

**BUFFALO CITY METROPOLITAN MUNICIPALITY  
WHISTLE BLOWING POLICY**



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<b>POLICY OWNER</b>	Office of the City Manager
<b>POLICY CHAMPION</b>	Head: Legal Services

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APPROVED BY COUNCIL



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## **1. Policy Title**

Whistle Blowing Policy

## **2. Definitions and Abbreviations**

**'Anonymous'**, means a complaint received from or by a person, author, etc. whose name is unknown or withheld

**'City'** means the Buffalo City Metropolitan Municipality, a municipality established in terms of the Local Government: Municipal Structures Act, 2000, Act No 117 of 1998, or any structure or employee of the City acting in terms of delegated authority;

**'City Manager'**, means a person appointed in terms of section 54A of the Municipal Systems Act, 2000, (Act 32 of 2000), or his/her duly authorised nominee in terms of the City's System of Delegations.

**'Constitution'** means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

**'Discrimination'** means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly-

(a) imposes burdens, obligations or disadvantage on;

(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:

- (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, 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, 2000 (Act 4 of 2000); or

- (g) that any matter referred to in paragraphs (a) to (f) has been, is being or is likely to be deliberately concealed;

**'Good faith'** means that the employee must believe that the allegations are true.

**'Harassment'** means unwanted conduct which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is



calculated to induce submission by actual or threatened adverse consequences and which is related to-

- (a) sex, gender or sexual orientation; or
- (b) a person's membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with such group;

**'Occupational Detriment'** means a staff member 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 employment or retirement altered to one's disadvantage, being refused a reference, or being provided with an adverse reference from the City, 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 City, including employment opportunities and work security

**'Protected Disclosures Act'**: means the Protected Disclosures Act, 2000 (Act 26 of 2000) and came into effect on 16 February 2001

**'Protected disclosure'**: means a disclosure made in accordance with certain section of the Protected Disclosures Act and made to —

- (a) a legal adviser in accordance with section 5;
- (b) an employer in accordance with section 6;
- (c) a member of Cabinet or of the Executive Council of a province in accordance with section 7;
- (d) a person or body in accordance with section 8; or



(e) any other person or body in accordance with section 9, but does

not include a disclosure—

- (i) in respect of which the employee concerned commits an offence by making that disclosure; or
- (ii) by a legal adviser to whom the information concerned was disclosed in the course of obtaining legal advice in accordance with section 5;

**'this Act'** includes any regulation made in terms of section 10.

**'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.

### **3. Problem Statement**

3.1 One of the key obstacles in the fight against corruption is the fact that, without legal protection, individuals are often too intimidated to speak out or blow the whistle on criminal and irregular activities they observe in the workplace. 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;



- concern about personal and professional retaliation; and
- not knowing how and where to report corruption.

3.2 The City is committed to the highest standards of openness, integrity and accountability. We aim to promote a culture in which employees feel able to raise genuine and valid concerns without fear of victimization, discrimination, or disadvantage. Members of the public and service providers are also encouraged to raise concerns about our activities so that we can investigate and take appropriate action. The City therefore recognises the fact that: -

- Criminal and other irregular conduct within the City is detrimental to good, effective, accountable, and transparent governance.
- There is a need for procedures in terms of which employees should, without fear of reprisals, disclose information relating to suspected or alleged criminal or other irregular conduct;
- Every employee has a responsibility to disclose criminal and/or any other irregular conduct in the workplace; and
- Employees who disclose such information must be protected from any reprisals because of such disclosure.

#### **4. Desired Outcomes**

- 4.1 The Protected Disclosures Act came into effect on 16 February 2001. In order to remain in compliance with the Act, and its duty as a public body in terms of the Constitution to promote good governance, the City will through the development and adoption of this policy: -

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- 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
- Promote the eradication of criminal and other irregular conduct within the City.

The policy is intended to encourage and enable staff to raise concerns rather than overlooking a problem or blowing the whistle through inappropriate channels.

4.2 Furthermore the policy aims to: -

- Provide avenues for staff to raise concerns;
- Inform staff on how to take the matter further if they are dissatisfied with the response; and
- Reassure staff that they will be protected from reprisals or victimisation for whistle blowing in good faith.

