

MOLEMOLE LOCAL MUNICIPALITY



Kopano ke maatla, go aga setshaba se kaone

Molemole Municipality

WHISTLE BLOWING POLICY 2018/19

Council resolution	SC/5.3/30/04/18
Financial year	2018/19
Council approval	30 April 2018



Molemole Municipality

MOLEMOLE LOCAL MUNICIPALITY WHISTLE BLOWING POLICY 2018/19

Table of contents	Page
1. Purpose.....	2
2. The scope of the policy.....	3
3. Raising concerns	4
4. Culture of openness.....	4
5. Disclosure and Confidentiality	4
6. Procedure of reporting fraud and corruption [allegations]	6
7. Independent Advice	6
8. Protection of the employees.....	6
9. Other related documents	7
10. Review of the policy.....	7
11. Approval of the policy	7

1. Purpose

The purpose of this policy is to provide a means by which stakeholders of the Molemole Local Municipality, including employees and local Communities are able to raise concerns with the appropriate line management, or specific appointed persons or structures within the Municipality, where they have reasonable grounds for believing that there is a fraud and corruption within the Municipality. Such reporting must be made in good faith.

Good faith means a reasonable, subjective belief in the truth of the suspicion. It does not mean that a potential whistle-blower must be able to prove the guilt of the object of the suspicion. When in doubt as to whether a suspicion is reasonable or not, it is advisable to rather report it.

Any disclosure made in good faith and substantially in accordance with any reporting procedure prescribed by the Municipality is considered to be a protected disclosure. An employee making such a protected disclosure is protected from being subjected to any occupationally detrimental victimisation of any kind as a result of the protected disclosure.

Any employee or other stakeholder who suspects or reports suspected dishonest activity or such activity that he / she witnessed will be afforded the opportunity to remain anonymous should this be his / her wish.

The protected Disclosures Act, Act 26 of 2000, which became effective on February 2001, provides protection to employees for disclosures made without malice and in good faith, in defined circumstances.

In terms of the Protected Disclosure Act employees can blow the whistle on fraud and corruption in the working environment without the fear of suffering occupational detriment as defined by the act. This includes:

- (i) Being subjected to any disciplinary action;
- (ii) Being dismissed, suspended, demoted, harassed or intimidated;
- (iii) Being transferred against his / her will;
- (iv) Being refused transfer or promotion;
- (v) Being subjected to a term or condition of employment or retirement which is altered or kept altered to his/ her disadvantage;
- (vi) Being refused a reference or being provided with an adverse reference, from his / her employer;
- (vii) Being denied appointment to any employment, profession or office;
- (viii) Being threatened with any of the actions referred to above;
- (ix) Being otherwise adversely affected in respect of his / her employment, profession or office, including employment opportunities and work security.

Management encourages staff to raise matters of concerns responsibly through the procedures laid down in this policy document.

2. The scope of the policy

- 2.1. The policy is designed to deal with the concerns raised in relation to issues relating to fraud, corruption, misconduct and malpractice within Molemole Local Municipality. This policy will not apply to personal grievances, which will be dealt with under existing procedures on grievance, discipline and misconduct. Details of these procedures are obtainable from the Human Resources Department.
- 2.2. The policy covers all genuine concerns raised including:
- (i) Financial misconduct;
 - (ii) Health and safety risks;
 - (iii) Environmental damage;
 - (iv) Unfair discrimination;
 - (v) Corruption and misconduct;
 - (vi) Any Maladministration;
 - (vii) Attempts to suppress or conceal any information relating to any of the above.
- 2.3. If in the course of investigation any concern raised in relation to the above matters appears to the investigator to relate more appropriately to grievance or discipline, those procedures will be evoked.
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- 2.4. As the employer - employee relationship includes the requirement of trust; every employee has a common law duty to report to the employer knowledge of any fact that might have a negative impact on the employer's business. The Municipality expects employees, stakeholders, service providers and customers to report any reasonable suspicions, of whatever value, to the Municipality. The ultimate decision to pursue an investigation is the responsibility of the Municipality. The Municipality will weigh the evidence and decide on the appropriate action to be taken. Failure of an employee to comply with this requirement may result in disciplinary action.
- 2.5. It is the responsibility of every employee of the Municipality to report all incidents of fraud, corruption, theft and maladministration or any other dishonest activities of a similar nature to his / her manager.
- 2.6. It is important to understand that an employee does not have to be involved in the commission of a crime for the reporting duty. Furthermore, these triggers are not confined to a subjective belief – when somebody ought to have known or suspected a criminal action, the reporting duties also apply. Thus, wilful blindness and negligence in failing to detect or report an obvious irregularity will also be punishable.

