



WHISTLE BLOWING POLICY

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1. INTRODUCTION

Polokwane Municipality recognises the fact that Criminal and other irregular conduct within Polokwane Municipality is detrimental to good, effective, accountable and transparent governance within Polokwane Municipality and can endanger the economic stability of the municipality and have the potential to cause social damage. There is a need for procedures in terms of which employees may, without fear of reprisals, disclose information relating to suspected or alleged criminal or other irregular conduct affecting them and/ or the municipality. Every employer and employee has a responsibility to disclose criminal and any other irregular conduct in the workplace and every employer has a responsibility to take all necessary steps to ensure that employees who disclose information regarding criminal and any other irregular conduct in the workplace are protected from any reprisals as a result of such disclosure.

2. DEFINITIONS

Occupational detriment as defined by the Protected Disclosures Amendment Act includes being subjected to disciplinary action, dismissed, suspended, demoted, transferred against your will, harassed, denied promotion, subjected to terms and condition of employment or retirement which are altered or kept altered, intimidated, refused a reference or being provided with an adverse reference, as a result of your disclosure.

Whistle-blowing – the act of informing the public or someone in authority about alleged dishonest or illegal activities (misconduct) occurring in a government department, a public or private organisation, or a company.

Fraud – this involves actions or behaviour by an individual, other person or entity that manipulate others or systems into providing a benefit that would not normally accrue to the public servant, other person or entity.

Corruption - Prevention and Combating of Corrupt Activities Act (12 of 2004) provide a very specific legal definition of corruption. It can be summarised as follows: "Corruption is where someone (A) gives (or offers to give) someone (B) in a position of power something to use that power, illegally and unfairly, to the advantage of A (or anyone else). The person offering to give or do something is always guilty of corruption and both parties (A and B) will be guilty of corruption if the offer is accepted.

Misconduct – is a legal term meaning wrongful, improper, or unlawful conduct motivated by premeditated or intentional purpose or by obstinate indifference to the consequences of one's acts.

3. OBJECTIVES OF THE POLICY

- 3.1 In order to remain in compliance with the Protected Disclosures Act, which came into effect on 16 February 2000, Polokwane Municipality undertakes to:
- 3.1.1 Strive to create a culture which will facilitate the disclosure of information by employees relating to criminal and other irregular conduct in the workplace in a responsible manner by providing clear guidelines for the disclosure of such information and protection against reprisals as a result of such disclosure; and
- 3.1.2 Promote the eradication of criminal and other irregular conduct within Polokwane Municipality.
- 3.2 The policy is intended to encourage and enable staff to report suspected fraud and corruption activities within Polokwane Municipality rather than overlooking a problem or blowing the whistle via inappropriate channels.

4. APPLICATION OF THE POLICY

There are existing grievance procedures in place within the organisation enabling employees of Polokwane Municipality to raise grievances relating to their employment. This policy is intended to cover concerns that fall outside the scope of grievance procedures. These concerns in accordance with the Protected Disclosures Act are the following:

- a) That a criminal offence has been committed is being committed or is likely to be committed.
- b) That a person has failed is failing or is likely to fail to comply with any legal obligation to which that person is subject.
- c) That a miscarriage of justice has occurred, is occurring or is likely to occur.
- d) That the health or safety of an individual has been, or is being or is likely to be endangered.
- e) That the environment has been, is being or is likely to be damaged;
- f) Unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) No.4 of 2000 is taking place or is likely to take place.
- g) That any matter referred to in paragraphs (a) to (f) has been is being or is likely to be deliberately concealed.

5. LEGISLATIVE FRAMEWORK

5.1. PROTECTED DISCLOSURES ACT

This policy is developed based on the principle objects of *Protected Disclosures Amendment Act, No. 5 of 2017* The Protected Disclosures Act, which encourages employees to disclose any acts of misconduct without fear of any recriminations or reprisals.

Section 2 of The Protected Disclosures Act clearly defines the “*Objectives of the Act*” as follows:

- 5.1.1 To protect an employee or worker from being to any occupational detriment by his or her employer on account, or partly on account, of having made a protected disclosure.”.5.1.2 To provide for remedies in connection with any occupational detriment suffered on account of having made a protected disclosure.

- 5.1.3 To provide for procedures in terms of which an employee can, in a responsible manner, disclose information regarding improprieties by his or her colleagues, other stakeholders and employer.

6. WHO CAN REPORT?

Any member of staff member who has a reasonable belief that there is fraud or corruption or misconduct relating to any of the protected matters specified in Section 4 of this Policy, may report under the procedure as set out in this Policy. Concerns must be raised without malice, in good faith and not for personal gain and the individual must reasonably believe that the information disclosed, and any allegations contained in it are substantially true.

The Municipality also encourages communities and stakeholders or service providers who suspect fraud and corruption to report allegations of fraud and corruption using the protected disclosure.