### **5. Strategic Intent**

5.1 The City is committed to the fight against fraud and corruption, and the development of this policy is a proactive step that aligns itself with the City's "well governed, green, connected and innovative city" strategic focus area with reference to its key objectives, namely:



- A productive and innovative city
- A spatially connected city
- A green city
- A connected city
- A well governed city

The City's "Well governed, green, connected and innovative city" strategic focus area is aligned with the future direction of 2030 which states that the city will be a place thriving with robust civic spirit and this will be promoted through a comprehensive social cohesion plan which encourages diverse communities to work together to address the common challenges, whilst appreciating cosmopolitanism and preservation of a sense of place.

## **6. Policy Parameters**

6.1 There are existing grievance procedures in place to enable employees to raise grievances relating to their employment. This policy is intended to cover concerns that fall outside the scope of grievance procedures.

These concerns indicated in 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, 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, Act 4 of 2000; or
- (g)
- (h) That any matter referred to in paragraphs (a) to (f) has been, is being or is likely to be deliberately concealed.

## **7. Role Players and Stakeholders**

7.1 The following is role players and/ stake holders in respect of this policy are as follows:

- Council
- City Manager
- Heads of Directorates, General managers, Programme managers, Supervisors
- All Staff of BCMM

## **8. Regulatory Context**

- Labour Relations Act, 1996 (Act 66 of 1996);
- Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000);
- Protected Disclosures Act, 2000 (Act 26 of 2000)
- Prevention and Combating of Corrupt Activities Act 12 of 2004



- Employment Rights Act 1996
- Municipal Systems Act 32 of 2000

## **9. Policy Directive Details**

### **9.1 Protected Disclosures Act**

9.1.1 Section 2 of The Protected Disclosures Act clearly defines the "Objects of the Act" as follows:

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

9.1.2 This Policy is developed based on the principle objects of the Protected Disclosures Act, which encourages and places a duty on employees to disclose any acts of misconduct without fear of any recriminations or reprisals.

### **9.2 Harassment or Victimisation**

9.2.1 The City will not tolerate harassment or victimisation of any employee and will take action to protect employees when they raise a concern in good faith. Any



act of harassment or victimisation against an employee should be reported to the Head: Legal Services. "Harassment or victimisation" includes any acts falling under the definition of '**occupational detriment**', referred to above.

9.2.2 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.

### **9.3 REPORTING OF ALLEGATIONS**

- For minor issues, employees should normally raise the concerns with their immediate supervisor/manager. In general, however, the whistle blowing procedure is expected to be used for potentially more serious and sensitive issues (e.g. fraud and corruption). The first step will be for the employee to approach his/her immediate supervisor/manager unless he/she or senior management is the subject of the complaint, in which case the Head: Legal Services should be informed.
- Should the complaint be found by the line manager to be substantiated, he/she will consult with the Head: Legal Services unit on whether the matter should be investigated internally or referred to the appropriate external body (e.g. the SAPS).
- 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. The earlier the concern is reported, the easier it is to act and initiate recovery procedures where necessary.
- Employees are not expected to prove the truth of an allegation; however, they will need to demonstrate to the person contacted that there are sufficient grounds for concern.



- Advice and guidance on how matters of concern may be pursued can be obtained from the legal services department.

Employees, communities, or third parties may use available platforms to blow the whistle on fraud, corruption, and maladministration. One can report internally via the following platforms:

### **9.3.1 The City Manager:**

One can write to the Accounting Officer on the alleged incident of fraud or corruption. The report should be made in writing giving clear details as follows:

- The background and history of the concern,
- Names of the alleged implicated persons or companies where possible
- Dates and places where possible should be set out and
- The reason why the individual is particularly concerned about the situation.

Whistle-blowers are not expected to prove the truth of an allegation; however, most importantly, whistle-blowers must guard against deliberately making allegations that they know or suspects to be false and/or which are made with malicious intent.

### **9.3.2 The Whistle-Blowing Platform**

The City understands that at times whistle-blowers would not be comfortable disclosing their identity and therefore would want to remain anonymous, it is for this reason that the City has an ethics hotline, which is a platform created for whistleblowing and is hosted by an external service provider. Whistle-blowers can use the City's Fraud Hotline number (0800668413) to report incidents of fraud or corruption.



