



CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

REVIEWED WHISTLE BLOWER POLICY

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GROUP FORENSIC AND INVESTIGATION SERVICES

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1. ABBREVIATIONS

Throughout this document, unless otherwise stated, the words in the first column below have the meanings stated opposite to them in the second column (and cognate expressions shall bear corresponding meanings):

AG	Auditor General
CoJ	City of Johannesburg
City Manager	The person appointed in terms of section 54A of the Municipal Systems Act, 2000, (Act 32 of 2000), his/her duly authorised nominee in terms of the CoJ's System of Delegations
Discrimination	Means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly: <ul style="list-style-type: none"> a) imposes burdens, obligations or disadvantage on: or b) withholds benefits, opportunities or advantages from any person on one or more of the prohibited grounds
Disclosure	Means any disclosure of information regarding any conduct of an employer, or an employee of that employer, made by any employee who has reason to believe that the information concerned shows or tends to show one or more of the following: <ul style="list-style-type: none"> 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 being or is likely to occur; d) that the health or safety of an individual has been, is being or is likely to be endangered; e) that the environment has been, is being or is likely to be damaged; unfair discrimination as contemplated in the Promotion of Equity and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000); or that any matter referred to in paragraphs (a) to (f) has been, is being or is likely to be deliberately concealed:
GAC	Group Audit Committee
GCCS	Group Corporate and Shared Services

GFIS	Group Forensic and Investigation ServiceS
Good Faith	Means that the employees must believe that the allegations are true
SAPS	South African Police Service
Occupationaletrim	Means any employee being subjected to any disciplinary action, being dismissed, suspended, demoted, harassed, intimidated, transferred against one's will, refused transfer or promotion, having a term or condition of one's disadvantage, being refused a reference from the CoJ, being denied appointment to any employment, profession or office, being threatened with any of the above or being otherwise adversely affected in one's employment with the CoJ, including employment opportunities and work security
Policy	The Whistle Blower Policy for the CoJ
"Victimisation"	Means to punish or discriminate against an employee selectively or unfairly. The labour Relations Act, 1995 (Act 66 of 1995) does not define victimisation in the workplace exactly but deals with it rather more broadly by legislating unfair practices such as unfair discrimination, forced resignations and unfair dismissals.

2. INTRODUCTION

When employees of the City of Johannesburg (CoJ) Metropolitan Municipality realize that there are incidences of unethical behaviour amongst them, they may not know where to report these incidences without fear of harassment or even victimization. Whistleblowing is not about informing in the negative, anonymous sense but rather about raising a concern about a malpractice within CoJ.

In its effort to promote ethical conduct, CoJ is committed to eradicate the unethical behaviour by its employees through this policy.

Furthermore, CoJ also has a Code of Conduct which is intended to:

- Promote core values; and
- Provide a framework for identifying conduct that is ethical and acceptable for the employees of the CoJ who, effectively, act as its agents at all levels.

Some of the problems identified as the most significant potential barriers in preventing employees from taking action about workplace misconduct are:

- Conduct being seen as justified and correct when it should not be, resulting in an ethical dilemma for the public official;
- The attitude that there is no point in reporting corruption as nothing will be done about it; and
- Not knowing how and where to report corruption.

CoJ is committed to the highest level of openness, integrity and accountability. CoJ aims to promote a culture in which employees are able to raise genuine and valid concerns without fear of victimisation, discrimination or disadvantage.

CoJ recognises the fact that:

- Criminal and other irregular conduct within the CoJ is detrimental to good, effective, accountable, corporate governance and cause financial and social harm;
- There is a need for a procedure in terms of which employees may, without fear of reprisals, disclose information relating to suspected or alleged criminal or alleged criminal or other irregular conduct affecting the CoJ;
- 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 such information are protected from any reprisals as a result of such disclosure.

