

Regulations on Reporting Suspected Misconduct and Whistleblower Protection

Regulation drafted according to the VSNU's "Good Governance Code for Universities 2007"

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1. Introduction

These regulations are intended to actively encourage and enable all relevant parties (see art. 1C.) to raise and report any concerns about (suspected) violations of IHE Delft's Codes of Conduct or violations of laws or regulations that are damaging to the operations of the organization, its environment and people.

The Rectorate considers it desirable in the context of good management and compliance with applicable laws and regulations to adopt a clear procedure for 1.) Reporting suspected cases of misconduct and 2.) The protection of employees and others against prejudicing of their position as a result of their reports (so-called "whistleblowing").

In view of the "Good Governance Code for Universities 2007" the Rectorate has adopted the following regulations with the consent of the Works Council (WoC).

Art. 1 Definitions

In these regulations, the terms are defined as follows:

- a. **Suspicion of Misconduct:** a suspicion based on reasonable grounds of misconduct at IHE Delft regarding:
 - A (threatening) criminal offense;
 - A (threatening) gross violation of rules;
 - A serious danger to public health, safety or the environment;
 - An improper act or omission that constitutes a danger to the proper functioning of the Institute or that seriously prejudices the Institute;
 - A (threat of) intentionally misinforming public bodies or;
 - A (threat of) intentional concealment, destruction or manipulation of information about the above mentioned offenses.
- b. **Whistleblowing:** whistleblowing is the disclosure or reporting of (suspected) misconduct, including all the points mentioned above, and acts to cover up any of these;
- c. **Whistleblower:** a whistleblower is any party who reports (suspected) misconduct covered under point a. and who is potentially at risk of retribution. This includes employees and individuals who are outside the traditional employee-employer relationship at IHE Delft such as course participants and visitors – regarding the latter one can think of guest lecturers, consultants, contractors, trainees/interns, volunteers, student workers, temporary workers and former employees;
- d. **Employee:** a person who is working for or at IHE Delft on the basis of an employment contract with IHE Delft;
- e. **Course participant:** a person registered in the central student administration system at IHE Delft;
- f. **Visitor:** a person who is mentioned under point c. and in such a capacity is using the facilities of IHE Delft;
- g. **Supervisor:** the immediate manager or (academic) supervisor of an employee, course participant or visitor;
- h. **Confidentiality Counsellor:** the person who has been appointed as (in-or external) confidentiality counsellor by the Rectorate;
- i. **Whistleblower reporting body:** an external contact point such as the House for Whistleblowers (Huis voor klokkenluiders: <https://huisvoorklokkenluiders.nl/>) which has the authority to launch an independent investigation;
- j. **Foundation Board:** the Board is responsible for safeguarding the continuity of IHE Delft's operations by providing funds and resources.
- k. **Rectorate:** the Rectorate of IHE Delft.

Art. 2 General

The purpose of this document is to communicate the IHE Delft regulations providing specific instructions for the reporting of suspected misconduct including disclosure channels, subsequent investigation and proper protection of so-called whistleblowers against any form of retaliation. Finally, the information the whistleblower discloses is considered very important and meaningful and can be used in a way so that IHE Delft can address and correct inappropriate conduct and actions.

Art. 3 Internal reporting by an employee

1. An employee who suspects misconduct must report that suspicion internally
 - To his/her supervisor, commonly the first point of contact;

Otherwise:

- If he/she does not consider reporting to the supervisor desirable, the employee is encouraged to speak with the "next level up", normally a higher level manager (if he/she works at a support unit) or (associate) professor (if he/she works at an academic department);
 - If he/she does not consider reporting to any of the above mentioned staff desirable, the employee is encouraged to speak with a member of the Rectorate.
2. If the employee does not (yet) consider reporting to any of the above-mentioned staff members desirable or sufficient, the employee can first discuss the suspected misconduct with the confidentiality counsellor for advice before deciding whether or not to report the misconduct. The confidentiality counsellor is available through a hotline which is managed by an independent third party service provider. If after discussion with a confidentiality counsellor, the employee still decides to make an internal report, he/she must report to his supervisor –or alternatively escalate to the "next level up"- as mentioned above. An employee can also report misconduct to both the confidentiality counsellor and member of staff as mentioned above.
 3. If the employee chooses to report to a confidentiality counsellor only, the confidentiality counsellor must inform the Rectorate.
 4. The confidentiality counsellor is entitled to the right of non-disclosure.
 5. In case of suspicion of misconduct in which the Rectorate or one of its members is involved, the employee must report directly to the Foundation Board. The Foundation Board handles reports received in accordance with the provisions of these regulations, whereby in the relevant provisions 'the 'Foundation Board' should be read instead of 'the Rectorate'.
 6. A course participant or visitor who suspects misconduct should follow similar instructions as mentioned under art. 3.1, while reporting any suspicion making use of disclosure channels, if possible, internally or alternatively externally or with the confidentiality counsellor. In this light, all the relevant provisions of this document, whereby usually is referred to 'the employee', should also apply to course participants and visitors wherever possible and within reason.

