

*WHISTLE-BLOWER POLICY

INTRODUCTION

*1. The International Atomic Energy Agency (IAEA) has zero tolerance for fraud, corruption or other forms of misconduct¹ in its programmes and activities, and is committed to good governance, transparency and accountability.

*2. The Director General has established a Whistle-blower Policy to:

- a. Provide the means for staff members, persons engaged under the policy governing the engagement and conditions of service of personnel other than staff members (Part II, Section 11 of the Administrative Manual — AM.II/11) and external persons to report fraud, corruption or other forms of misconduct, and to protect them against identity disclosure; and
- b. Protect staff members and persons engaged under AM.II/11 against retaliation² for making such reports or for cooperating with audits and investigations.

3. This Policy applies to:

- a. All staff members, regardless of their type of appointment or its duration; and
- b. Persons engaged under AM.II/11 — such as consultants or interns — and external persons — such as vendors or contractors — having information on fraud, corruption or any other forms of misconduct involving the IAEA's programmes and activities.

4. Anyone who has any information indicating that fraud, corruption or other forms of misconduct are occurring or have occurred within the Agency's programmes and activities is, in the case of staff members, required³ to report the information, and, in the case of persons engaged under AM.II/11 and external persons, urged to report the information. Such a report may be made anonymously.

5. The reporting under this Policy is separate from, and an alternative to, the already established channel for submitting reports of misconduct to the Director of the Division of Human Resources (DIR-MTHR), or through the dedicated mailbox: MTHR.Staff-Relations@iaea.org, and does not replace this channel or mailbox.

6. The Director of the Office of Internal Oversight Services (DIR-OIOS) and the Chief of Ethics are designated as the responsible officers to implement this Policy.

7. This Policy will be shared with all staff, as well as with persons engaged under AM.II/11 and external persons that may be concerned. Furthermore, this Policy will be incorporated into ethics training and posted on a publicly accessible website.

¹ See *The Agency's Anti-Fraud Policy*, AM.I/22.

² The term "retaliation" as used in this Policy is defined in paragraph 25 below.

³ As per paragraph 20 of the *Standards of Conduct for the International Civil Service* (AM.II/1, Appendix A): "International civil servants have the duty to report any breach of the organization's regulations and rules to the official or entity within their organizations whose responsibility it is to take appropriate action and to cooperate with duly authorized audits and investigations. An international civil servant who reports such a breach in good faith or who cooperates with an audit or investigation has the right to be protected against retaliation for doing so."

8. At least every two years, the Agency shall review and assess the terms and implementation of the present policy.

WHAT TO REPORT

9. Staff members, persons engaged under AM.II/11 and external persons may report concerns relating to fraud, corruption or other forms of misconduct. Misconduct includes, but is not limited to, theft, misuse or abuse of funds, coercion, harassment, retaliation, discrimination, abuse of authority and other acts described in Staff Rule 11.01.1 (B).⁴

10. The report should provide as much detail as possible concerning the information on fraud, corruption or other forms of misconduct. The whistle-blower is encouraged to include his/her contact details (name, address and/or phone number), so that clarifications may be sought, if necessary. However, the whistle-blower may also remain anonymous.

11. This channel for reporting shall not be used to transmit unsubstantiated rumours or false allegations of misconduct. Staff members and persons engaged under AM.II/11 are reminded that the making of unsubstantiated rumours or deliberately false allegations of misconduct is a form of misconduct as defined by Staff Rule 11.01.1(B). In such cases, staff members and persons engaged under AM.II/11 are not entitled to the protection provided by this Policy and they may themselves be the subject of disciplinary procedures.

HOW TO REPORT

12. Staff members, persons engaged under AM.II/11 and external persons may report concerns relating to fraud, corruption or other forms of misconduct directly to DIR-OIOS using any of the options described below, or in person.

