

WEST RAND DISTRICT MUNICIPALITY



WHISTLE BLOWING POLICY AND GUIDELINES

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1. Introduction and message from the Municipality Manager

A personal note from the Municipality Manager of West Rand District Municipality conveying Management commitment in making it clear that WRDM is committed to the fight against fraud and corruption in WRDM, whether the perpetrators are internal or external.

That the Whistle- Blowing Policy and Procedure is part of WRDMs commitment to working towards a culture of accountability, openness and transparency. It could be added that confidentiality will be maintained, and that nobody will be penalized or victimized for disclosing in good faith, information that might be in the Public and WRDM's interest.

2. Purpose of this policy

The purpose of this policy is to provide a means by which staff is able to raise concerns with the appropriate, line management or specific appointed persons in WRDM and external channels, where they have reasonable grounds for believing that there is fraud and corruption within WRDM departments.

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

In terms of the Protected Disclosures Act, employees can blow the whistle on fraud and corruption in the working environment without the fear of suffering an occupational detriment as defined by the Act. WRDM Management encourages staff to raise matters of concern responsibly through the procedures laid down in this policy document.

3. Scope of the policy

The policy is designed to deal with concerns raised in relation to issues relating to fraud, corruption, misconduct and malpractice within WRDM. The policy will not apply to personal grievances, which will be dealt with under existing HR procedures on grievance, discipline and misconduct. Details of these procedures are obtainable from the Human Resources Department.

The policy covers all genuine concerns raised including:

- Financial misconduct
- Health and safety risks
- Environmental damage
- Unfair discrimination
- Corruption, malpractice and misconduct
- Attempts to suppress or conceal any information relating to any of the above. 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.

4. Who can raise a concern?

Any member of staff or community, who has a reasonable belief that there is corruption or misconduct relating to any of the protected matters specified above may raise a concern under the procedure detailed. 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. The issues raised may relate to a manager, another member of staff, group of staff, the individuals' own section or a

different section/division of WRDM. The perpetrator can be an outsider, an employee, a manager, a customer or an ex-employee.

You may even be aware of a system or procedure in use, which may cause WRDM to transgress legal obligations.

5. Culture of openness

WRDM 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/ process on whistle-blowing promoted by Senior Management. This policy will be issued to all existing employees and to each new employee.
- Educating/ training/informing/explaining to employees what constitutes fraud, corruption and malpractice and its effect on WRDM. Promoting awareness of standards of appropriate and accepted ethical employee conduct and establishing a common understanding of what is acceptable and what is unacceptable behavior.
- Encouraging unions to endorse and support this approach
- Having a policy to combat fraud
- Annual reporting to WRDM on the number of fraud/corruption matters reported and the outcome.

6. Our assurances to you - Your safety

Management is committed to this policy. WRDM will ensure that any member of staff 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 dismissed, suspended, demoted, transferred against your will, harassed or

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 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 or vicariously, may be subject to fair and regulated disciplinary proceedings.

A whistleblower should not be suspended or suppressed, regardless of the medium they use to report corruption or fraud including using social media.

Suspension of the whistleblower should be the last arbiter after verification of evidence has been provided to be untruthful and not a reasonable reality.

Ensure that the identity of the whistleblower is kept confidential, unless they consent to disclose.

7. Your confidence

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. WRDM will not tolerate the harassment or victimisation of anyone raising a genuine concern.

However, we recognise that you may nonetheless wish to raise a concern in confidence under this policy. If you ask us to protect your identity by keeping your confidence, we will not disclose it without your consent. However, we do expect the same confidentiality regarding the matter from you. 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 court), we will discuss with you whether and how we can proceed.

Accordingly, while we will consider anonymous reports, this policy is not appropriate for concerns raised anonymously.

8. How we will handle the matter

Once you have told us of your concern, we will look into it to assess initially what action should be taken. This may involve an internal inquiry or a more formal investigation. The issue you raise will be acknowledged within 7 working days. If it is requested, an indication of how the organisation 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. We will tell you who would be handling the matter, how you can contact him/her and whether your further assistance may or will be needed. When you raise a concern, you may be asked how you think the matter might best be resolved. If you do have any personal interest in the matter, we do ask that you tell us at the outset. If your concern falls more properly within the Grievance Procedure we will tell you. While the purpose of this policy is to enable us to investigate possible malpractice and take appropriate steps to deal with it, we will give you as much feedback as we properly can. If requested, we will confirm our response to you in writing. Please note, however, that we may not be able to tell you the precise action we take where this could infringe a duty of confidence owed by us to someone else.

9. How to raise a concern internally

Step one: If you have a concern about malpractice and you feel comfortable to raise it first with your manager/supervisor. This may be done verbally or in writing.