7. A former employee who wants to report misconduct must do so within twelve months of the termination date of his employment contract with the Institute.

Art. 4 Employee's identity

1. The person to whom a report is made must not disclose the identity of the employee making the report without the employee's consent.
2. Those who are involved in handling a report must deal properly and carefully with the identity of the reporting person

Art. 5 Informing the Rectorate and investigation

1. The staff member referred to in article 3.1 who receives a report must, record a report in writing, stating the suspicion of misconduct including date of receipt, have the employee sign his/her approval (of which the employee will receive a copy) and ensure that the Rectorate is informed without delay. If the employee does not consent to disclosure of his/her identity, the employee will be 'anonymized' in the written report, i.e. any personal data unique to the individual employee will be removed from the report.
2. After receiving a report, the Rectorate will immediately start an investigation and appoint an independent and impartial party -two or more individuals- who will act as an 'investigative team' and who will logically have sufficient expertise to follow through a successful investigation.
3. The Rectorate will ensure the investigation will not be executed by individuals who are, or have been, involved in the suspected misconduct.
4. The Rectorate will send confirmation of receipt to the employee who has reported a suspicion of misconduct, unless the employee has not consented to disclosure of his/her name.
5. The Rectorate will inform the person against whom a report is made and notify him/her of next steps, unless in the interest of the investigation the Rectorate has been advised, usually by an external body, not to inform the person who is subject of the investigation.
6. The Rectorate will (have to) decide to withdraw from a further investigation if:
 - they have concluded there is no clear case of a suspected misconduct as referred to in the definitions of these regulations;
 - the suspected misconduct has been reported at such a late moment that it is virtually impossible to proceed with a successful investigation.
7. The Rectorate will inform any discontinuation of an inquiry and subsequent treatment of a report -in writing- to the employee or confidentiality counsellor and the accused in case he/she is involved, within 4 weeks.

Art. 6 Investigating a suspected misconduct

1. The investigative team will invite the employee (if necessary via the counsellor) who has reported a suspicion of misconduct to being heard.
The team must produce a written record of the hearing to capture all factual details of the suspected misconduct and will have the employee sign his/her approval (of which the employee will receive a copy);
2. The investigative team can also hear others related to the incident. Also here the team must produce a written record of the hearing to capture all factual details of the suspected misconduct and will have the involved individual sign his/her approval (of which he/she will receive a copy);
3. The investigative team has the authority to request and examine any documents or places, i.e. files, desks, cabinets and other storage facilities, whether electronic or other form, they consider necessary for carrying out the investigation within reason;
4. Vice versa, the employee or involved individual can provide the investigative team all the documents which they deem necessary in the interest of the investigation;
5. The investigative team drafts a concept report and informs the employee for him/her to make comments if necessary;
6. The investigative team will complete the report and will send the employee and the Rectorate a copy.

Art. 7 Viewpoint of the Rectorate

1. Within a period of eight weeks from the time of the internal reporting of the suspected misconduct, the Rectorate will inform the person against whom the employee made the report and/or the employee, in writing, of its substantive viewpoint on the reported suspicion of misconduct. It will also indicate the steps to which the report has led.
2. If the viewpoint cannot be given within eight weeks, the person against whom the employee made the report and/or the employee will be notified of this by or on behalf of the Rectorate. The notification will indicate the period with which a viewpoint can be expected.

Art. 8 External procedure at the whistleblower reporting body

1. The Rectorate appoints an external whistleblower reporting body.
2. It is the responsibility of the whistleblower reporting body to independently investigate a suspected misconduct reported by an employee and advise the Rectorate.

Art. 9 Reporting to the whistleblower reporting body

1. An employee can report misconduct to the whistleblower reporting body within reasonable time if:
 - a. He/she does not agree with the viewpoint referred to in article 7;
 - b. He/she has not received a viewpoint within the period referred to in article 7;
 - c. He/she sees no other way than to directly inform the whistleblower reporting body of the suspicion of misconduct which can only be done under exceptional circumstances – not unusual in situations where there is an immediate threat of retaliation.
2. The employee can request the whistleblower contact point not to disclose his/her identity. He/she can withdraw this request at any time.
3. A report to the whistleblower reporting body contains at least:
 - a. The name and address of the reporting person;
 - b. The organization's name where the employee is working or used to work;
 - c. A description of the suspected misconduct;
 - d. The reason for reporting to the whistleblower reporting body.
4. In case serious interests prevent application of the internal procedure, in departure from article 3 and 7, the employee can report misconduct directly to the whistleblower reporting body.
5. The whistleblower reporting body will not disclose the employee's identity without the employee's consent.

