

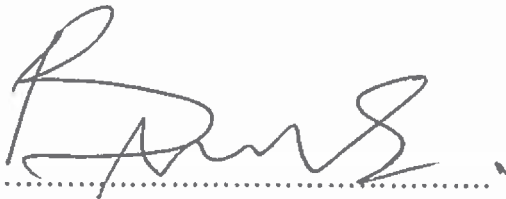
**OFFICE OF THE PUBLIC SERVICE COMMISSION
NOTICE 22 OF 2017**

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PUBLIC SERVICE COMMISSION

PUBLIC SERVICE COMMISSION ACT, 1997

The Public Service Commission has, under section 11 of the Public Service Commission Act, 1997 (Act No. 46 of 1997), made the rules contained in the Schedule.



CHAIRPERSON

OF THE PUBLIC SERVICE COMMISSION

SCHEDULE

PUBLIC SERVICE COMMISSION RULES ON CONDUCTING INVESTIGATIONS

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Definitions

1. In these rules, unless the context indicates otherwise -

“applicable procedures” means all procedures issued in terms of legislation and all sub-ordinate legislation that regulates public administration and personnel practices in the Public Service;

“Commission” means the Public Service Commission established by section 196(1) of the Constitution;

“complainant” means a person who has lodged a complaint with the Commission;

“complaint” means a matter reported to the Commission in terms of section 196(4)(f)(i), (iii) and (iv) of the Constitution, 1996;

“Constitution” means the Constitution of the Republic of South Africa, 1996;

“department” means a national department, a national government component, the Office of a Premier, a provincial department or a provincial government component;

“employee” means a person contemplated in section 8 of the Public Service Act, but excludes a person appointed in terms of section 12A of the Act;

“personnel practices” means all those functions and activities executed to provide a service to employees such as recruitment, appointment, transfer and other career management objectives aimed at enhancing the well-being and effectiveness of the employees;

“public administration practices” means all those functions and activities executed by departments to provide effective and efficient services to any person, e.g. financial management, personnel provisioning and administration, supply chain management processes, service delivery, application of policies and procedures to attain proficiency;

“public service” means the public service contemplated in section 8 of the Public Service Act, 1994, as amended.

CHAPTER 1

PURPOSE AND APPLICATION OF RULES

Purpose and application of the rules

2. (1) The purpose of these rules is to provide for the investigation and evaluation of matters as contemplated in section 196(4)(f)(i), (iii) and (iv) of the Constitution, 1996.

(2) These rules are made under section 11 of the Public Service Commission Act, 1997 (Act No. 46 of 1997), which authorises the Commission to make rules regarding the matters to which section 196(4) of the Constitution relate.

(3) These rules do not apply to -

- (a) grievances of employees as contemplated in section 196(4)(f) (ii) of the Constitution, 1996, that fall within the ambit of the formal grievance procedure; and
- (b) misconduct appeals of employees that fall within the ambit of the formal disciplinary code and procedures for the public service.

CHAPTER 2

LODGING OF COMPLAINTS WITH THE COMMISSION

Matters that may be investigated and evaluated by the Commission

3. (1) The Commission may either of its own accord or on receipt of any complaint -

- (a) investigate and evaluate the application of personnel and public administration practices as contemplated in section 196(4)(f)(i) of the Constitution, 1996;
- (b) investigate and monitor adherence to applicable procedures in the public service as contemplated in section 196(4)(f)(iii) of the Constitution; and
- (c) advise national and provincial organs of state regarding personnel practices in the public service, including those relating to the recruitment, appointment, transfer, discharge and other aspects of the careers of employees in the public service as contemplated in section 196(4)(f)(iv) of the Constitution.

