myriad of legal pitfalls facing the whistleblower. Providing legal advice without having expert knowledge in this regard, may affect the whistleblower's case negatively.
- **Give psychological advice.**
 - Of course, one wants to comfort the whistleblower and that sometimes involves sharing one's wisdom. But again, rather leave this to the professionals who would be able to help him/her to learn to cope with stressful situations.
- **Give or offer to pay for transport, groceries, airtime, etc.**
 - Whistleblowers often find themselves in dire financial situations because of, for example, having lost their jobs. It is not your responsibility, however, to assist them financially. There are organisations who will do so (see Part 5).
- **Tell everyone in the office about the report.**
 - Telling all and sundry about the content of the report and/or the identity of the whistleblower might put him/her in danger. Only share the report details with those people that need to know it to enable them to act. This is called the need-to-know principle.



"Need-to-know basis" refers to a principle of information sharing in which access to sensitive or confidential information is limited to individuals who have a specific, justifiable need for the information to perform their job duties or other authorised activities.



Part 3: Questions to ask

Vague whistleblowing reports can seriously hamper investigations into the matter. It is therefore very important to obtain as much information about the wrongdoing as possible. Below are ten (10) questions to ask the whistleblower that will assist investigators.

1. Who committed the alleged wrongdoing?
2. What happened?
3. When did this occur? Is it ongoing?
4. Where did this happen?
5. Is there a disciplinary case against you?
6. Who else may have seen or heard this as a witness?
7. Have you reported this in your organisation, or discussed this with anyone? If so, to whom did your report it, who did you tell, when did you tell them and why?
8. How has this affected you?
9. Is there any electronic or physical evidence about this wrongdoing?
10. Do you have any other information that might be helpful for an investigation?

Although it is not your responsibility to conduct a risk assessment on the whistleblower, it would be most helpful to the referral organisation to have answers to the questions below (adapted from Blow the whistle - PPLAAF). But caution against your questioning sounding like an interrogation. Keep the conversation and questions natural and flowing.

You do not have to ask all the questions below. The most important thing now is to determine if the whistleblower's life is in danger.

The whistleblower's personal situation

1. Are you or your family in any physical danger – for example, have you or your family been physically threatened (directly or indirectly) or attacked?
2. Are you or have you been personally involved with the wrongdoing or misconduct?
3. If you have documentation or evidence, did you obtain any of it illegally?
4. Are you aware that you may lose your job?
5. Do you have sufficient financial reserves or savings in case you lose your job?
6. Do you have the support of your family?

7. Is your spouse or partner employed at a level that if you lose your job, you and your family could manage financially?
8. Do you have access to a reliable support structure such as friends or colleagues, should your name become public?

The whistleblower's work situation

9. How long have you worked at the job where you have observed the wrongdoing?
10. Does your employer have a whistleblower protection policy?
11. Are you a government official or employee?
12. Do you have many well-positioned allies or colleagues at work?
13. Are you a member of a labour union or trade association?

The whistleblower's disclosure

14. Do you have original documents or evidence?
15. Could the information you have be verified or confirmed by other parties as being true?
16. Is any of the information that you have already public?
17. Does your information concern an urgent risk to people, public health or the environment?
18. Have people died, or been injured or sickened, as a result of the situation you are aware of?
19. Have public or shareholder funds or resources been stolen, diverted or lost?
20. How likely is it that the wrongdoing or misconduct could be covered up, or evidence destroyed?
21. Are top managers or the head of your organisation involved with the misconduct?



Always keep any opinions to yourself, regardless of whether they apply to the whistleblower, the accused, the situation, the claims, etc. And be careful not to sound accusing during the questioning.

“Every country needs its whistleblowers. They are crucial to a healthy society. The employee who, in the public interest, has the independence of judgement and the personal courage to challenge malpractice or illegality is a kind of public hero.”

- Fuad Alakbarov



Part 4: Legal framework for the protection of whistleblowers

While not every FR will be a legal expert, it is good to know that South Africa has several laws that protect whistleblowers. These laws provide different levels of protection to those who come forward with information. Each of the Acts in the table below is summarised insofar as it is relevant to whistleblower protection. To qualify for protection, the whistleblower must have a “reasonable belief” that a wrongdoing has occurred, or likely to incur, and the decision to report and seek protection is in the best interest of the public.