2.1 PURPOSE

The purpose of this policy is to:

- Promote the zero tolerance on criminal and other irregular conduct within CoJ Municipality.
- Encourage the reporting of matters that may cause financial or non-financial loss to the Municipality or damage to the Municipality's reputation.
- Provide for the appropriate systems and mechanism for reporting.
- Encourage and enable all employees of the CoJ to raise concerns rather than overlooking a problem or blowing the whistle through inappropriate channels.
- Provide avenues for all employees to raise concerns.
- Inform all employees on how to take the matter further if they are dissatisfied with the response.
- Reassure all employees that they will be protected from reprisals or victimisation for whistle blowing in good faith.
- Encourage and enable employees and councillors to raise concerns within the CoJ rather than overlooking a problem or blowing the whistle to inappropriate channels.
- 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
- Remain in compliance with the Protected Disclosures Act

2.2. SCOPE AND APPLICATION

This policy applies to all employees of CoJ, including temporary, permanent and contract employees. Furthermore, the policy is intended to cover concerns that fall outside 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; and
- g) That any matter referred to in paragraphs (a) to (f) has been is being or is likely to be deliberately concealed.

3. LEGISLATIVE FRAMEWORK

This policy is developed and guided by the following:

3.1. CoJ Code of Conduct; and

3.2 Protected Disclosures Act, 26 of 2000, which encourages employees to disclose any acts of misconduct without fear of any recriminations or reprisals. Section 2 of the Act clearly defines the “Objectives of the Act” as follows:

- i) To protect an employee from being subjected to an occupational detriment on account of having made a protected disclosure.
- ii) To provide for remedies in connection with any occupational detriment suffered on account of having made a protected disclosure.
- iii) 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.

4. THE POLICY

4.1 WHO CAN REPORT?

Any CoJ employee who has a reasonable belief that there is misconduct, fraud and corruption, theft of CoJ assets, maladministration as well as hijacked properties relating to any of the protected matters specified in Section 2.2 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.

4.2 STEPS FOR REPORTING

- 4.2.1 Reporting possible fraud or corruption, the employee must approach their immediate manager unless he/she or senior management is the subject of the complaint, in which case the next senior level should be informed. Should the complaint be found by the manager or supervisor to be substantiated, he/she will consult with the City Manager/ Speaker on referring it to the appropriate body (e.g the SAPS and/or GFIS).
- 4.2.2 Concerns are better raised in writing. The background and history of the concern, giving names, dates and places where possible should be set out and the reason why the individual is particularly concerned about the situation.
- 4.2.3 Those who do not feel comfortable to reduce their concern/s in writing, can telephone the CoJ Anti-Fraud and Corruption Hotline number **(0800 002 587)**. Persons may remain anonymous when making reports via this Hotline.
- 4.2.4 Employees are not expected to prove the truth of an allegation, they will need to demonstrate to the person contacted that there are sufficient grounds for concern.
- 4.2.5 Advice and guidance on how matters of concern may be pursued can be obtained from either GFIS or Group Corporate and Shared Services (GCSS).

4.2.6 Where an employee have reported his/her concern through any of the channels described 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 CoJ.

4.2.7 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:

4.2.7.1 South African Police Services (SAPS);

4.2.7.2 Public Protector;

4.2.7.3 Auditor-General; or

4.2.7.4 Audit Committee Chairperson

4.2.7.5 Risk Management Committee Chairperson; and

4.2.7.6 Any other relevant authority

4.3 REPORTING OF ANONYMOUS ALLEGATIONS

The CoJ encourages employees who are reporting allegations to provide their names and contact details. Concerns expressed anonymously are difficult to investigate; nevertheless, they will be followed up at the discretion of the CoJ. This discretion will be applied by taking into account the following:

- The seriousness of the issue raised;
- The credibility of the concern; and
- The likelihood of confirming the allegation.

When anonymous reports on allegations are received, it is not possible to provide feedback on the actions taken to the anonymous reporter.