(2) Subject to these rules, a complainant may lodge a complaint with the Commission in respect of any matter contemplated in subrule (1), which may include a complaint regarding -

- (a) ethics related issues such as dishonesty, favouritism, abuse of power, improper personal gain and conflicts of interest;
- (b) accountability related issues such as appointment, procurement and financial irregularities, non-compliance with public service legislation and policy

- (including departmental policies), lack of access to information and lack of confidentiality;
- (c) service delivery and professionalism related issues such as bias/impartiality, unfairness, discrimination and prejudice;
 - (d) performance related issues such as incapacity, incompetence, lack of training/capacitating and lack of representivity; and
 - (e) policy related issues such as the non-existence of policies and policies that may be in conflict with legislation.

Matters that will not be investigated by the Commission

4. (1) The following matters that fall outside the jurisdiction of the Commission will not be investigated;

- (a) corruption and maladministration;
- (b) conduct of private medical practitioners;
- (c) the outcome of and delays in court cases;
- (d) public entities as listed in Schedules 2 and 3 of the *Public Finance Management Act, 1999*;
- (e) former public servants;
- (f) private sector bargaining councils and labour unions;
- (g) conduct of Magistrates during court cases;
- (h) conduct of Sheriffs of the Court; and
- (i) private businesses.

(2) The Commission will also not investigate a complaint if any of the following applies:

- (a) A complaint already investigated by the Commission;
- (b) A complaint lodged with the Commission that has already been lodged with another institution that would lead to a duplication of efforts or resources;
- (c) A complaint that has been investigated by another institution will not be reviewed by the Commission;
- (d) Instances where the Commission establishes non-disclosure by the complainant of having referred the complaint to another institution;
- (e) A complaint that can more appropriately be dealt with by another institution;
- (f) An anonymous complaint in which critical factual gaps exist, rendering the likelihood of a successful conclusion unlikely;
- (g) A complaint of a frivolous, vexatious or tactical nature or seeking to abuse the Public Service Commission Rules on conducting investigations;
- (h) A complaint not meeting the criteria set out in the Public Service Commission Rules on conducting investigations; and
- (i) Instances of "Forum Shopping".

Procedure to be followed before lodging of complaints with the Commission

5. (1) Before lodging a complaint with the Commission a complainant may first endeavour to resolve the complaint with the relevant department.

(2) If the complainant is still not satisfied, or if the complainant is of the view that the complaint should be referred directly to the Commission for investigation, she or he may then lodge that complaint with the Commission via the

national office or the relevant provincial office, in which case reasons must be provided to the Commission in both instances.

(3) When a complainant's lodging of a complaint directly with the Commission is not accepted by the Commission, the complainant must be informed accordingly within 21 days from the date on which the Commission took its decision.

Timeframes for lodging of complaints with the Commission

6. (1) A complainant must lodge a complaint with the Commission within 12 months from the date on which the incident occurred.

(2) The Commission may, on good cause shown, decide whether to investigate a complaint lodged after the expiry of the period of 12 months referred to in subrule (1).

(3) In deciding whether or not to investigate a complaint lodged after the 12 month period, the Commission will consider the following:

- (a) the reasons for the late lodging of the complaint, if any;
- (b) the extent of the prejudice likely to be suffered if the complaint is not investigated by the Commission; and
- (c) any other circumstances/relevant factors which warrant condonation of such late lodging of a complaint.

(4) When a complainant's lodging of a complaint after the expiry of the period of 12 months referred to in subrule (1) is not accepted by the Commission, the complainant must be informed accordingly within 21 days from the date on which the Commission took its decision.

Methods that may be used when lodging complaints with the Commission

7. (1) A complainant may lodge a complaint with the Commission by following any one of the following methods:

- (a) By the completion of the form for lodging a complaint with the Commission, as set out in Annexure A, which form is available online on the Website of the Commission (www.psc.gov.za) or at any Office of the Commission.

- (b) By means of a letter or statement addressed to the Commission which may be posted, e-mailed to info@opsc.gov.za or faxed to the Commission.
- (c) By contacting any Office of the Commission telephonically, in which case the form referred to in subrule (1)(a), must be completed by the relevant Office of the Commission on behalf of the complainant.
- (d) By lodging a complaint verbally in person with any Office of the Commission, in which case the form referred to in subrule (1)(a), must be completed and signed by the complainant.