13. Staff members and persons engaged under AM.II/11 may use any of the following options to make a report:

- a. **Telephone** — A dedicated telephone line (ext. 26111) has been set up in the office of DIR-OIOS to receive telephone reports and messages and is accessible only to authorized OIOS staff;
- b. **Email** — A dedicated email account (whistleblower@iaea.org) has been set up and is accessible only to authorized OIOS staff;
- c. **Facsimile** — A dedicated fax machine (ext. 29126) has been set up in the office of DIR-OIOS and is accessible only to authorized OIOS staff;
- d. **Internal mail** — Written reports should be placed in an envelope, sealed and marked “Confidential to be opened by the addressee only”. The envelope should be addressed to DIR-OIOS (room A2723);
- e. **External mail** — Written reports should be placed in an envelope, sealed and marked “Confidential to be opened by the addressee only”. The envelope should be addressed to the Director of the Office of Internal Oversight Services, IAEA, Vienna International Centre, PO Box 6, 1400 Vienna, Austria.

14. External persons may use any of the following options to make a report:

⁴ Staff Regulations and Staff Rules, AM II/1.

- a. **Telephone** — A dedicated telephone line (+43-1-2600-26111) has been set up in the office of DIR-OIOS to receive telephone reports and messages and is accessible only to authorized OIOS staff;
- b. **Email** — A dedicated email account (whistleblower@iaea.org) has been set up and is accessible only to authorized OIOS staff;
- c. **Facsimile** — A dedicated fax machine (+43-1-2600-29126) has been set up in the office of DIR-OIOS and is accessible only to authorized OIOS staff;
- d. **External Mail** — Written reports should be placed in an envelope, sealed, and marked “Confidential to be opened by the addressee only”. The envelope should be addressed to the Director of the Office of Internal Oversight Services, IAEA, Vienna International Centre, PO Box 6, 1400 Vienna, Austria.

CONFIDENTIALITY

15. The identity of a whistle-blower is kept confidential and only disclosed with the consent of the whistle-blower or for compelling reasons such as legal obligations or obvious misconduct of the whistle-blower. In the latter case, DIR-OIOS is accountable for the decision to disclose the identity of whistle-blowers.

16. OIOS is responsible for safeguarding all information received from a whistle-blower. The intentional, unauthorized disclosure of whistle-blower information or identity by any staff member, and in particular OIOS staff members, who have been provided with such information for official purposes, may constitute misconduct for which, if established, disciplinary measures may be imposed.

IMPLEMENTATION

17. DIR-OIOS receives, logs, reviews, and takes action on all incoming reports. Each report is screened to assess its reliability and whether there is sufficient information or a need to contact the whistle-blower, if contact information has been provided. DIR-OIOS will seek to complete the preliminary review within 45 working days of receiving the complaint of retaliation or the report of fraud, corruption or other forms of misconduct.

18. Should DIR-OIOS determine that a whistle-blower report warrants an investigation, OIOS will conduct the investigation in accordance with its investigation procedures⁵. All investigations are carried out with complete independence and confidentiality and the due process rights of affected staff members or persons engaged under AM.II/11 are respected throughout the investigation. DIR-OIOS makes all efforts to ensure that investigations are conducted in the most efficient and effective manner and completed in the shortest possible time, given the resources available.

19. OIOS investigators must be objective and independent, both organizationally and personally. If there is a possibility that this independence or objectivity may be called into question during a particular investigation, DIR-OIOS, after reviewing the facts, may take any action necessary to ensure that the provisions of the OIOS Charter⁶, with respect to independence and objectivity, are applied.

⁵ See AM.III/4.

⁶ Reproduced in AM.III, 1.

20. DIR-OIOS reports periodically to the Director General on the volume and nature of whistle-blower reports and the results of investigations undertaken.

21. Based on investigation results and recommendations, the Director General, following MTHR action under the Procedures to be Followed in the Event of Reported Misconduct (AM.II/1, G), may initiate disciplinary proceedings against staff members in accordance with the provisions of the Administrative Manual, or take other appropriate actions against persons engaged under AM.II/11, or other external persons.

22. At any point prior to issuance of a final report on the alleged misconduct reported by the whistle-blower and/or retaliation, DIR-OIOS or the Chief of Ethics may recommend that the Director General take immediate interim measures to safeguard the interests of the whistle-blower, including, but not limited to, suspension of implementation of the allegedly retaliatory action, temporary reassignment or transfer of the alleged retaliator with no loss of pay, grade or benefits, and, with the consent of the whistle-blower, temporary reassignment or transfer of the whistle-blower within or outside the work unit concerned with no loss of pay, grade, or benefits.

