

# BA-PHALABORWA MUNICIPALITY



## WHISTLE BLOWING POLICY

2014/15

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## 1. INTRODUCTION

The Protected Disclosure Act came into effect on the 16<sup>th</sup> February 2001. The Act is commonly referred as the Whistle Blowing Act. In order to remain in compliance with the Act, the Municipality has created the Whistle Blowing policy with the following objectives:

- To encourage the reporting of matters that may cause financial and non-financial loss to the Municipality, or damage the Municipality's reputation;
- To enable the Municipality to effectively deal with reports from whistle blowers by providing clear guidelines for the disclose of such information and protection against reprisal as a results of such disclose;
- To provide for the appropriate infrastructure including alternative mechanism for reporting.

## 2. SCOPE OF THE POLICY

The Whistle Blowing Policy is not a replacement for the existing Grievance procedure and therefore grievances should not be reported in terms of this policy. Any grievance should be lodged in accordance with the provisions of the Grievance Procedure.

The policy is designed to deal with concerns raised in relation to issues relating to fraud, corruption, misconduct and malpractice within and around Ba-Phalaborwa.

In terms of the Protected Disclosure Act the following can be raised:

- a) That a criminal offence has been committed, is being committed or is likely to be committed;
- b) That the person has failed, is falling 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 and is likely to occur;
- d) That the health and safety of any 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 4 of 2000;
- g) That any matter referred to paragraphs (a) to (f) has been is being or is likely to be deliberately concealed.

### 3. PURPOSE OF THE POLICY

This policy has been developed to give effect to the Protection Disclosure Act, namely;

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

This policy is intended to encourage employees to report the matter as set out under paragraph 2 (a) to (f) by providing procedures and mechanisms for such reporting as well as ensuring that employees who make such reports in good faith are not victimized, harassed and do not suffer any occupational detriment.

This is in line with the promotion or creating awareness of standards of appropriate and accepted employee conduct and establishing a common understanding of what is acceptable and what is unacceptable behaviour

### 4. WHO CAN RAISE A CONCERN?

Any member of staff(c1) who has a reasonable belief that there is fraud or corruption or misconduct relating to any of the protected matter specified in paragraph 2 may raise a concern under the procedure detailed below. Concerns must be raised without malice, in good faith and not for a personal gain and the individual must reasonably believe that the information disclosed, and any allegations contained in it are substantially true. The issues raised may relate to a manager, another member of staff, or a group of staff.

### 5. GUARANTEES AND PROTECTION

Confidentiality will be maintained, and nobody will be penalized for disclosing in good faith, information that might be in interest of Ba-Phalaborwa Municipality, every effort will be made not to reveal the identity of the whistle blower unless he/she so wish.

Ba-Phalaborwa Municipality is will ensure that any member of staff/employee who makes a disclosure in the above mentioned circumstances will not be penalized or suffer any occupational detriment for doing so.

Occupational detriment as defined by the 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.

If you raise a concern in good faith in terms of this policy, you will not be at risk of losing your job or suffer any form of retribution as a result.

This guarantee and protection/assurance is not extended to employees who maliciously raise matters they know to be untrue.

Ba-Phalaborwa Municipality will not tolerate the harassment or victimization of anyone raising a genuine concern.

If the situation arises where we are not able to resolve the concern without revealing your identity for example where your evidence is needed in formal forums, consultations will be done of how the matter may proceed

#### **6. REPORTING PROCEDURE.**

If you have a concern about malpractice, raise it first with the Manager: Risk Manager verbally, in writing or with the Municipal Manager and you may remain anonymous when making such reports. Manager Risk Management or Municipal Manager and you have substantial reason to believe that there would be a cover or that evidence will be destroyed or that the matter might not be handled properly, you may raise your concern in good faith with the member of the Executive Council in the Municipality, Cabinet, the Presidency or with the National fraud hotline.

All individuals who have concerns are encouraged to report such to the Manager: Risk Management or the Municipal Manager until such time the Hotline facility is established.

#### **7. INDEPENDENT ADVICE**

If you are unsure whether to use this procedure or you want independent advice at any stage, you may contact your personal legal adviser, or your labour organization.

#### **8. HOW THE MUNICIPALITY WILL RESPOND.**

The action taken by the Municipality will depend on the nature of the concern reported. The possible actions open to the Municipality are to:

- Investigate internally; and /or refer the matter to South African Police Service or other relevant law enforcement agency, if applicable

Initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form the investigation should take. Concerns raised may not necessary require an investigation to resolve them.

The amount of contact between the investigation officer and the person raising the concern (if not anonymous) will depend on the nature of the concern raised and the investigations which may require to be performed. If required, further information maybe is sought from the person who made the report.

All investigations will be handled confidentially and will not be discussed with person other than those who legitimately have the right to such information.

#### **9. FALSE AND MALICIOUS ALLEGATION**

Those wishing to make reports must guard against making allegations which are false and made with malicious intent. Persons making such reports will not enjoy the protection offered by the Protected Disclosure Act. Furthermore, there are resources and cost implication in respect to initiating investigation, which need to be considered in the event of false or malicious information.

A member of staff 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 or vexatious, may be subject to disciplinary proceedings.

By using this policy, you will help Ba-Phalaborwa Municipality achieve the objectives as provided in the Act and manage risks.

#### **10. CREATING AWARENESS**

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

## 11. SOURCES OF REFERENCE

- The Protected Disclosure Act No. 26 of 2000
- The Bill of rights as contained in The Constitution Act of 1996
- The Labour Relation Act of 1995
- Promotion of Access to Information Act

## 12. APPROVAL

APPROVED