(2) A complainant may lodge a complaint with the Commission in any of the official languages referred to in section 6(1) of the Constitution.

Information required when lodging complaints with the Commission

8. (1) The following information should be contained in the complaint that is lodged with the Commission:

- (a) the full names of the complainant;
- (b) the physical and postal address of the complainant;
- (c) the telephone number, facsimile number and e-mail address (if available) of the complainant;
- (d) the place and date of the occurrence of the complaint;
- (e) the names and designations of employees involved;
- (f) the department involved;
- (g) the nature of the complaint, which should contain the background and history of the complaint;
- (h) the steps, if any, that have been taken in trying to resolve the complaint;
- (i) the names and particulars of the employees of the department who have been dealing with the complaint (if applicable);
- (j) an indication whether or not the complaint was lodged with any other department or institution/authority and, if so, the outcome thereof;
- (k) the names, contact numbers and addresses of any person who could provide information relevant to the complaint;
- (l) the outcome sought to be achieved by the investigation; and
- (m) supporting documentation relevant to the complaint, if any.

(2) Upon receipt of a complaint, the Commission may conduct a preliminary investigation, if necessary, in order to determine whether there are grounds for a more in-depth investigation to be conducted.

Complaints lodged with the Commission anonymously

9. (1) The Commission is not obliged to investigate a complaint lodged with it anonymously.

(2) The Commission may decide to investigate such a complaint after taking into consideration, amongst others, the following factors:

- (a) The magnitude, seriousness and complexity of the allegations;
- (b) whether or not critical factual gaps exist that may render the likelihood of a successful investigation and conclusion unlikely; and
- (c) the supporting documentation accompanying the complaint, if any.

CHAPTER 3

INVESTIGATION OF COMPLAINTS BY THE COMMISSION

Registration and allocation of complaints received

10. The Commission will upon receipt of a complaint –
- (a) allocate a reference number to the complaint;
 - (b) assign the complaint to an investigating officer;
 - (c) acknowledge receipt of the complaint within 48 hours from the date of receipt of the complaint by the investigating officer;
 - (d) ensure that the information provided with the complaint complies with the provisions of rule 8;
 - (e) follow up with the complainant to obtain essential information and/or documentation, if required, in those instances where the contact details of the complainant are provided and where the complaint was lodged by any of the methods listed in rule 7(1);
 - (f) assess whether the Commission has the jurisdiction to investigate the complaint; and

- (g) inform the complainant in writing, within a reasonable period but not later than 21 days after either the date of receipt of the complaint by the investigating officer or the date on which the non-disclosure of the referral of the complaint to another institution was established by the Commission, that the complaint will –
 - (i) not be investigated by the Commission in which case reasons must be provided therefor in accordance with rule 4; or
 - (ii) be investigated by the Commission in which case the name and contact particulars of the investigating officer will be provided.

Determine the scope of the investigation and additional information required

11. (1) The Commission will determine whether the complaint will be dealt with as a complaint for early resolution or as a complaint for investigation by developing terms of reference for the investigation.

(2) Early resolution complaints:

- (a) The Commission will close/refer to the appropriate institution an early resolution complaint when the following applies:
 - (i) The complaint falls outside the jurisdiction of the Commission as referred to in rule 4(1).
 - (ii) The conditions referred to in rule 4(2).
 - (iii) Any other reason at the discretion of the Commission.
- (b) The Commission will investigate an early resolution complaint where there is a possibility that the complaint can be resolved within 45 days from the date of receipt of all relevant documentation.
- (c) The Commission will inform a complainant of the closure/referral/outcome of an early resolution complaint within 10 days from the date on which the complaint was closed/finalised/referred.

