



Governance and Priorities Committee Report For the meeting of June 26, 2014

Date: May 21, 2014 **From:** Trina Harrison, Director of Human Resources
Subject: Whistleblower Policy

Purpose

The purpose of this report is to report back on control deficiencies identified by the auditors in the 2012 Financial Statements.

Background

As part of the annual audit KPMG Enterprise, the City's external auditors, identified control deficiencies they determined to be matters were of sufficient importance to merit management's attention. The Auditors recommended that the City develop policy to promote and inform staff how they can report areas of concern, misconduct, risk and fraud within the organization that otherwise may be undetected through normal business processes.

Council unanimously carried the motion "that Council accept the 2012 Financial Statements, and that Council direct staff to report back on the two control deficiencies identified on page 7 of the KPMG audit for the year ended December 31, 2012."

The City is committed to protect its revenue, property, information and other assets from any acts of Wrongdoing and to ensure the highest standards of ethical behaviour in the workplace. Staff developed policy that promotes proper conduct of staff and establishes clear responsibilities that allow staff to make confidential reports of acts of fraud, theft or other misconduct.

This policy provides procedures for staff who wish to report workplace wrongdoings that may adversely impact the City, customers, employees, or the public at large, without fear of retaliation or a negative impact on their employment status.

This policy is intended to foster and maintain an environment where employees can work safely and appropriately and provide procedures for reporting workplace wrongdoings. The City's auditors have reviewed the policy and are satisfied that it met with their original recommendations to safeguard the City against misconduct, risk and fraud within the organization that otherwise may be undetected through normal business processes.


Recommendation:


That Council receive this report as information.


Trina Harrison, Director Human Resources

Report accepted and recommended by the City Manager: _____

Date: _____


June 26, 2014

 CITY OF VICTORIA	CORPORATE POLICY GUIDE	
	No.177	Page 1 of 5
CHAPTER:	HUMAN RESOURCES	
SECTION:	EMPLOYEE RELATIONS	
SUBJECT:	WHISTLEBLOWER	
AUTHORIZED BY:	CITY MANAGER	
EFFECTIVE DATE:	November 2013	REVISION DATE:

1. PURPOSE

The purpose of this policy is to ensure employees are supported in reporting workplace Wrongdoings that may adversely impact the City, customers, employees, or the public at large, without fear of retaliation or a negative impact on their employment status.

2. POLICY STATEMENT

The City is committed to ensuring the highest standards of ethical behaviour in the workplace and will foster and maintain an environment where employees can work safely and appropriately. In this regard, the City is committed to protecting its revenue, property, information and other assets from any acts of Wrongdoing.

This policy is not intended to override or replace existing reporting processes provided in collective agreements, other City policy or legislation. Complaints made under this policy may be redirected where other more appropriate process are applicable, such as collective agreement grievance procedures; Human Rights Complaints; or Workers' Compensation Act.

3. APPLICATION AND RESPONSIBILITY

This policy applies to all employees. All employees are responsible for understanding and complying with this policy.

Appropriate Authority Responsibility

The Appropriate Authority shall conduct an investigation and resolve claims of workplace Wrongdoing as expediently as possible. The Appropriate Authority is also responsible for:

- Administering the complaint process
- Determining the veracity of allegations of wrongdoing or retaliation.
- Determining whether or not a reported act is indeed wrongdoing or Retaliatory Act.
- Administering appropriate disciplinary or corrective actions if allegations are true.
- Administering appropriate disciplinary actions if allegations were knowingly falsely made.

Employee Responsibility

Employees who believe they have witnessed an act or acts of workplace Wrongdoing should report the incident(s) immediately to the Appropriate Authority. Any hesitancy in reporting acts of Wrongdoing may impact the quality of an investigation or may make the case against a possible Respondent more difficult to establish.

Manager / Supervisor Responsibility

Managers / Supervisors must take all appropriate steps to prevent and stop workplace Wrongdoing in their areas of responsibility. Any Manager / Supervisor who is subjected to, witnesses, or is given written or oral complaints of Wrongdoing or Retaliatory Act shall immediately report it to the Appropriate Authority.

Assurance Against Retaliation

Employees are encouraged to freely express in a responsible and orderly fashion their thoughts, opinions, and feelings regarding workplace Wrongdoing complaints. Any retaliation by any persons against the Complainant is strictly prohibited and will result in appropriate disciplinary action.

An employee shall not bring fraudulent or malicious complaints against another employee. Any complaint made in bad faith, if demonstrated as being such through convincing evidence, will result in appropriate disciplinary action being taken against the Complainant lodging a fraudulent or malicious complaint.

4. DEFINITIONS

Wrongdoing – An act occurring at the workplace or a workplace practice that constitutes an illegal or inappropriate action. This may include auditing or accounting practices, discrimination, violence, theft, fraud, dishonest conduct, illegal employment actions, unsafe activities, unsafe work environments, violation of laws and regulations, violations of City policies, unethical behaviour or practices, endangerment to public health or safety and negligence of duty and Retaliatory Act.

Complainant – An employee who submits a complaint or report of alleged Wrongdoing in writing.

Respondent – An employee whose alleged conduct is the subject of a complaint of Wrongdoing.

Appropriate Authority – The Director of Human Resources who has the authority to make final decisions regarding employees, Wrongdoings, and resulting actions.

Retaliatory Act – Any retaliation, retribution, or reprisal by a Respondent against any Complainant, or against any employee who testifies or otherwise participates in an investigation or hearing relating to the allegation of Wrongdoing.

