ON BRIBERY AND CONFLICTS OF INTEREST
– guidelines for public sector employees
To everyone working in central government, municipalities or county councils

We who work in public administration work on behalf of the citizens and serve their interests. Democracy, the rule of law and efficiency are fundamental values upon which all public services are based.

Confidence in public administration requires that our work as public sector employees must not be influenced by inappropriate requests or considerations. Confidence in our services can be damaged quite easily but rebuilding it takes considerable time and effort.

Public sector employees or elected representatives must never abuse their position. We are all accountable to our employers – the citizens of this country – to fight corrupt behaviour wherever it may occur. In doing so we can defend and strengthen the rule of law in our society.

But what is ‘corrupt behaviour’? At what point does bribery or conflict of interest arise? The law does not always tell us very clearly. Often a personal sense of responsibility and your own ability to make ethical choices must take over. These guidelines aim to give you some support. We hope, too, that they will stimulate many fruitful discussions at your workplace.

These guidelines are the result of a collaboration between the Department for Public Administration at the Ministry of Finance and the Swedish Association of Local Authorities and Regions.

Ministry of Finance
Swedish Association of Local Authorities and Regions
Background and purpose

Public administration works on behalf of the citizens. Those of us working in this sector have a particular responsibility to citizens to fight bribery and other forms of corruption and, in general, to strive to maintain objectivity and impartiality. In this way public confidence will not be undermined and the rule of law will be upheld and strengthened. This places a significant responsibility on each one of us.

In the public sector we handle matters and perform duties that are often very important for individuals or companies. An essential prerequisite is that we never act in a way that will undermine confidence in the objectivity and impartiality of government authorities, boards, committees or administrations. Public sector employees or elected representatives must never even be suspected of allowing themselves to be influenced in their work by inappropriate requests or considerations.

These guidelines aim to highlight the risks involved in accepting any gifts and benefits from people or companies that you deal with as part of your work.

Another aim is to present ways to respond and react when you come across issues associated with bribery and conflicts of interest.

A third aim is to provide a basis for workplace discussions to help you and your colleagues clarify how laws and agency regulations are to be applied in bribery and conflict of interest situations that may arise at your workplace.

These guidelines apply to all public sector employees, i.e., to
those of you who work in government agencies, municipalities or county councils and also to elected representatives in the public sector.

Public administration spans many different arenas and the contexts within which employees work also vary greatly. These guidelines, therefore, are intended to be of a general nature.
Passive and active bribery

What does the law say?
Legal provisions on passive and active bribery are set out in the Swedish Penal Code. They apply to all employees, whether from the public or the private sector and regardless of their position or form of employment. The provisions also apply to elected representatives.

Passive bribery is committed when an employee or contractor personally or on behalf of another person accepts a bribe or other improper reward for the performance of his or her duties. Demanding a bribe or accepting a promise of a bribe is also an offence of passive bribery. There need be no causal connection between the benefit and the way in which the employee performs his or her duties (Chapter 20, Section 2 of the Swedish Penal Code).

Giving, promising, or offering an improper reward to an employee or contractor constitutes active bribery. Accepting a demand for an improper reward from an official or elected representative also constitutes active bribery (Chapter 17, Section 7 of the Swedish Penal Code).

Proper or improper
The dividing line between a ‘proper’ and an ‘improper’ reward or benefit is fluid and can vary with time and between different areas of activity. It should be noted, however, that the courts apply very high standards to public sector employees. Several legal cases are outlined in the appendix.
A reward may be improper even if it is not given with the intention of influencing the receiver to act in a certain way. A public employee should look upon every benefit as being improper if it can be suspected of influencing the performance of duties.

In a court hearing an overall assessment is always made of all the circumstances that are relevant to the specific case. Being able to demonstrate that a benefit you have received has not influenced you will be of no help.

Here are some questions you should ask yourself if you are offered something by a third party:

• Is this a benefit and why is it being offered to me?
• Is there a connection between the benefit and the duties I perform?
• What is the nature of the benefit and how much is it worth?
• What influence do I have over my employer’s relationship with the party offering benefit?