23. In the event that the identity of the whistle-blower is not disclosed to a staff member or a person engaged under AM.II/11 suspected of misconduct, no administrative decision or disciplinary measure will be taken unless there is sufficient, reliable and probative evidence that provides a factual foundation for the action proposed. Such evidence must be disclosed to the staff member or the person engaged under AM.II/11 suspected of misconduct and he/she must have the opportunity to respond to it.

24. DIR-OIOS, at his/her discretion, may provide an update on the outcome of an investigation to a whistle-blower if requested, without disclosing confidential information.

RETALIATION

25. Retaliation (for purposes of this Policy) means any direct or indirect detrimental action that adversely affects the employment or working conditions of an individual, where such action has been recommended, threatened or taken for the purpose of punishing, intimidating or injuring an individual because that individual engaged in “protected activity” as described below in paragraph 27. Retaliation is itself a separate act of misconduct and a violation of this Policy. For purposes of this Policy, the legitimate application of regulations, rules or administrative policies, issuances or procedures, or the mere expression of disagreement, admonishment, criticism or a similar expression regarding work performance, conduct or related issues within a supervisory or similar relationship, do not constitute retaliation.

26. Retaliation against individuals who have reported misconduct or who have cooperated with duly authorized audits or investigations violates the fundamental obligation of all staff members or persons engaged under AM.II/11 to uphold the highest standards of efficiency, competence and integrity, and to discharge their functions and regulate their conduct with the best interests of the Agency in view. Retaliation is by itself a form of misconduct, which will be investigated⁷ and, if established, will lead to the imposition of disciplinary measures according to Staff Rule 11.01.2.

27. Staff members or persons engaged under AM.II/11, regardless of their type of appointment or its duration, who have engaged in any of the following “protected activities” are entitled to protection from retaliation⁸:

- a. Provided information under this Policy in good faith;
- b. Submitted a written report of potential misconduct under AM.II/1, G;

⁷ Staff Rule 11.01.1(B)(6).

⁸ *Standards of Conduct for the International Civil Service* (AM.II/1, Appendix A).

- c. Submitted a formal report of alleged harassment under AM.II/17, E;⁹ or
- d. Cooperated with duly authorized audits and investigations.

28. If a staff member did not engage in a protected activity, any detrimental action recommended, threatened or taken against him/her will not be considered retaliation under this Policy. Claims concerning conduct not covered under this Policy should be addressed to MTHR as a potential management issue or alleged misconduct or, if appropriate, reported directly to OIOS. Reprisals for resorting to informal mechanisms or support services to express concerns about inappropriate behaviour in accordance with the Agency's Prevention of Harassment and Sexual Harassment Framework (AM.II/17, E) does not constitute retaliation under this Policy, however it may be considered a violation of AM.II/17, E and/or misconduct under Staff Rule 11.01.1 which should be separately addressed.

REVIEW BY THE CHIEF OF ETHICS

*29. Staff members or persons engaged under AM.II/11 who believe that they have been threatened by retaliation or that retaliatory action has been taken against them may report their complaint to the Chief of Ethics. The Chief of Ethics will undertake a preliminary review of the retaliation complaint. The Chief of Ethics will seek to complete the preliminary review within 30 days of receiving all information requested concerning the complaint. Submission of a complaint to the Chief of Ethics does not have the effect of suspending the time limits for filing any process under Article XII of the Staff Regulations and Staff Rules (AM.II/1), or an appeal to the Administrative Tribunal of the International Labour Organization under the Rules of that Tribunal.

A. Preliminary Review

30. The Chief of Ethics will conduct a preliminary review of the complaint of retaliation to determine if:
- a. the complainant engaged in a protected activity;
 - b. the complainant experienced, or was threatened with, one or more detrimental actions; and
 - c. there is a prima facie case that the protected activity was a contributing factor in causing the detrimental action or threat of such action.

31. A determination by the Chief of Ethics that the elements identified in paragraph 30 above are not present does not imply the absence of wrongdoing. OIOS may determine that allegations which do not constitute a retaliation for engaging in a protected activity do, however, support a finding that another type of misconduct occurred. Accordingly, the determination by the Chief of Ethics is without prejudice to a complainant's right to submit a complaint under AM.II/17, E regarding alleged harassment or alleged misconduct under Staff Rule 11.01.1.