4.4 FALSE ALLEGATIONS

All managers should discourage employees or other parties from making allegations, which are false and made with malicious intentions. Where such malicious, vexatious, or false allegations are discovered, the person who made the allegations will be subjected to firm disciplinary action, or other appropriate action in the case of external parties. 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 CoJ from the person who made the false or malicious allegation.

This does mean that the employees have to prove that the allegations are correct. It simply requires that the employees believes them to be correct and that this is likely given the circumstances surrounding the allegations.

4.5 HARASSMENT OR VICTIMISATION

The CoJ acknowledges the fact that the decision to report a concern can be a difficult one to make, not least because of fear of reprisal from those responsible for the irregularity. The CoJ will not tolerate harassment or victimisation and will take action to protect employees when they raise a concern in good faith. This does not mean that if an employee is already the subject of disciplinary or other action, that action will be halted as a result of their whistle blowing.

4.6 CONFIDENTIALITY

The CoJ will do its best to protect an individual's identity when he/she raises a concern and does not want their identity to be disclosed. It must be appreciated, however, that the investigation process may reveal the source of the information and a statement by the employee may be required as part of the evidence.

Furthermore, there is a possibility that the employee may be required in due course to provide evidence at a hearing or trial. Confidentiality regarding the identity of the employee reporting under this Policy will always be maintained , and nobody acting in good faith will be penalized for making such disclosure regarding information that might be in the interest of CoJ. Every effort will be made not to reveal the identity of the whistle blower unless he/she permit/allow.

Notwithstanding clause 5.1 above; CoJ as the 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.

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. CoJ will not tolerate the harassment or victimization of anyone raising a genuine concern.

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.

5. HOW THE COMPLAINT WILL BE DEALT WITH

5.1 The action taken by CoJ will depend on the nature of the concern reported. The matters reported may among other possible options be:

- Investigated internally by GFIS.
- Referred to the SAPS or other relevant law enforcement agency.
- Referred to the Group Audit Committee (GAC); and/or
- Referred to the Disciplinary Board.

5.2 In order to protect individuals and CoJ, initial enquiries will be made to decide whether an investigation is appropriate and if so, what form it should take. Concerns or allegations which fall within the scope of other procedures will normally be referred for consideration under those procedures.

5.3 The CoJ will write to the complainant:

- Acknowledging that the concern has been received;
- Indicating how it proposes to deal with the matter and whether any additional enquiries been made;
- Giving an estimate of how long it will take to provide a final response; and
- Informing them whether further investigations will take place and if not, why not.

5.4 The amount of contact between the bodies investigating the issues and the persons raising the concern will depend on the nature of the matters raised, the potential difficulties involved, and the clarity of the information provided. If necessary, further information will be sought from the individual.

5.5 The CoJ accepts that employees need to be assured that the matter has been properly addressed. However, the progression of investigations will be handled in a confidential manner and will not be disclosed or discussed with any persons other than those who have a legitimate right to defined public interest to such information. This is important in order to avoid damaging the reputation of suspected persons who are subsequently found innocent of wrongful conduct. 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.

6. CREATING AWARENESS

6.1 For the policy to be sustainable, it must be supported by a communication and awareness programme.

6.2 It is the responsibility of all managers/supervisors to ensure that all employees, are made aware of, and receive appropriate training and education with regard to the whistle blowing policy.

6.3 For purposes of reporting by members of the public the Municipal Manager must ensure that this Policy is available on the Municipal website.

7. ADMINISTRATION

The City Manager has overall responsibility for the maintenance and operation of this policy. The City Manager will be supported by GFIS and GCSS in maintaining a record of concerns raised and the outcomes (but in the form which does not endanger confidentiality).

8. REVIEW AND UPDATING OF THE POLICY

The policy will be reviewed every 3 years or as and when required to incorporate changes in the legislative framework within CoJ.

Review and Approval

Approval	February 2021
Review	2020
First Policy	2008