Art. 10 Confirmation of receipt

1. The whistleblower reporting body will confirm the receipt of a report of suspicion of misconduct to the employee who reported the suspicion.
2. If the whistleblower reporting body considers this important for the performance of its task, it will start an investigation.
3. For the purpose of the investigation of a report of a suspicion of a misconduct, the whistleblower reporting body is authorized to obtain all information from the Rectorate it considers necessary to formulate its advice. The Rectorate will provide the whistleblower reporting body with the requested information.
4. The whistleblower reporting body may delegate the investigation or parts of it to the Rectorate or an external source or expert.
5. If the contents of certain information provided by the Rectorate must remain the exclusive purview of the whistleblower reporting body because of its confidential nature, the whistleblower reporting body must protect confidential information from becoming known to unauthorized persons.

Art. 11 Inadmissibility

The whistleblower reporting body will declare the report inadmissible if:

- a. there is no clear case of a suspected misconduct as referred to in the definitions of these regulations;
- b. the employee does not come under the definition of employee under these regulations;
- c. the employee has not followed the procedure referred to in art. 3 without a reason or knowing, or;
- d. the employee has followed the procedure referred to in art. 3 but the periods referred to in art. 7 have not yet elapsed;
- e. the report was not made within a reasonable period.

Art. 12 Substantive advice from the whistleblower reporting body

1. If the reported suspicion of misconduct is admissible, the whistleblower reporting body will set out its findings regarding the report of suspicion of misconduct in an advice to the Rectorate within 8 weeks. The whistleblower reporting body will send a copy of the advice to the employee or the person to whom the employee made his/her report, with due observance of any confidential nature of the information provided to the contact point
2. If the advice cannot be given within eight weeks, the whistleblower reporting body will extend the period by four weeks at the most. The whistleblower reporting body will inform the Rectorate as well as the employee of this in writing.
3. The advice will be in an anonymized form, with due observance of any confidential nature of the information provided to the whistleblower reporting body and the relevant applicable statutory provisions, in a manner that the whistleblower reporting body deems appropriate, unless there are serious reasons not to do so.

Art. 13 Further viewpoint of the Rectorate

1. Within two weeks after receiving the advice referred to in art. 12, the Rectorate will inform the employee or the person to whom the employee made the report and the whistleblower reporting body, in writing, of its (further) viewpoint. It will also indicate the steps and/or measures to which the advice has led.
2. An employee who requested the whistleblower reporting body not to disclose his/her identity will be informed of the further viewpoint by way of the whistleblower reporting body.
3. A (further) viewpoint departing from the advice must be reasoned.

Art. 14 Legal protection

1. The position of an employee who has reported a suspicion of misconduct with due observance of the provision of these regulations must not be prejudiced in any way as a result of the report, i.e. individuals shall be protected from all forms of retaliation, disadvantage or discrimination linked to or resulting from reporting a suspicion of misconduct (so-called "whistleblowing").
2. Adverse consequences include:
 - a. To dismiss an employee without consultation;
 - b. Not to extend a fixed-term employment contract;
 - c. Not to convert a fixed-term contract into an employment contract for an indefinite time;
 - d. To transfer or appoint an employee, without consultation, to another job or another department;
 - e. To expand or reduce duties or hours without consultation;
 - f. To take disciplinary manners;
 - g. To address performance of the employee 'suddenly' as poor performance when it is not;
 - h. Intimidating or threatening behavior such as bullying and/or harassment;
 - i. To silence, frustrate or obstruct an employee from releasing information or taking part in discussions or meetings;
 - j. To withhold salary increases, occasional remuneration, bonuses or the award of allowances;
 - k. To withhold opportunities for promotion;
 - l. Not to accept a request for sick leave, or to uphold sick leave;
 - m. To refuse a request for leave;
 - n. To grant leave other than at his/her own request insofar as the above decisions are made because of the report made by the employee of a suspicion of misconduct.
3. The Rectorate must ensure that the reporting person (whistleblower) does not experience any other adverse consequences of the report for the performance of his/her job.

Art. 15 Affirmation of regulations on reporting misconduct and whistleblower protection

Upon beginning of employment with IHE Delft, all employees will be issued with a copy of these regulations and will be required to acknowledge, in writing, the acceptance of its terms as a condition of employment at IHE Delft. Also, existing staff will be required to affirm, in writing, their commitment after the regulations will come into effect or in case of subsequent updates. Others, course participants and visitors, will be notified of the existence of the Regulations, how they may be accessed, and the importance of their commitment to the Regulations.

Art. 16 Final provisions

These regulations are published on the website of IHE Delft and on the Source (intranet).

These regulations shall be in effect as of January 2017 and supersede all previous regulations with respect to reporting suspected misconduct and whistleblower protection.