Some typical situations worth thinking about carefully are when you are offered gifts, legacies, discounts, commission, meals, trips, conferences, leisure offers, services or credit, but also hidden benefits such as “cost-price purchases”. A good way to avoid the difficulty of where to draw the line is, of course, not to accept any gifts or benefits whatsoever.

At times the giver will feel that the receiver is being impolite in declining a gift or reward. If the value is very low it may be acceptable. But if it is to be accepted at all, it must be very clear that it cannot be construed as a bribe. A gift or reward that is of no financial value can at times be so attractive to the receiver that it might conceivably influence the performance of his or her duties.
Gifts of money must never be accepted no matter how small they are. If you are uncertain about how to deal with the offer of a gift or benefit you should raise the issue with your manager for assessment. Naturally, however, the approval of a manager cannot turn an improper gift into an acceptable gift.

On trips abroad, a good starting point for your own behaviour is to follow the laws, policies and ethical rules that apply in your own country. If the local legislation is stricter, then obviously those regulations will apply.

There may be occasions where you are offered a gift that is too valuable to accept but where acceptance of the gift is customary. You should promptly pass the gift on to the relevant manager to decide how the agency is to deal with it.

Report attempted bribery and other irregularities
If in the course of your work you feel that you are the target of improper influence, you should immediately inform your manager or other relevant superior.

As public employees we are expected to uphold strict standards of objectivity and impartiality when performing our duties. We have every reason to expect our co-workers to uphold the same standards. Loyalty to the assignment and the employer – ultimately the citizens – means that we should not tacitly accept signs of irregularities in our surroundings. For this reason, you should react if you discover that one or some of your colleagues are allowing themselves to be improperly influenced or are taking improper considerations in performing their duties. For example, you could inform a relevant superior. Other options include contacting the agency’s management, internal auditors or the police and prosecutors.
Summary
If someone affected by your work attempts to give you a gift or benefit, make an overall assessment of all the circumstances that are relevant in the context. Remember that the highest standards are demanded of public sector employees.

Benefits that are not intended to influence your actions, and that cannot reasonably be suspected of influencing them, are generally acceptable and include:

• occasional routine business meals
• minor samples or simple ornaments and mementos
• modest gifts in connection with birthdays or illness.

The following are examples of improper benefits:
• Gifts of money including cash, securities or similar
• Favourable loans
• Guarantee commitments or debt coverage
• Waiving of purchase price, debt, repayment instalments or interest
• Various loyalty schemes related to the purchase of, for example, goods, aeroplane tickets and hotel stays if the benefit accrues to the employee and not the employer
• Having at your disposal a vehicle, boat, holiday house, or similar for private use
• Holiday or entertainment travel paid in full or in part

If in doubt, exercise caution. You will never have to regret a gift that you have declined.
Conflicts of interest

What does the law say?
The legal regulations on conflicts of interest for public employees are contained in Section 11 of the Administrative Procedure Act and in Chapter 6, Sections 24–27 of the Local Government Act. The regulations specify when an employee or elected representative should be seen as having such an interest in a matter that his or her impartiality can be called into question.

Regulations concerning conflicts of interest apply to the handling of all cases and are directed at people who in one way or another can influence the outcome. The regulations apply first and foremost to decision-makers and officials presenting cases for decision but also to anyone who has been involved in drawing up a proposed decision but who is subsequently not involved in the final processing of the case.

When do conflicts of interest arise?
• if you, a close friend or a relative are the applicant in the case, or if the outcome of the case can be expected to be of extraordinary advantage or detriment to you or a close friend or relative,
• when a case is appealed or for another reason is brought before a higher authority and you had taken part in the final processing by the lower authority.

You may also be in a conflict of interest if there is some other special circumstance that could undermine confidence in your impartiality, for example, if you are
• on friendly or unfriendly terms with someone who is a party to or stakeholder in the case,
• financially dependent on a party or stakeholder,
• involved in the case in a way that may easily give rise to suspicions that there is an inadequate chance of an impartial assessment.