### **9.3.3 Receiving of reports through the hotline**

Every call received through the hotline shall be recorded and allocated a unique reference number. The caller shall be required to provide details of the incident, and the following details are required where possible:

- The names or identity of the whistle-blower, (***N.B. whistle-blowers have an option of requesting to be anonymous***)
- The background and history of the concern,
- Names of the alleged implicated persons or companies
- Dates and places where possible should be set out and
- The reason why the individual is particularly concerned about the situation.

The Hotline Manager after receiving the report will then forward the detailed report to the Municipality through the designated offices, which includes risk management, legal services, the City Manager, the Mayor, and Internal Audit **within 48 hours** of receipt of the call.

***N.B. For grievance-related cases/ incidents, employees of BCMM are encouraged to follow the prescribed grievance procedure and not use the hotline for such reports. A grievance may be defined as any feeling of discontent, unfairness, or injustice which an employee may have in respect of his work conditions, against his manager or supervisor, including a fellow worker, and which is brought to the attention of Management.***



#### **9.4 Reporting of allegations of Financial Misconduct relating to the Accounting officer or Senior Managers**

Section 3(1) of the Municipal regulations on financial misconduct procedures and criminal proceedings states: “Any person must report an allegation of financial misconduct against the Accounting officer, a Senior Manager of the Chief financial officer of a municipality, to the Municipal Council of the municipality, the provincial treasury, and the National Treasury.” The Mayor of Accounting must table the reported case to the Municipal Council no later than 7 days after receipt of the report or at the next sitting of Council.

#### **9.5 Anonymous Allegations**

The City encourages employees to put their names to allegations. Concerns expressed anonymously are difficult to investigate; nevertheless, they will be followed up at the discretion of the City. This discretion will be applied by taking into account the following:

- seriousness of the issue raised;
- credibility of the concern;
- likelihood of confirming the allegation; and
- sufficiency of information provided.

Employees who do utilize the fraud hotline also need to be aware of the fact that it will be possible for the employee to be advised of the steps taken by the City arising from the allegation.

##### **9.5.1 False Allegations –“ALLEGATIONS NOT MADE IN GOOD FAITH”**

Employees or other parties must understand that they need to make the allegations in good faith. This does not mean that the employee has to prove that the allegations are correct. It simply requires that the employee believes them to



be correct and that this is likely given the circumstances surrounding the allegations. Accordingly, employees must guard against reporting rumors or "hunches", or suspicions that they "smell a rat" without information backing such rumors or hunches.

Most importantly, employees must guard against deliberately making allegations which the employee knows or suspects to be false and/or which are made with malicious intent. Such allegations prevent the employee from benefiting from the protection of the Public Disclosures Act.

#### **10 THE INVESTIGATION AND ENQUIRY PROCESS**

The action taken by the City will depend on the nature of the concern. The possible actions may, amongst others be to:

- investigate by line management;
  - investigate by Legal Services; and/or
  - Disciplinary Board investigation
  - refer to the SAPS or other relevant law enforcement agency.
- 
- In order to protect individuals and the City, initial enquiries will be made to decide whether an investigation is appropriate and if so, what form it should take. Some concerns may be resolved without the need for investigation, for instance HR related complaints, for example time & attendance, misuse of a vehicle, leave and/or sick leave.
  - The amount of contact between the body 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.



- The City 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 such information.

### **10.1 Assessing whistle-blower reports**

The action taken by the City will depend on the nature of the concern. The possible actions may, amongst others be to:

- investigate by line management;
- investigate by Legal Services; and/or
- Disciplinary Board investigation
- refer to the SAPS or other relevant law enforcement agencies.

To protect individuals and the City, a preliminary assessment of the whistle-blower report will be made to decide whether an investigation is appropriate and if so, what form it should take. The purpose of the preliminary assessment is to determine the following:

- Category of the allegation
- Completeness of information
- Likelihood and potential impact of risk to the City or the stakeholders
- Priority in terms of further investigation
- Precautionary measures to be taken where applicable and necessary
- Allocation of case

A preliminary assessment of the whistle-blower report shall be concluded within **one month** from the date of receipt of the report from either the Hotline or the office of the City Manager.