Step two: If you feel unable to raise the matter with your manager, for whatever reason, please raise the matter either with: Human Resources/Ethics Office or Internal Audit: Please say if you wish to raise the matter in confidence so that they can make appropriate arrangements.

Step three: If these channels have been followed and you still have concerns, or if you feel that the matter is so serious that you cannot discuss it with any of the above, please contact the Office of the MM or Gauteng Premier on 011 836 9334 /08600 11000. Should you have exhausted these internal mechanisms or where you 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, you may raise the matter in good faith with a member of the Executive Council in WRDM

10. 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, or the independent legal advice center and Office Of Premier on its toll free helpline on 0800 525 352. Their legally trained staff can give you free confidential advice at any stage about how to raise a concern about serious malpractice at work.

11. What information is needed when reporting?

Whistle-blowers are encouraged to provide as much information and details as possible, including

- Who
- What
- When
- Why and How.

12. External contacts

Option 1: While this policy gives you reassurance you need to raise such matters internally, we recognize that there may be circumstances where you can properly report matters to outside bodies, such as regulators or the police. Office of the Premier will be able to advise you on such an option and on the circumstances in which you may be able to contact an outside body safely.

Option 2: While this policy gives you reassurance, you may also use the following reporting mechanisms:

West Rand District Municipality Whistleblower Email Line – fraudline@wrdm.gov.za

National Anti-Corruption Hotline – 0800 701 701

Gauteng Provincial Hotline – 0860 428 8364

Gauteng Ethics Hotline operated by the Independent Gauteng Advisory Council – 080 1111 633

13. If you are dissatisfied

If you are unhappy with our response, remember you can go to the other levels and bodies detailed in this policy. While we cannot guarantee that we will respond to all matters in the way that you might wish, we commit ourselves to handle the matter fairly and properly.

By using this policy, you will help us to achieve this.

The Public Protector - 012 366 7000/ 0800 112 040

The Auditor-General - 012 426 8000

“The Act further indicates that the disclosure is protected if made to certain persons, namely:

- Legal Advisor;
- Member of Cabinet/ Executive Council of Province, where relevant; where the employer is a Public Sector body;
- The Public Protector;
- The South African Human Rights Commission
- The Commission for Gender Equality
- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
- The Public Service Commission
- Auditor-General; and
- Any Person, prescribed in certain circumstances”

ANNEXURE A

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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THE PRESIDENCY DIE PRESIDENSIE

No. 785. 7 August 2000 No. 785. 7 Augustus 2000

It is hereby notified that the President has assented to the Hierby word bekend gemaak dat die President sy following Act which is hereby published for general goedkeuring het aan die onderstaande Wet wat information:- hierby ter algemene inligting gepubliseer word:

No. 26 of 2000: Protected Disclosures Act, 2000. No. 26 van 2000: Wet 21

ACT

To make provision for procedures in terms of which employees in both the private and the public sector may disclose information regarding unlawful or irregular conduct by their employers or other employees in the employ of their employers; to provide for the protection of employees who make a disclosure which is protected in terms of this Act; and to provide for matters connected therewith.

PREAMBLE

Recognising that-

- the Bill of Rights in the Constitution of the Republic of South Africa, 1996, enshrines the rights of all people in the Republic and affirms the democratic values of human dignity, equality and freedom;
- section 8 of the Bill of Rights provides for the horizontal application of the rights in the Bill of Rights, taking into account the nature of the right and the nature of any duty imposed by the

right;

- criminal and other irregular conduct in organs of state and private bodies are detrimental to good, effective, accountable and transparent governance in organs of state and open and good corporate governance in private bodies and can endanger the economic stability of the Republic and have the potential to cause social damage:

And bearing in mind that-

- neither the South African common law nor statutory law makes provision for mechanisms or procedures in terms of which employees may, without fear of reprisals, disclose information relating to suspected or alleged criminal or other irregular conduct by their employers, whether

in the private or the public sector;

- every employer and employee has a responsibility to disclose criminal and any other irregular conduct in the workplace;
- 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;

And in order 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 comprehensive statutory guidelines for the disclosure of such information and protection against any reprisals as a result of such disclosures; promote the eradication of criminal and other irregular conduct in organs of state and private bodies,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:-

(English text signed by the President.)

