

# **MATJHABENG LOCAL MUNICIPALITY**



## **WHISTLE BLOWING POLICY 2018/19**

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## 1. INTRODUCTION

This policy is intended to make it clear that Matjhabeng Local Municipality (hereafter referred to “MLM”) is committed to the fight against fraud and corruption whether the perpetrators are internal or external. The Whistle-blowing policy and procedures is part of the Municipality’s commitment to working towards a culture of openness, accountability and transparency. Confidentiality will be maintained, to the extent provided by the law, and nobody will be penalized for disclosing in good faith, information that might be in the Municipality’s interest.

Thus, any serious concerns that any person may have about any aspect of service delivery or the conduct of officials or members of the Matjhabeng Local Municipality council or others acting on behalf of the Municipality, can be reported under this policy.

All concerns will be treated in confidence and every effort will be made not to reveal the identity of whistle-blowers ‘if they so wish’. At the appropriate time, however, the whistle-blower may need to come forward as a witness.

### 1.1 What is whistle-blowing

Understood correctly, whistle-blowing is not about informing in the negative, anonymous sense but rather raising a concern about malpractice within an organisation.

### 1.2 Why is whistle-blowing important

Whistle-blowing is an early warning system to avert possible risks to the organization and alert Management about any wrong doing in time so that they can take necessary corrective action. A positive whistle-blowing culture is a critical element in the success of any risk management system.

An organization that positively encourages whistle-blowing stands a far better chance of demonstrating that it is properly run and managed. The existence of a working whistle-blowing policy is pivotal in legal proceedings.

Ethical dilemmas in whistle-blowing

Ethical behaviour should guide or conduct. Often in the case of whistle blowing, ethical dilemmas arise:-

- Gifts and gratuities
- Conflicts of interest

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- Confidentiality
  - Permission to do outside work
  - Discrimination

### **1.3 Why don't people blow the whistle**

While employees are usually the first to know of wrongdoing, many feel they stand to lose the most by speaking up. Those who genuinely suspect that something may be going seriously wrong in the workplace usually face an acute dilemma. They can stay silent and look the other way, they can raise the matter with the employer, or they can take their concerns outside the organization.

The fear of being labelled a sneak or a troublemaker, the fear of breaking ranks and appearing disloyal to colleagues, and the fear of being required to provide irrefutable evidence are powerful disincentives to speaking up; and encourages people not to blow the whistle. A good policy encourages and protects responsible whistle-blowing.

### **1.4 The conceptual core**

At its heart, the Protected Disclosure Act contains a simple idea; that, it is in the best interest of both the employer and the (responsible, potential whistle-blower) employee to blow the whistle internally within the organization rather than externally, to, for example, the media.

Once a disclosure is made externally the stakes are much higher for both the employer and the employee.

For the employer, it may result in damaging publicity, whether warranted or not.

For the employee, it may be more likely that the employer may react negatively to the disclosure, with adverse consequences for the employee and his or her future work prospects.

### **1.5 The Protected Disclosure Act 2000**

**1.5.1 The Protected Disclosure Act sets out a clear and simple framework to promote responsible whistle-blowing by:**

- Reassuring workers that silence is not the only safe option;
- Providing strong protection for workers who raise concerns internally;

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- Reinforcing and protecting the right to report concerns to public protection agencies such as The Special Investigation Unit, The South African Police Services, The National Intelligence Agency, Public Protector and Auditor General; and
  - Protecting more general disclosures provided that there is a valid reason for going wider and that the particular disclosure is a reasonable one.

#### **1.5.2 The following are objects of the Act:**

- (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
- © 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. PURPOSE OF THE POLICY**

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

The Protected Disclosure Act, Act 26 of 2000, 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 fear of suffering an occupational detriment as defined by the Act.

Matjhabeng Local Municipality's Management encourages staff to raise matters of concern responsibly through the procedures laid down in this policy documents. The Prevention and Combating of Corrupt Activities Act, Act No. 12 of 2004 provides for measure to prevent combat corruption and corrupt activities, investigative measures and penalties and related matters.

## **3. SCOPE OF THE POLICY**

This policy is designed to deal with concerns raised in relation to issues relating to fraud, corruption, misconduct and malpractice within Matjhabeng Local Municipality. The policy will not apply to personal grievances, which will be dealt with under existing procedures on grievance, discipline and misconduct.

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The policy covers all genuine concerns raised including but not limited:

- Financial misconduct
- Corruption
- Fraud
- Theft
- Health and safety risks
- Environmental damage
- Any person abusing their position in connection with unauthorised activity for personal gain
- Misuse of the municipal property and resources.

If in the course of investigation of any concern raised in relation to the above matters it appears to the investigator that concerns raised relate more appropriately to grievance or discipline, those procedures will be evoked.

#### **4. CONFIDENTIAL REPORTING PROCEDURE**

4.1 Any member of staff who has a reason to belief that there is corruption or misconduct relating to any of the matters specified above may raise a concern under the procedure detailed in this policy. Concerns must be raised without malice, in good faith and not for personal gain and the individuals must reasonably believe that the information disclosed, and any allegations contained in it, are substantially true.