### **10.2 Process of preliminary assessment of the whistle-blower report.**

Upon receipt of the detailed report, it shall be thoroughly analyzed with supporting evidence and the following shall be performed:

- Establish whether the reported incident does implicate BCMM employees or service providers
- Where the report contains the name of alleged BCMM employees, request confirmation from HR to establish that indeed the alleged people are employed by the City.
- Engage with other departments/ directorates where necessary to gather more information where necessary, however, confidentiality shall be maintained and not compromised.
- In an event of the alleged implication of service providers, establish through SCM the nature of business they have conducted with the City.
- Establish whether there is sufficient information provided to lay a basis for investigation
- Where necessary and to establish facts, may request additional information
- Establish the nature of the alleged misconduct
- Establish whether was the allegation reported previously and if so, was it fully investigated, and what the outcomes of that investigation were.

Upon conclusion of the preliminary assessment, a report will be drafted detailing the findings and clear recommendations of how the whistle-blowing report should be processed. The preliminary assessment report shall be tabled to the risk management committee and audit committee. Some concerns may be resolved without the need for



investigation, for instance, HR-related complaints, for example, time & attendance, misuse of a vehicle, leave, and/or sick leave.

***N.B. The conclusion of the preliminary assessment depends on the nature of each incident however, it should be concluded at least within a month from the date of receipt of the report.***

## **11 INVESTIGATING WHISTLE -BLOWER REPORTS**

How investigations shall be conducted differs from case to case as each is unique and therefore, a blanket approach cannot be applied. The following shall apply:

### **11.1 Financial misconduct related cases**

According to the Municipal Financial misconduct regulations, all financial misconduct-related whistle-blowing reports or reported incidents shall be dealt with. The City has appointed a Disciplinary board whose mandate is to investigate all financial misconduct-related cases and advise the Council on whether the matter warrants a further investigation or not. The Disciplinary Board shall:

- Conduct a preliminary investigation to determine whether the allegation is founded and make a recommendation to the Council.
- The DC Board can terminate the investigation if the allegations are frivolous, vexatious, speculative, or unfounded.
- If there are not sufficient grounds for further investigation, the DC board can make a recommendation to Council that the matter is closed and not investigated further.



## **11.2 HANDLING OF REPORTS INVOLVING POLITICAL OFFICE BEARERS**

All whistleblowing reports received against political office bearers shall be forwarded to the office of the Speaker for further processing. Council has established an ethics committee in terms of the Local Government: Municipal Structures Act No. 117 Of 1998 and have been assigned amongst other, the following specific functions:

- To carry out investigations, submit findings and make appropriate recommendations to the Council about the alleged contravention of the Code of Conduct for Councillors as contained in Schedule 1 of the Local Government Municipal Systems Act No. 32 of 2000.
- To investigate and make recommendations to the Council on any alleged contraventions by a Councillor of any policy document of the Council, statutory provision, or any other obligatory provisions applicable to members of the Council.

## **12 CONFIDENTIALITY**

The City 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. It is, furthermore, a possibility that the employee may be required in due course to provide evidence at a hearing or trial.

The City accepts that employees need to be assured that the matter has been properly addressed. However, the progression of investigations will be handled confidentially and will not be disclosed or discussed with any persons other than those who have a legitimate right to such information.



### **13.ASESSING OF THE INTERNAL CONTROL ENVIRONMENT**

In each instance where fraud has been detected, line Management has a responsibility to assess the adequacy and effectiveness of existing controls, where necessary consider improvement options.

### **14.EXTERNAL REPORTING PROCEDURE**

The action taken by the City will depend on the nature of the concern. The possible actions may, amongst others be to refer to the SAPS or other relevant law enforcement agencies. Reporting externally shall be done by the Accounting officer or the legal services department as per delegations and a register of all externally reported cases shall be maintained.

### **15. CREATING AWARENESS**

15.1 In order for the Policy to be sustainable, it must be supported by a structured education, communication and awareness programme.

15.2 It is the responsibility of all hod's and managers to ensure that all employees are made aware of and receive appropriate training and education with regard to the Whistle Blowing Policy.

### **16. Implementation Programme**

This policy will be implemented once approved by the Council and will form part of the training material during Fraud Awareness training sessions with all Directorates and Departments



**17. Monitoring, Evaluation and Review**

This policy will be reviewed as and when necessary however, after every three years from the date of approval.

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