32. For avoidance of doubt, the determination by the Chief of Ethics referred to in paragraphs 30 and 31 above is not an administrative decision that can be appealed. However, a determination by the Chief of Ethics under paragraph 30 does not preclude a staff member from, as a separate matter, requesting review of any underlying adverse administrative decision which a staff member may have raised in the context of his/her retaliation complaint, and which the staff member alleges does not observe the terms of his/her appointment, pursuant to Staff Regulation 12.01 and Staff Rule 12.01.1(D)(1).

⁹ See AM.II/17, E, paragraphs 70–73.

B. Referral Following Prima Facie Determination

33. If the Chief of Ethics determines that the elements in paragraph 30 above are present, he/she will refer the matter to OIOS for investigation and immediately notify the complainant in writing that the matter has been referred for investigation. Following a referral by the Chief of Ethics, OIOS shall complete an investigation of the alleged retaliation.

34. OIOS will conduct the investigation in accordance with its investigation procedures, taking into account the provisions of paragraph 35 below requiring submission of a report to Chief of Ethics to allow for an independent review of the findings.¹⁰

35. For protection purposes, the investigation shall determine if there is evidence that the administration would have undertaken the same challenged action if no previous protected activity had taken place. The administration shall have the burden to prove that it would have taken the same challenged action if no previous whistle-blowing or cooperation with audits and investigations had taken place. A finding of retaliation will follow if the Agency is unable to discharge this burden of proof. DIR-OIOS will seek to complete the investigation and submit a report to the Chief of Ethics within 120 working days.

C. Review of the Investigation Report by Chief of Ethics

36. Upon receipt of the investigation report, the Chief of Ethics will conduct an independent review of the findings of the report and supporting documents to determine whether the report and the supporting documents show, by clear and convincing evidence, that the management would have taken the alleged retaliatory action absent the complainant's protected activity or that the alleged retaliatory action was not made for the purpose of punishing, intimidating or injuring the complainant. If, in the view of the Chief of Ethics, this standard of proof is not met, the Chief of Ethics will consider that retaliation has occurred. If the standard of proof is met, the Chief of Ethics will consider that retaliation has not occurred. In all cases, the Chief of Ethics will inform the complainant in writing of the determination and make his/her recommendations to the Director General.

37. The Chief of Ethics may also refer the matter to DIR-MTHR, pursuant to AM.II/1, G, for possible disciplinary procedures or other action that may be warranted as a result of the determination. Where the process under AM.II/1, G results in disciplinary sanctions, complainants will be informed on a confidential basis of the disciplinary sanctions.

D. Corrective Measures

38. If the Chief of Ethics considers that there has been retaliation against a complainant, he/she may, after taking into account any recommendations made by OIOS or other concerned office(s) and after consultation with the complainant, recommend to the Director General appropriate measures aimed at correcting negative consequences suffered as a result of the retaliatory action and protecting the complainant from any further retaliation, including, but not limited to: the rescission of the retaliatory decision, including reinstatement, or, if requested by the complainant, transfer to another office and/or function and/or change of reporting lines. For individual contractors or consultants, such measures shall not include reinstatement or extension of an engagement beyond its original date of completion. The foregoing corrective measures shall not include, nor shall they be considered, disciplinary measures.

39. Subject to all relevant due process rights, including rights under the Staff Regulations and Staff Rules, recommended measures may also include transfer of the person who allegedly engaged in retaliation.

¹⁰ See AM.III/4.

40. The Director General shall provide a written decision to the complainant on the recommendations of the Chief of Ethics pursuant to paragraph 36 above within 30 days of receipt of this recommendation. The decision shall also be communicated to the Chief of Ethics. The decision taken by the Director General under this paragraph will constitute an administrative decision that may be appealed under Staff Rule 12.01.1. Subject to paragraph 41 below, the decision must respect the confidentiality rights of the person who allegedly engaged in retaliation in relation to any ongoing disciplinary process.

41. Protection against retaliation will be extended to staff members and persons engaged under AM.II/11 who report in good faith fraud, corruption, or other forms of misconduct to an entity or individual outside the established internal Agency mechanisms, where the criteria set out below in paragraphs 47 and 48 are satisfied.