Note that information in the table does not constitute legal advice. Only a lawyer can advise on the specific circumstances of the whistleblower's case.

LEGISLATION	RELEVANT SECTION	SUMMARY
Constitution of the Republic of South Africa Act 108 of 1996	Sections 9, 14, 16 and 23	The Constitution does not explicitly make provision for the protection of whistleblowers. However, there are several rights contained in the Bill of Rights which are applicable to whistleblowing such as the right to equality before the law, dignity, life, freedom and security of person, privacy and fair labour practices.
Companies Act 71 of 2008	Section 159 (5)	The section applies to potential whistleblowers who are, inter alia, shareholders, directors, and company secretaries, and who make a disclosure in good faith to, e.g., the Companies and Intellectual Property Commission, the Companies Tribunal, a director, auditor, or company secretary.
Financial Intelligence Centre Act 38 of 2001	Sections 28, 29, 37 and 38	Section 29 of FICA places a duty on people who carry on a business, manage a business or who are employed by a business, and who know or suspect or ought reasonably to know or suspect unlawful activity in relation to, inter alia: money laundering, tax evasion and the financing of terrorist activities, to report such knowledge to the Financial Intelligence Centre.

LEGISLATION	RELEVANT SECTION	SUMMARY
ILO190 Violence and Harassment Convention	In full	<p>This Convention protects workers and other persons in the world of work against violence, discrimination, bullying and all other forms of harassment.</p> <p>Workers include employees as defined by national law and practice, as well as other persons working irrespective of inter alia their contractual status and workers whose employment has been terminated.</p>
Labour Relations Act 66 of 1995	Section 185	Section 185 of the LRA provides that every employee has the right not to be unfairly dismissed or subjected to unfair labour practices.
National Environmental Management Act 107 of 1998	Section 31	Section 31 of NEMA protects the whistleblower from threats arising as a result of expressing the intention to exercise or exercising the right to disclose information. A person who threatens a whistleblower is guilty of an offence, and the penalty on conviction is a fine not exceeding R5 million, or imprisonment for a period not exceeding five years.
Pension Funds Act 24 of 1956	Sections 9B, 13B(10) and 37(1)	Section 9B(1) of the PFA requires the Registrar of Pension Funds to “provide a process for the submission of disclosures by a board member, principal officer, deputy principal officer, valuator or other officer or employee of a fund or an administrator, which ensures appropriate confidentiality and provides appropriate measures for the protection of disclosures”. Section 9B(2) provides that, in addition to what is provided in sections 8 and 9 of the PDA, such a disclosure is a protected disclosure. Section 9B(3)(b) provides remedies for any person who suffers any detriment because of such disclosure.

LEGISLATION	RELEVANT SECTION	SUMMARY
Prevention and Combating of Corrupt Activities Act 12 of 2004	Sections 18 and 34	Section 18 makes it an offence for any person to attempt to corrupt or intimidate a witness. This Act also amended the Witness Protection Act 112 of 1998 to ensure that witnesses to a crime of corruption are eligible to receive protection under the Witness Protection Act.
Protection from Harassment Act 17 of 2011	Sections 1 and 2	A whistleblower can apply for a protection order from harassment. The Act has a wide definition of harassment, including directly or indirectly engaging in conduct that the respondent knows or ought to have known causes harm or inspires the reasonable belief that harm may be caused by, inter alia, following, watching, pursuing, accosting, or engaging in any form of communication with the witness.
Witness Protection Act 112 of 1998	Section 7 and in general	The WPA provides for protection of persons who have witnessed corrupt activities. It is only available for witnesses, potential witnesses, or related persons in criminal judicial proceedings (either appearing in court or making an affidavit).

Source: Some of the content has been adapted from Whistleblower protection in SA. Whistleblower protection in South Africa: where to from here? just-share-whistleblower-report_may2022_final.pdf (futuregrowth.co.za)



Part 5: Referral organisations

Remember that the whistleblower approached your organisation with the belief that you will act on the report. However, the only further action that you can take as a civil society organisation is to ensure that the report is brought to the attention of the relevant authorities who can take the matter further.

Here are the most prominent organisations who are mandated to conduct investigations, or who can assist whistleblowers with legal, psychological, financial and security services. The choice of organisation to whom you refer the report will depend on the type of case and/or the needs of the whistleblower.