3. Raising concerns

- 3.1. Any member of the staff who has a reasonable belief that there is corruption or misconduct relating to any of the protected matters specified above may raise concerns under the procedure detailed.
- 3.2. Concerns should be raised without malice, in good faith and not for personal gain and the individual must reasonable believe that the information disclosed and any allegations contained in it, are substantially true.
- 3.3. The issue raised may relate to a manager, another member of staff, a group of staff, your own section or different section or division of the Municipality. The perpetrator can be an outsider, an employee, a manager, a customer or an ex-employee. Whistle - blower may even be aware of a system or procedure in use, which may cause the Municipality to transgress legal obligations.

4. Culture of openness

The Municipality commits itself to encouraging a culture that promotes openness. This will be done by:
Involving employees, listening to their concerns and encouraging the appropriate use of this policy or process on whistle blowing promoted by senior management. This policy will be used to all existing policy and to all new employees.

Educating, training, informing and explaining to employees what constitutes fraud, corruption and malpractice and its effect on the Municipality.

Promoting awareness of standards of appropriate and accepted employee conduct and establishing a common understanding of what is acceptable and what is unacceptable behavior.

Encouraging unions to endorse and support this approach.

5. Disclosure and Confidentiality

- 5.1 All information received via a protected disclosure tip-off relating to irregularities will be treated as highly confidential. The investigation will be handled in a confidential manner and no information will be disclosed or discussed with any person other than those who have a legitimate right to such information. This is to avoid damage to the reputation of a suspect who is, subsequent to an investigation, found innocent of wrongful conduct.
- 5.2 No information with regard to the issues covered within this policy may be shared with any external parties or the media without the express permission of the Municipal Manager.
- 5.3 Management is committed to this policy and will ensure that any member of staff who makes a disclosure in the above mentioned circumstances will not be penalised or suffer any occupational detriment for doing so.
- 5.4 If the whistle - blower raise a concern in good faith in terms of this policy, he / she will not be at risk of losing his / her job or suffering any form of retribution as a result.

- 5.5 This assurance is not extended to employees who maliciously raise matters they know to be untrue. 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, may be subject to disciplinary proceedings.
- 5.6 In view of the protection offered to a member of staff raising a bona fide concern, it is preferable that the individual puts his / her name to the disclosure. The Municipality will not tolerate the harassment or victimisation of anyone raising a genuine concern.
- 5.7 However, the Municipality recognise that the whistle - blower may nonetheless wish to raise a concern in confidence under this policy. If the whistle - blower ask the Municipality to protect his / her identity by keeping his / her confidence, the Municipality will not disclose it without the whistle – blowers consent. However, the Municipality do expect the same confidentiality regarding the matter from the whistle - blower.
- 5.8 If the situation arises where the Municipality is not able to resolve the concern without revealing the identity of the whistle - blower (for example where the evidence is needed in court), the Municipality will discuss with the whistle - blower whether and how the Municipality can proceed. Accordingly, while the Municipality will consider anonymous reports, this policy is not appropriate for concerns raised anonymously.
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- 5.9 Once the Municipality receives a concern, the Municipality will look into it to assess initially what action should be taken. This may involve an internal inquiry or a more formal investigation.
- 5.10 The issue raised by the whistle - blower will be acknowledged within seven (7) working days if it is requested, an indication of how the Municipality proposes to deal with the matter and a likely time scale could be provided. If the decision is made not to investigate the matter, reasons will be given.
- 5.11 The details of the person investigating the matter will be furnished for communication purposes and whether the whistle - blower further assistance may or will be needed. When the whistle - blower raise a concern, he / she may be asked on how he / she think the matter might best be resolved.
- 5.12 If the whistle – blower has any personal interest in the matter, the municipality shall ask that he / she tells at the outset. If a concern falls more properly within the Grievance Procedure the Municipality will inform the whistle – blower.
- 5.13 While the purpose of this policy is to enable the Municipality to investigate possible malpractice and take appropriate steps to deal with it, the Municipality will give the whistle – blower as much feedback as it properly can. If requested, the Municipality will confirm its response to the whistle - blower in writing. The Municipality may not be able to tell the whistle – blower the precise action it take where this could infringe a duty of confidence owed by the Municipality to someone else.