Adverse Employment Action – Adverse employment action includes, but is not limited to discipline, transfer to a lesser position, denial of promotion, threats, harassment as a result of the employee's report of Wrongdoing, or any manner of discrimination against an employee in the terms and conditions of employment because of any other lawful act done by the employee pursuant to this policy.

5. PROCEDURES

All complaints shall be handled in a fair, impartial and consistent manner.

Process for Handling Complaints of Workplace Wrongdoing

When a Complainant lodges a complaint, a confidential discussion shall take place with the Appropriate Authority to the extent allowed by the law. During this discussion, the Appropriate Authority will explain the process to the Complainant. If the Complainant wishes to proceed further with the complaint, the Complainant shall provide a written statement regarding the alleged workplace Wrongdoing.

Based on the circumstances of the complaint, the Appropriate Authority must determine whether or not the Complainant's identity can be kept confidential if the complaint proceeds. Depending on threat determination, the Complainant must be advised that her/his identity may have to be disclosed to the Respondent for the complaint to proceed further and must be given an opportunity to withdraw or abandon the complaint.

Informal Procedures

The Appropriate Authority shall notify the Respondent of the complaint, keeping all such communication confidential. The Appropriate Authority may then implement whatever steps necessary to create an informal resolution that is acceptable to both the Complainant and Respondent.

If an informal resolution of the complaint is achieved, no record of the complaint will be entered in the Respondent's personnel records. However, the Appropriate Authority will record the occurrence of the complaint and the informal resolution achieved.

Formal Procedures

If the complaint is not dealt with through the Informal Procedures, the Respondent shall be provided ten (10) working days to respond, in writing, to the allegation. The Respondent's statement must answer – with specific responses – to each complaint, admitting, denying, or explaining the allegations against them. The Respondent must sign his or her statement, which will then be attached to the complaint.

If the Appropriate Authority feels a formal hearing is warranted, the hearing shall be conducted within ten (10) working days after receiving the complaint.

Accounting Allegations

Any accounting allegation that is made directly to management, whether openly, confidentially or anonymously, shall be reported immediately to the Appropriate Authority who may consult with any member of management or employee whom they believe would have appropriate expertise or information to assist. The Appropriate Authority shall determine whether to investigate the accounting allegation under this policy, taking into account all considerations. The Appropriate Authority shall be free to engage outside auditors, counsel or other experts to assist in the investigation and in the analysis of results.

Any accounting allegation of misconduct involving the City Manager, shall be reported immediately to the Appropriate Authority and dealt with in-camera by Council, who will then determine and assign responsibility for investigation and disposition of the matter.

Complaints about Appropriate Authority

Complaints of any Wrongdoing in which the Appropriate Authority was allegedly involved, either as the perpetrator or as a witness, shall be made directly to the City Manager who shall act as the Appropriate Authority.

Complainant / Respondent Rights

When conducting investigations Complainants and Respondents have certain rights. These rights include, but are not limited to:

- Receiving written notice of the allegations (where permitted by law).
- Presenting relevant information to the Appropriate Authority.
- Receiving a copy of the report at the conclusion of the investigation (where permitted by law).

Confidentiality

All records of Wrongdoing complaints and subsequent investigations are considered confidential and will not be disclosed to anyone except to the extent required by law. The City will do everything it can to protect the privacy of all individuals involved and to ensure that the Complainant and the Respondent are treated fairly and respectfully.

Reporting Out

At the conclusion of an investigation, a written report shall be prepared which shall include a statement of factual findings and a determination of whether a Wrongdoing has been committed or the Retaliatory Act has been violated. If necessary, the report shall be shared with law enforcement officials or legal counsel.

The Appropriate Authority shall advise the Complainant and the Respondent in writing of the resolution of any investigation conducted under this Policy. A copy of the investigative findings may be provided to both the Complainant and the Respondent.

Timelines

Complainants are encouraged to file a complaint immediately after an alleged incident of Wrongdoing. The City recognizes that a timely complaint may not always be possible, due to feelings of fear on the Complainant's part. Employees who believe that they have witnessed a Wrongdoing shall lodge a complaint within ten (10) days following an alleged incident. The Appropriate Authority may refuse to investigate any complaint lodged more than ten days after the alleged incident. It is the responsibility of the Complainant to show good reasons for late complaints.

Records

Records of all resolutions, hearings, and reviews shall be kept by the Human Resources Department and will only be available to Management, and only in the following circumstances:

1. When determining an appropriate disciplinary action for subsequent Wrongdoing.
2. When a Respondent is a candidate for a promotion to a supervisory position.
3. When a complaint of a Retaliatory Act is made.
4. When a complaint decision or resolution is reviewed.

Any records concerning an employee will be maintained in accordance with all applicable laws and regulations. Both the Complainant and the Respondent are eligible to obtain copies of hearings or of their own statements made throughout the course of process.

In all cases, the Human Resources Department shall retain the findings report for a minimum of two (2) years or for as long as any administrative or legal action arising out of the complaint is pending.

Disciplinary Actions

Upon concluding that an instance of Wrongdoing occurred, the Respondent will be subject to disciplinary action, which may result in suspension of duties, or termination of employment and possible legal action depending on the severity of the action. Disciplinary action imposed will be determined on the basis of the facts of each case and the extent of harm to the Complainant or the City's interests.

It is a violation of this policy for any employee to knowingly make false or frivolous complaints of Wrongdoing or to provide false information. Employees who violate this policy are subject to discipline up to and including termination of employment.

5. REFERENCES

Policy 163, Protection of Workers from Violence in the Workplace

Policy 176, Respectful Workplace

REVISION HISTORY