Organisations with investigative capabilities

ORGANISATION & MANDATE	TYPES OF CASES
<p>Corruption Watch</p> <p>Corruption Watch investigates selected reports of alleged acts of corruption, especially those that run the risk of severely affecting society. They hand their findings over to the relevant authorities to take further action and they monitor the progress of each case.</p>	<p>Corruption</p> <p>Contact details: www.corruptionwatch.org.za</p>
<p>Human Resources Departments</p> <p>Organisational human resources departments look after the employee life cycle (from recruitment to resignation/retirement). They are also responsible for handling employee grievances, and in some organisations, for investigating certain types of misconduct.</p>	<p>Bullying Conflicts of Interest Discrimination Grievances</p> <p>Contact details: Organisation specific</p>
<p>National Prosecuting Authority (NPA)</p> <p>Section 179(2) of the Constitution empowers the NPA to institute criminal proceedings on behalf of the State and to carry out any necessary functions incidental to instituting criminal proceedings.</p>	<p>Commercial crime (fraud, forgery, uttering and theft)</p> <p>Organised crime Money laundering</p>

ORGANISATION & MANDATE	TYPES OF CASES
<p>The Investigating Directorate investigates common law and statutory offences. These can include commercial crimes such as fraud, forgery, uttering and theft, and statutory offences related to legislation covered by the Prevention of Organised Crime Act, the Public Finance Management Act, and the Municipal Management Act.</p> <p>The Office for Witness Protection is tasked with ensuring the safety of witnesses whose testimony has resulted in threats to them, family, or property. Only witnesses who do provide evidence of a crime and/or testify in court are afforded protection.</p>	<p>Criminal gang activities</p> <p>Racketeering activities</p> <p>Transgressions of the Public Finance Management Act</p> <p>Transgressions of the Municipal Finance Management Act</p> <p>Threats to life of whistleblower and/or family (but only when the whistleblower is a State Witness)</p> <p>Contact details:</p> <p>The Investigating Directorate: id_leads@npa.gov.za Investigating Directorate NPA</p> <p>Office for Witness Protection: No specific number provided, but call Head Office at 012 845 6000 www.npa.gov.za</p>
<p>Public Protector South Africa</p> <p>The Public Protector is an independent institution established in terms of section 181 of the Constitution, with a mandate to support and strengthen constitutional democracy. The Public Protector has the power to investigate, report on and remedy improper conduct in all state affairs. Anyone can complain to the Public Protector, but the person must have exhausted all internal reporting mechanisms.</p>	<p>Complaints against an organ of state or a state functionary.</p> <p>Contact details: http://www.publicprotector.org</p>

ORGANISATION & MANDATE	TYPES OF CASES
<p>Organisational Ethics Office</p> <p>An Ethics Office can act as a receiver of whistleblowing reports within organisations. They ensure that such reports are sent to the appropriate investigative function in an organisation, e.g., forensic investigations, human resources, internal audit or employee relations.</p>	<p>Fraud Corruption Theft Harassment Bullying Victimisation Conflicts of Interest Discrimination</p> <p>Contact details: Organisation specific</p>
<p>The Organisation Undoing Tax Abuse (OUTA)</p> <p>OUTA is a registered non-profit civil action organisation that focuses on exposing government corruption and the abuse of taxes and public funds through, among others, investigation, and litigation.</p>	<p>Squandering, maladministration, and misuse of taxes</p> <p>Contact details: Whistleblowing outa info@outa.co.za https://www.outa.co.za</p>
<p>South African Revenue Service (SARS)</p> <p>SARS investigates any taxpayers who wilfully and intentionally seeks to break the law.</p>	<p>Tax evasion Fraudulent / undue refund claims Customs related crimes</p> <p>Contact details: Fraud/Anti-corruption Hotline on 0800002870.</p> <p>Reporting of Suspected Non-Compliance https://www.sars.gov.za</p>