(Assented to 1 August 2000.) 22

Definitions

a. In this Act, unless the context otherwise indicates-

(i) "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 No. 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;

(ii) "employee" means-

(a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and

(b) any other person who in any manner assists in carrying on or conducting the business of an employer;

(iii) "employer" means any person-

(a) who employs or provides work for any other person and who remunerates or expressly or tacitly undertakes to remunerate that other person; or

(b) who permits any other person in any manner to assist in the carrying on or conducting of his, her or its business, including any person acting on behalf of or on the authority of such employer;

(iv) "impropriety" means any conduct which falls within any of the categories referred to in paragraphs (a) to (g) of the definition of "disclosure", irrespective of whether or not-

(a) the impropriety occurs or occurred in the Republic of South Africa or elsewhere; or

(b) the law applying to the impropriety is that of the Republic of South Africa or of another

country;

- (v) "Minister" means the Cabinet member responsible for the administration of Justice;
- (vi) "occupational detriment", in relation to the working environment of an employee, means-
 - (a) being subjected to any disciplinary action;
 - (b) being dismissed, suspended, demoted, harassed or intimidated;
 - (c) being transferred against his or her will;
 - (d) being refused transfer or promotion;
 - (e) being subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage;
 - (f) being refused a reference, or being provided with an adverse reference, from his or her employer;
 - (g) being denied appointment to any employment, profession or office;
 - (h) being threatened with any of the actions referred to paragraphs (a) to (g) above; or
 - (i) being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security;

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- (vii) "organ of state" means-
 - (a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or
 - (b) any other functionary or institution when-
 - (i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation;
- (viii) "prescribed" means prescribed by regulation in terms of section 10;
- (ix) "protected disclosure" means a disclosure 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) made by a legal adviser to whom the information concerned was disclosed in the course of obtaining legal advice in accordance with section 5;

(x) “this Act” includes any regulation made in terms of section 10.

Objects and application of Act

b. (1) The objects of this Act are-

(a) to protect an employee, whether in the private or the public sector, from being subjected to an occupational detriment on account of having made a protected disclosure

(b) to provide for certain remedies in connection with any occupational detriment suffered on account of having made a protected disclosure; and

(c) to provide for procedures in terms of which an employee can, in a responsible manner, disclose information regarding improprieties by his or her employer.

(2) This Act applies to any protected disclosure made after the date on which this section comes into operation, irrespective of whether or not the impropriety concerned has occurred before or after the said date.

(3) Any provision in a contract of employment or other agreement between an employer and an

employee is void in so far as it-

- (a) purports to exclude any provision of this Act, including an agreement to refrain from instituting or continuing any proceedings under this Act or any proceedings for breach of contract; or
- (b) (i) purports to preclude the employee; or
- (ii) has the effect of discouraging the employee, from making a protected disclosure. **Employee making protected disclosure not to be subjected to occupational Detriment**

c. No employee may be subjected to any occupational detriment by his or her employer on account, or partly on account, of having made a protected disclosure.²⁴

Remedies

d. (1) Any employee who has been subjected, is subject or may be subjected, to an occupational

detriment in breach of section 3, may-

- (a) approach any court having jurisdiction, including the Labour Court established by section 151 of the Labour Relations Act, 1995 (Act No. 66 of 1995), for appropriate relief; or
- (b) pursue any other process allowed or prescribed by any law.

(2) For the purposes of the Labour Relations Act, 1995, including the consideration of any matter emanating from this Act by the Labour Court-

(a) any dismissal in breach of section 3 is deemed to be an automatically unfair dismissal as contemplated in section 187 of that Act and the dispute about such a dismissal must follow the procedure set out in Chapter VIII of that Act; and

(b) any other occupational detriment in breach of section 3 is deemed to be an unfair labour practice as contemplated in Part B of Schedule 7 to that Act, and the dispute about such an unfair labour practice must follow the procedure set out in that Part: Provided that if the matter fails to be resolved through conciliation, it may be referred to the Labour Court for adjudication.

(3) Any employee who has made a protected disclosure and who reasonably believes that he or she may be adversely affected on account of having made that disclosure, must, at his or her request

and if reasonably possible or practicable, be transferred from the post or position occupied by him or her at the time of the disclosure to another post or position in the same division or another division of his or her employer or, where the person making the disclosure is employed by an organ of state, to

another organ of state.

(4) The terms and conditions of employment of a person transferred in terms of subsection (2) may not, without his or her written consent, be less favourable than the terms and conditions applicable to him or her immediately before his or her transfer.

Protected disclosure to legal adviser

e. Any disclosure made-

- (a) to a legal practitioner or to a person whose occupation involves the giving of legal advice; and
- (b) with the object of and in the course of obtaining legal advice, is a protected disclosure.

Protected disclosure to employer

f. (1) Any disclosure made in good faith-

(a) and substantially in accordance with any procedure prescribed, or authorized by the employee's employer for reporting or otherwise remedying the impropriety concerned;
or

(b) to the employer of the employee, where there is no procedure as contemplated in paragraph (a), is a protected disclosure.