6. Procedure of reporting fraud and corruption [allegations]

- 6.1 Step one: It is the responsibility of all employees to report all allegations and incidents of fraud and corruption to their immediate manager/supervisor. This may be done verbally or in writing.
- 6.2 Step two: If an employee feels unable to raise the matter with his / her manager, for whatever reason, an employee may raise the matter either with:
- (i) Other member of management;
 - (ii) The Municipal Manager;
 - (iii) Risk Officer

Employee should indicate as to whether he / she wish to raise the matter in confidence.

- 6.3 Step three: If the above mentioned steps have been followed and the whistle - blower still has concerns, or feel that the matter is so serious that he / she cannot discuss it with any of the above, the whistle - blower may raise the matter in good faith with:

- (i) The Mayor;
- (ii) The Speaker
- (iii) Member of the Executive Committee;
- (iv) Risk Management Officer and /or;
- (v) The Chairperson of the Risk Committee.
- (vi) The Chairperson of the Audit Committee
- (vii) The District Anti Fraud Hotline

- 6.4 Step four: Should the whistle - blower have exhausted these internal mechanisms or where the whistle - blower have substantial reason to believe that there would be a cover-up or that evidence will be destroyed or that the matter might not be handled properly, the whistle - blower may report the matter in good faith to:

- (i) Presidential Hotline: 17737 (1PRES)
- (ii) Corruption Watch: 0800 023 456
- (iii) National Anti-Corruption Hotline: 0800 701 701.

7. Independent Advice

Whistle – blower may seek an independent advice from his / her personal legal adviser or labour organisation on how to raise a concern about malpractice at work.

8. The protection of the employee

The Protected Disclosure Act prohibits the employer from reacting to the employee's detriment if the disclosure is covered by the Act. This means that the employer may not:

- (a) dismiss, suspend, demote, harass or intimidate the employee;
- (b) subject the employee to disciplinary action;
- (c) transfer the employee against their will;
- (d) refuse due transfer or promotion;
- (e) alter the employment conditions of the employee unilaterally;
- (f) refuse the employee a reference or provide them with an adverse reference;
- (g) deny appointment;
- (h) threaten the employee with any of the above; or
- (i) otherwise affect the employee negatively.

Apart from the protection under the Protected Disclosure Act, employees dismissed, suspended or otherwise discriminated against have wide protection under the Labour Relations Act, no 66 of 1995.

In terms of the Labour Relations Act, employees subjected to discrimination as described above, will be entitled to approach the CCMA, which has available a wide range of remedies, including reinstatement, compensation, etc. The rules pertaining to the law of evidence and procedure, with reference to the CCMA have been designed to facilitate easy accessibility to the CCMA by affected employees. Employees have to complete relatively easy-to-understand questionnaires before any action on their behalf is considered. The rules also provide for speedy remedies and settlement.

9. Other related documents

This policy and framework must be read in conjunction with the following related policies:-

- (i) Code of Conduct;
- (ii) Risk Management Policy;
- (iii) Risk Management Strategy;
- (iv) Fraud Prevention Policy and Strategy.

10. Review of the policy

The Risk Management Committee shall review Whistle - Blowing Policy annually or as and when a need arises to reflect the current stance on Risk Management.


11. Approval of the policy

The Whistle-Blowing Policy shall be reviewed on an annual basis and adopted by Council.


Molemole Local Municipality
Whistle blowing policy 2018/19

REVIEWED BY: 
ML Mosena
Municipal Manager

30/04/2018
Date

RECOMMENDED BY: 
MW Mokwele
Chairperson Risk Management Committee

30/04/2018
Date


SAB Ngobeni
Chairperson Audit Committee

30/04/2018
Date

ADOPTED BY: 
ME Fata
Mayor

30/04/2018
Date