Organisations who look out for the well-being of whistleblowers

ORGANISATION & MANDATE	TYPES OF CASES
<p>The Whistleblower House</p> <p>The Whistleblower House supports people who know about or witness wrongdoing so that they can more safely become whistleblowers. They facilitate access to empathetic service providers, including, but not limited to professional legal, financial, security and psychological support.</p>	<p>Assistance with legal, psychological, financial, security and safety matters.</p> <p>Contact details: info@whistleblowerhouse.org</p>
<p>Southern Africa Human Rights Defenders</p> <p>AfricanDefenders (the Pan-African Human Rights Defenders Network) is a network of five African sub-regional organisations, dedicated to the promotion and protection of human rights defenders (HRDs) across the African continent.</p>	<p>Assistance with safety and security concerns</p> <p>Contact details: https://africandefenders.org</p>
<p>Platform to Protect Whistleblowers in Africa (PPLAAF)</p> <p>PPLAAF litigates and advocates on behalf of the whistleblower where their disclosures speak to the public interest of African citizens.</p> <p>They can defend whistleblowers against legal actions even if they do not have financial resources. They can also send the whistleblower's information and documents to an investigative journalist at a trusted publication.</p>	<p>Protection against retaliation Legal assistance</p> <p>Contact details: info@pplaaf.org</p>

A last word

Many whistleblowers state that they feel as if they had 'done wrong for doing right.' And that is hardly surprising given that reporting possible instances of wrongdoing by their colleagues, peers, supervisors, and other stakeholders of the organisation, exposes them to the risk of retaliation in their workplaces. Added to this, they often become dependent because no one takes them seriously.

That is why the FR is such an important person – the one person who will listen to them and forward the report to those who are in a position to act. By doing so the FR, in many instances, restores a whistleblower's confidence and dignity.

It is hoped that this guide assists FRs to continue doing so.

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This guidance resource was compiled after receiving invaluable contributions from a number of civil society organisations, state entities and individuals, including:

Active Citizens' Movement	Open Secrets
Ahmed Kathrada Foundation	Organisation Undoing Tax Abuse (OUTA)
amaBhungane Centre for Investigative Journalism	Platform the Protection of Whistleblowers in Africa (PPLAAF)
Centre for Environmental Rights	Section 27
Corruption Watch	South African Litigation Centre (SALC)
Helen Suzman Foundation	Southern African Institute for Responsive and Accountable Governance (SAIRAG)
June Bellamy	SouthernDefenders
Legal Resources Centre	The Ethics Institute
Media Monitoring Africa	Whistleblower House
National Prosecutions Authority	

About the author

Dr Liezl Groenewald is the Senior Manager Organisational Ethics at The Ethics Institute (TEI) in South Africa, immediate past President of the Business Ethics Network of Africa (BEN-Africa) and a Certified Ethics Officer since 2004 (Ethics Officer number 08). Liezl holds a BA (Communication Science), a Masters in Applied Ethics and a PhD in Applied Ethics.

Liezl has been in the field of organisational ethics since 2004. Since joining TEI in 2008, Liezl has worked with organisations not only in South Africa, but across the African continent and the Gulf Cooperation Council. She specialises especially in whistleblowing management systems, the governance of whistleblowing as well as non-retaliation of whistleblowers. In this regard she authored the *Whistleblowing Management Handbook* and the *Whistleblowing Non-retaliation Toolkit*. She is also the co-author of the *Ethics and Compliance Handbook* and *Institutionalising Ethics Handbook* and contributed to the *Ethics Office Handbook*.

Liezl represented South Africa at the International Standardisation Organisation's (ISO) global technical working groups responsible for drafting ISO 37002 – Whistleblowing Management Guidelines, and ISO 37000 – Governance of Organisations. She also serves on the global technical working group for ISO 37004 – Governance Maturity.

She is a co-founding director of The Whistleblower House in South Africa that facilitates access for whistleblowers to, amongst others, legal, security, and psychological professionals. She is a lecturer in Business Ethics at the Innsbruck University of Applied Sciences (Austria), Council member of CPUT, member of the Inaugural Committee of the International Society of Military Ethics for Africa (Afro-ISME), member of the Advisory Boards of BEN-Africa and Visslan (a whistleblowing service provider in Sweden), and a research associate at Stellenbosch University (Philosophy Department).



Whistleblowing First Responder Guide

This guide was developed by The Ethics Institute for Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ) based on an understanding of the needs of individuals in Civil Society Organisations who are the first responders to whistleblowing reports.

The purpose of this guide is to assist First Responders regarding:

- How to respond to and handle situations where a whistleblower reports wrongdoing or illegal activity;
- Questions to ask whistleblowers;
- Legal framework for the protection of whistleblowers; and
- Organisations to whom reports could be referred.

The First Responder is an important person in any whistleblower's life – the person who provides hope and in many instances, restores a whistleblower's confidence and dignity. This guide aims to assist First Responders to continue doing so.