(2) Any employee who, in accordance with a procedure authorized by his or her employer, makes

a disclosure to a person other than his or her employer, is deemed, for the purposes of this Act, to be making the disclosure to his or her employer.²⁵

Protected disclosure to member of Cabinet or Executive Council

g. Any disclosure made in good faith to a member of Cabinet or of the Executive Council of a province is a protected disclosure if the employee's employer is

(a) an individual appointed in terms of legislation by a member of Cabinet or of the Executive Council of a province;

(b) a body, the members of which are appointed in terms of legislation by a member of Cabinet or of the Executive Council of a province; or

(c) an organ of state falling within the area of responsibility of the member concerned.

Protected disclosure to certain persons or bodies

h. (1) Any disclosure made in good faith to-

(a) the Public Protector;

(b) the Auditor-General; or

(c) a person or body prescribed for purposes of this section; and in respect of which the employee concerned reasonably believes that-

(i) the relevant impropriety falls within any description of matters which, in the ordinary course are dealt with by the person or body concerned; and

(ii) the information disclosed, and any allegation contained in it, are substantially true, is a protected disclosure.

(2) A person or body referred to in, or prescribed in terms of, subsection (1) who is of the opinion that the matter would be more appropriately dealt with by another person or body referred to in, or prescribed in terms of, that subsection, must render such assistance to the employee as is necessary to enable that employee to comply with this section.

General protected disclosure

- i. (1) Any disclosure made in good faith by an employee-
 - (a) who reasonably believes that the information disclosed, and any allegation contained in it, are substantially true; and
 - (b) who does not make the disclosure for purposes of personal gain, excluding any reward payable in terms of any law; is a protected disclosure if
 - (i) one or more of the conditions referred to in subsection (2) apply and
 - (ii) in all the circumstances of the case, it is reasonable to make the disclosure.
- (2) The conditions referred to in subsection (1)(i) are-
 - (a) that at the time the employee who makes the disclosure has reason to believe that he or she will be subjected to an occupational detriment if he or she makes a disclosure to his or her employer in accordance with section 6

(b) that, in a case where no person or body is prescribed for the purposes of section 8 in relation to the relevant impropriety, the employee making the disclosure has reason to believe that it is likely that evidence relating to the impropriety will be concealed or destroyed if he or she makes the disclosure to his or her employer

(c) that the employee making the disclosure has previously made a disclosure of substantially the same information to-

(i) his or her employer; or

(ii) a person or body referred to in section 8 in respect of which no action was taken within a reasonable period after the disclosure; or

(d) that the impropriety is of an exceptionally serious nature.

(3) In determining for the purposes of subsection (1)(ii) whether it is reasonable for the employee

to make the disclosure, consideration must be given to-

(a) the identity of the person to whom the disclosure is made;

(b) the seriousness of the impropriety;

(c) whether the impropriety is continuing or is likely to occur in the future;

(d) whether the disclosure is made in breach of a duty of confidentiality of the employer towards any other person;

(e) in a case falling within subsection (2)(c), any action which the employer or the person or body to whom the disclosure was made, has taken or might reasonably be expected to have taken, as a result of the previous disclosure;

(f) in a case falling within subsection (2)(c)(i), whether in making the disclosure to the employer the employee complied with any procedure which was authorized by the employer; and

(g) the public interest.

(4) For the purposes of this section a subsequent disclosure may be regarded as a disclosure of substantially the same information referred to in subsection (2)(c) where such subsequent disclosure extends to information concerning an action taken or not taken by any person as a result of the previous disclosure.

Regulations

j. (1) The Minister may, after consultation with the Minister for the Public Service by notice in the Gazette make regulations regarding -

(a) for the purposes of section 8(1), matters which, in addition to the legislative provisions pertaining to such functionaries, may in the ordinary course be referred to the Public Protector or the Auditor-General, as the case may be;

(b) any administrative or procedural matter necessary to give effect to the provisions of this Act; and

(c) any other matter which is required or permitted by this Act to be prescribed.

(2) Any regulation made for the purposes of section 8(1)(c) must specify persons or bodies and the descriptions of matters in respect of which each person or body is prescribed.

(3) Any regulation made in terms of this section must be submitted to Parliament before publication thereof in the Gazette.

(4) (a) The Minister must, after consultation with the Minister for the Public Service and Administration, issue practical guidelines which explain the provisions of this Act and all procedures which are available in terms of any law to employees who wish to report or otherwise remedy an impropriety.

(b) The guidelines referred to in paragraph (a) must be approved by Parliament before publication in the Gazette.

(c) All organs of state must give to every employee a copy of the guidelines referred to in paragraph (a) or must take reasonable steps to bring the relevant notice to the attention

of every employee.

Short title and commencement

k. This Act is called the Protected Disclosures Act, 2000, and commences on a date determined by the President by proclamation in the Gazette.