(3) **Complaints for investigation with terms of reference:**

- (a) The Commission will deal with a complaint as an investigation by developing terms of reference for the investigation as determined by the magnitude, seriousness, complexity and sensitivity of the allegations.
- (b) The Commission will request additional information from the complainant and/or the department(s) involved in order to enable the Commission to do a proper analysis and arrive at informed findings on the complaint, by means of –
 - (i) a letter directed to the executive authority/head of the department regarding the complaint and the conducting of the investigation by the Commission as well as requesting the relevant documentation;
 - (ii) telephonic conversations confirmed by e-mails or faxes; and
 - (iii) through consultations, interviews, visits and in-loco inspections, which will be properly documented.
- (c) The Commission will consider issuing summons in terms of section 10 of the *Public Service Commission Act, 1997*, in cases where the relevant department is not cooperating in providing the requested information or where a person is withholding material evidence pertaining to the investigation.

Conducting an investigation and compiling a report

12. (1) With regard to conducting an investigation, the Commission –
- (a) will approve the report within three months from the date of receipt of all relevant documentation;
 - (b) may proffer advice, make recommendations and/or issue directions based on the findings contained in the report;

- (c) will provide the executive authority/head of the department with an opportunity to comment on the findings made by the Commission within 30 days from the date of receipt of the provisional report;
- (d) will consider the comments from the executive authority/head of the department on the findings made by the Commission;
- (e) will provide the executive authority/head of the department with a final report containing findings, which may also contain advice and/or recommendations and/or directions, for implementation of the recommendations and/or directions and to provide feedback to the Commission within 60 days from the date of receipt of the report. If the executive authority/head of the department decides not to implement the Commission's recommendations, reasons must be provided to the Commission;
- (f) will follow up with the executive authority/head of the department on the implementation of recommendations and/or the issuing of directions contained in the report; in the event that no feedback is received within the 60 days;
- (g) shall report to the legislature in terms of section 196(4)(f)(i) of the Constitution, 1996 ; and
- (h) shall treat the information received as a result of a complaint lodged and an investigation conducted as confidential and shall take reasonable steps to safeguard confidentiality whilst conducting the investigation and compiling the report.

(2) Once the executive authority/head of the department has considered the report and made a decision in respect of the Commission's recommendations/directions the executive authority/head of the department may decide on the dissemination of copies of the report to affected and interested parties.

Withdrawal of rules and transitional measures

13. (1) The Rules published by Government Notice 977 of 19 July 2002 is hereby withdrawn.

(2) Any investigation instituted or complaint lodged under the law mentioned in subrule (1) must be finalised under that law as if that law has not been withdrawn by these Rules.

Short title and commencement

14. These Rules are called the Public Service Commission Rules on conducting investigations and shall come into operation on the date of publication in the Government Gazette.

Annexure A**FORM FOR LODGING A COMPLAINT WITH THE PUBLIC SERVICE COMMISSION****1. Particulars of complainant:**

Full names:

Postal address:

Code:

Street address:

Code:

Telephone number:

Cellphone number:

Fax number:

e-mail address:

2. Particulars of the complaint: (use additional pages if necessary and attach all relevant documentation)

Place of the occurrence:

Date of the occurrence:

Names and designations of official(s) involved:

Department(s) involved:

The nature of the complaint (background and history):

Steps, if any, taken to endeavour to resolve the complaint:

The names and particulars of those in the department who may have been dealing with the complaint

With which other institution(s) was the complaint lodged and what was the outcome?

The names, contact numbers and addresses of any person who could provide information relevant to the complaint:

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The outcome sought to be achieved by the investigation:

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List of supporting documentation (as attached):

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The method in which the complaint was lodged with the PSC:

- | | | |
|-----|--|--------------------------|
| (a) | Form completed by complainant | <input type="checkbox"/> |
| (b) | Letter or statement posted, e-mailed, SMSed or faxed | <input type="checkbox"/> |
| (c) | Telephonically | <input type="checkbox"/> |
| (d) | Verbally in person | <input type="checkbox"/> |

Signature of complainant completing the form:

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Date:

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Name and contact particulars of the employee of the OPSC who collated the information:

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