In the activities of government agencies, situations arise that are not always clear-cut or easy to assess in terms of conflict of interest. There may be circumstances that quite simply do not “feel good” and that may therefore be questionable. In this grey area of relationships, ties or conflicts of interest between you as an official and some party in the case, the nature of the circumstances may be such that the agency’s credibility may be damaged even if there is no question of a conflict of interest in the legal sense. **In all these cases a precautionary principle should be applied; in other words, it is probably best to ‘play it safe’ and not take part in the handling of the matter.**

**What if there is a conflict of interest?**

If you are in a conflict of interest, you may not take part in the handling of the case or the assignment. This normally means that you may not take any action in the case whatsoever.

If you know of any circumstance that could conceivably put you in a conflict of interest, you should voluntarily disclose it, normally to your manager. If you are uncertain whether a situation would constitute a conflict of interest you should raise the issue for discussion.

If you take part in the handling of a case despite being in a conflict of interest, you may cause a delay in the handling since a decision taken in the case can be appealed on the grounds of conflict of interest.
Responsibility for ensuring compliance with the law

Government agencies, municipalities and county councils are responsible for informing their employees and elected representatives of the laws that apply and how they are to be applied within the context of their own agency. With regard to issues concerning bribery and conflicts of interest, many organisations have supplemented the legislation with special guidelines for their own activities. It is essential to create the necessary conditions for regular workplace discussions on how the rules and guidelines are to be applied.

It is your responsibility to acquaint yourself with the laws and guidelines that apply. This means, for example, that in discussions with your managers and colleagues you take an active role in ensuring that the application of rules and guidelines at your workplace meets the highest ethical standards.
Some legal cases

A community employee working with the home service discovered that an elderly couple she was assisting were planning to sell their car. The woman’s daughter was able to buy the car for 3 000 kronor although it had been valued considerably higher. The Court of Appeal found the employee guilty of bribery and her daughter of complicity.

*Judgment of Court of Appeal for Northern Norrland, 10 June 2004, Case No B 918-03*

By incorrectly registering some people at addresses in Stockholm, an employee of the Swedish Tax Agency made it possible for these people to acquire attractive flats through a swap. He was sentenced to eight months in prison for gross misuse of office and bribery. The two men who acted as agents in the flat swap were also sentenced to imprisonment.

*Judgment of Stockholm City Court, 30 March 2004, Case No B 730-04*

A woman who had lived in Sweden for some time was to make a statement in connection with her mother’s application for a Swedish residence permit. When her letter was received by the then Swedish Immigration Board, it contained a thousand kronor note. The Court of Appeal found that the woman had attempted to improperly influence a public official and she was convicted of bribery.

*Judgment of Göta Court of Appeal, 31 October 2003, Case No B 1060-03*
A warden at a correctional institution borrowed 5,000 kronor from an inmate to buy winter tyres for the warden’s car. The inmate did not request a favour in return. The District Court considered that the loan was improper and had occurred in the course of the warden’s duties and sentenced the warden for bribery to a conditional sentence and fines.

*Judgment of Kalmar District Court, 24 June 2002, Case No B 1197-01*

An office supplies company sent invitations to a large number of public and private workplaces promising a Walkman to anyone ordering products worth more than a certain amount. The court considered that the offer was intended to influence the receivers’ performance of their duties and was a promise of an improper reward. Those responsible were convicted of bribery.

*Judgment of Supreme Court, 20 October 1993, Case No B2833-91*

The director of a block of service flats was involved when a person living in the block made her a beneficiary of their last will and testament. The director received the bequeathed property when the testator died. The court convicted the director of bribery.

*Judgment of Supreme Court, 27 June 1985, Case No B580-84*
Notes
On bribery and conflicts of interest is a guide for people working in government agencies, municipalities and county councils. It deals with the risks involved in accepting gifts or bribes from people or organisations that you deal with in the course of your work. It shows you how to respond and react if you are exposed to dubious offers or if you risk becoming involved in a conflict of interest. It can also serve as a basis for workplace discussions on these issues.

This brochure has been produced by the Department for Public Administration at the Ministry of Finance and the Swedish Association of Local Authorities and Regions.

Government agencies and private individuals may order the brochure free of charge at www.sweden.gov.se