7. HARASSMENT OR VICTIMISATION

- 7.1 Polokwane Municipality acknowledges the fact that the decision to report a concern can be a difficult one to make, not least because of fear of reprisals from those responsible for the irregularity.
- 7.2 Polokwane Municipality will not tolerate harassment or victimisation and will take action to protect employees against such conduct when they report in good faith.
- 7.3 Any act of harassment or victimisation should be reported to the Accounting Officer or alternatively, to the Manager: Risk Management.
- 7.4 Where an employee is already or stands to be the subject of disciplinary or other action, reporting of the nature stipulated in the Protect Disclosure Act, shall not mean that t action will automatically be ceased as a result of their whistle blowing.

8. GUARANTEES AND PROTECTION

- 8.1 Confidentiality regarding the identity of the person reporting under this Policy will be maintained at all times, and nobody acting in good faith will be penalized for making such disclosure regarding information that might be in the interest of Polokwane Municipality. Every effort will be made not to reveal the identity of the whistle blower unless he/she permit/allow.
- 8.2 Notwithstanding clause 7.4 above ; Polokwane Municipality as employer shall ensure that any employee who makes a disclosure in terms of the Protected Disclosures Act and in circumstances as herein discussed, will not be penalized or suffer any occupational detriment for doing so.
- 8.3 Any employee who raises a concern in good faith in terms of the Protected Disclosures Act, will not be at risk of losing their job or suffering any form of retribution as a result. Polokwane Municipality will not tolerate the harassment or victimization of anyone raising a genuine concern.

- 8.4 A guarantee and protection/assurance regarding occupational detriment can however not be extended to employees who maliciously raise matters they know to be untrue and action will be taken against such employees.

9. FALSE AND MALICIOUS ALLEGATION

- 9.1 Persons intending to report a matter under the Protected Disclosures Act shall guard against making allegations which are false and made with malicious intent.
- 9.2 In instances where persons do make such false and malicious reports, such persons will not enjoy the protection offered by the Protected Disclosure Act and where cost implications arise due to investigations done and resources allocated on the basis of false allegations, such costs shall be claimed as damages suffered by the Municipality from the person who made the false or malicious allegation.
- 9.3 An employee who does not act in good faith or who makes an allegation without having reasonable grounds for believing it to be substantially true, or who makes it maliciously, shall be subjected to disciplinary proceedings.

10. REPORTING PROCEDURE

- 10.1 Reports of possible fraud or corruption from any internal or external source can be submitted internally to:
- 10.1.1 Line management;
 - 10.1.2 Directors;
 - 10.1.3 Municipal Manager; or
 - 10.1.4 Risk Management Unit.
- 10.2 An alternate way of reporting possible fraud and corruption can be made by contacting the Municipality's Fraud Hotline **(0800 20 50 53 or email cdm@tip-offs.com)**. Persons may remain anonymous when making reports via this Hotline. The Fraud Hotline is available 24 hours in all official language, you have an option to remain anonymous or identify yourself when reporting.
- 10.3 Where a person has reported his/her concern through any of the channels described in sub-paragraphs 10.1 and 10.2 above and have substantial reason to believe that there may be a cover-up or that evidence may be destroyed or that the matter might not be handled properly, that person may raise his/her concern in good faith with a Member of the Mayoral Committee of the Municipality.
- 10.4 Employees and members of the public not wishing to report a matter internally may make reports or Public Interest Disclosures to the following investigating authorities:
- 10.4.1 SAPS;
 - 10.4.2 Public Protector;
 - 10.4.3 Auditor-General; or
 - 10.4.4 Any other relevant authority

- 10.4.5. Audit Committee Chairperson
- 10.4.6. Risk Management Committee Chairperson

11. HOW THE MUNICIPALITY WILL RESPOND

- 11.1 The action taken by the Municipality will depend on the nature of the allegation reported. The possible routes of action open to the Municipality are to:
 - 11.1.1 Investigate internally; and /or refer the matter to South African Police Service or other relevant law enforcement agency, where applicable.
 - 11.1.2 Initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form the investigation should take. Allegations raised may not necessarily require an investigation to be resolved.
 - 11.1.3 The frequency of contact between the investigating officer and the person reporting (where not anonymous) will depend on the nature of the allegations raised and the investigations which may be required to be performed. If required and where possible, further information maybe sought from the person who made the report.
 - 11.1.4 All investigations will be handled confidentially and will not be discussed with any persons other than those who legitimately have the right to such information.

12. CREATING AWARENESS

- 12.1 In order for this Policy to be sustainable, it must be supported by a structured education, communication and awareness programme.
- 12.2 It is the responsibility of all Directors and Managers to ensure that all employees, are made aware of, and receive appropriate training and education with regard to the whistle blowing policy.
- 12.3 For purposes of reporting by members of the public the Municipal Manager must ensure that this Policy is available on the Municipal website.

13. REVIEW AND UPDATING THE POLICY.

The policy will be reviewed every 2 years or as and when required to incorporate changes in the legislative framework within Local Government.

Previous approval

Risk Management Committee	16 August 2012
Audit Committee	31 October 2012
Mayoral Committee	22 November 2012
Council	05 December 2012

Review Approval

Risk Management Committee	29 June 2016
Audit Committee	26 July 2016
Portfolio Committee	12 October 2016
Mayoral Committee	21 October 2016
Council	27 October 2016

Review Approval

Risk Management Committee	05 March 2020
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Mayoral Committee	22 September 2020
Council	10 February 2021
After public participation	