42. If established, any retaliatory measures against a contractor or its employees, agents or representatives or any other individual engaged in any dealings with the IAEA because such person has reported misconduct may lead to disciplinary or other appropriate action.

PREVENTATIVE ACTION

43. OIOS will inform the Chief of Ethics of any complaint or report of misconduct received that may pose a retaliation risk. OIOS will provide this information to the Chief of Ethics only with the consent of the complainant.

44. When informed by OIOS of an individual who may be at risk of retaliation, the Chief of Ethics will consult with the individual on appropriate preventative action. With the individual's consent, appropriate preventative action may include engagement by the Chief of Ethics with senior management to ensure monitoring of the individual's working conditions with a view to preventing any retaliatory action against the individual as a consequence of his/her engaging in a protected activity.

HOW TO SUBMIT A REQUEST FOR PROTECTION AGAINST RETALIATION/COMPLAINT OF RETALIATION TO THE CHIEF OF ETHICS

45. Staff members or persons engaged under AM.II/11 who believe that they have been threatened by retaliation or that retaliatory action has been taken against them may report their complaint to the Chief of Ethics.¹¹ The Ethics function has developed the IAEA Protection Against Retaliation form that may be used to submit a complaint of retaliation.¹²

46. The retaliation complaint may be made in person to the Chief of Ethics (Office C0317), by telephone (+43 1 2600-24500) or email (EthicsHelpLine@iaea.org). The Chief of Ethics may afterwards request that a written and signed complaint be submitted. Complainants (i.e. a staff member or person engaged under AM.II/11 who submits a complaint) should forward all information and documentation available to them to support their complaint to the Chief of Ethics as soon as possible.

REPORTING OUTSIDE THE ESTABLISHED INTERNAL AGENCY MECHANISMS

47. Staff members or persons engaged under AM.II/11 may report fraud, corruption, or other forms of misconduct to an entity or individual outside the established internal Agency mechanisms in the following cases:

- a. When such reporting is necessary to avoid:

¹¹ For situations of potential conflicts of interest involving the Chief of Ethics, see AM.XI/1 (paragraphs 6.1–6.2).

¹² The form is available on [the IAEA Ethics Function page on InSite](#).

- i. a significant threat to public health and safety; or
- ii. a substantive damage to the Agency's operations; or
- iii. violations of national or international law.

and

- b. When the use of internal mechanisms is not possible because:
 - i. at the time the report is made, the staff member or person engaged under AM.II/11 has grounds to believe that he/she will be subjected to retaliation by the person(s) he/she should report to pursuant to the established internal mechanisms; or
 - ii. it is likely that evidence relating to the misconduct will be concealed or destroyed if the staff member or person engaged under AM.II/11 reports to the person(s) he/she should report to pursuant to the established internal mechanisms; or
 - iii. the staff member or person engaged under AM.II/11 has previously reported the same information through the established internal mechanisms, and DIR-OIOS has failed to inform the individual in writing of the status of the matter within six months of such a report.

48. Staff members or persons engaged under AM.II/11 shall not accept payment or any other benefit from any party for such reports referred to in paragraph 47.

OPTIONS TO SEEK INFORMAL GUIDANCE AND SUPPORT OR TO PURSUE MATTERS THROUGH OTHER ESTABLISHED MECHANISMS

49. The Agency encourages the informal resolution of conflicts. Therefore, notwithstanding any other provisions of this Policy, a staff member or person engaged under AM.II/11 who believes he/she may have been subjected to, or is threatened with, retaliation may, at his/her discretion, initially contact the Secretary of Mediation¹³ to seek an informal resolution of the underlying matter (i.e. the issue that has given rise to the concern about retaliation). The individual may also request a third person, acceptable to both parties, to mediate. Furthermore, the individual may seek support from other functions, including MTHR, the Staff Counsellor, or the Staff Council.

50. Pursuit of informal resolution of a matter, grievance or interpersonal problem that may form the basis of a complaint of retaliation may not prevent or preclude the independent and eventual institution of disciplinary or other administrative action against the alleged retaliator, if appropriate.

¹³ See AM.II/17, E, paragraphs 37–42.