4.2 The issue raised may relate to a manager, another member of staff, a group of staff, the individual own section or different section of the municipality. 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 Matjhabeng Local Municipality to transgress legal obligations.

4.3 Any suspicion of fraud or other wrong doing will be treated seriously with strictest confidence and will be reviewed and analysed.

4.4 Matjhabeng Local Municipality recognizes that it needs a channel through which suppliers, rate payers and other community members can report irregular activities, free from victimisation. The primary means of detecting fraud will always remain a sound system of internal control and regular internal audits.

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4.5 These measures will be supplemented with a fraud-reporting channel where information regarding fraud, theft and corruption is collected, and decisive corrective and protective steps are taken to limit the municipality's exposure to further or future loss. Vital to this function is the assurance of anonymity, commitment to investigate all irregularities, protection of the whistleblower and consistent application of the fraud policy, regardless of the seniority of the alleged offender.

4.6 Any suspected or actual fraud must be reported to the Supervisor or Manager if you are an employee. If the employee is not comfortable reporting such matters to his/her Supervisor/Manager, he/she should report the matter to his/her Supervisor/Manager's superior, with the final recourse to the Municipal Manager. People may also report incidents by using the Anti-Fraud & Anti-Corruption hotline if they wish to remain anonymous.

4.7 It is the responsibility of the Managers to report all incidents of fraud, corruption, theft, maladministration and other suspected irregularities of this nature to the Municipal Manager and the **Head of Internal Audit**. If the manager is not comfortable reporting such matters as indicated above, he/she should report the matter to the Executive Mayor. This reporting must take place as follows:

- a) Telephonically immediately after discovery of such an incident;
- b) This telephonic report must be followed by a detailed written report to be submitted within 24 hours of the discovery of such an incident.

4.8 If sufficient information is available to substantiate that a criminal offence has been committed, the Municipal Manager or his/her nominee must report the matter to the South African Police Services as soon as possible.

4.9 Where an employee is alleged to have committed an act of fraud, corruption, theft, or maladministration the Municipal Manager must institute disciplinary proceedings, in terms of the disciplinary code agreement of the municipality.

4.10 Managers are also required to ensure that losses or damages suffered by the Municipality as a result of an act committed or omitted by an employee must be recovered from such an employee if he/she is liable in law. The Municipal Manager must determine the amount of the loss or damage and, in writing request that employee to pay the amount within 30 days or in reasonable instalments. If the employee fails to comply with the request, the matter must be handed to the Chief Financial Officer for the recovery of the loss or damage.

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## 5. ANONYMOUS ALLEGATIONS

This policy encourages whistle-blowers to put their names to their allegations whenever possible. Where an individual chooses to report their concerns anonymously, such anonymity will be respected.

It should be noted that, if the report suggests criminal activity, and the case is to be pursued by police, the identity of the person reporting the details may be important at a later date if the criminal proceedings are to be pursued effectively.

## 6. UNTRUE ALLEGATIONS

Public, employees, and third parties may raise their concerns orally, telephonically or in writing. A person raising a concern or blowing the whistle, should give the details about the place and venue where the activity has taken place, is taking place or is going to take place, the time and the date where possible.

Anti-Fraud & Anti-Corruption hotline will be administered by Internal Audit in conjunction with the municipality's Investigation Unit will be put in place for the purpose of reporting fraudulent and corrupt activities.

Those who wish to make written reports are invited to use the following methods:

- Encrypted fax
- Letters addressed to the Municipal Manager and he will forward it to the Investigation Unit for investigation
- Visiting our offices
- Telephonically, through Anti-Fraud & Anti-corruption hotline ()
- Use of fraud & corruption reporting boxes that will be placed at different offices of the municipality of which access will be 48 hours.

Although whistle blowers are not expected to prove beyond reasonable doubt the truth of an allegation, they will need to demonstrate to the person contacted that there are reasonable grounds for their concern.



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## 7. WHAT NOT TO DO

A whistle-blower must not do any of the following:

- Contact the suspected perpetrator in an effort to determine facts or demand restitution
- If the whistle-blower is an employee of the municipality, discuss the case facts, suspicions, or allegations with anyone outside the municipality (including the Press or Media)
- Discuss the case with anyone within the municipality other than the people administering the Anti-Fraud & Anti-corruption hotline
- Attempt to personally conduct investigations or interviews or question anyone.

## 8. HOW THE MUNICIPALITY WILL RESPOND TO CONCERNS.

The municipality will respond to concerns raised by whistle-blowers by:

- Investigating all reported cases;
- Institute disciplinary hearings where appropriate;
- Lay criminal charges where necessary, and
- Blacklist perpetrators where appropriate (name and shame).

In order to protect individuals and those accused of possible malpractice, initial enquiries will be conducted to determine whether an investigation is appropriate or not and, where appropriate, what form should the investigation take.

The overriding principle which the municipality will uphold is of the public interest.

Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required, this will be taken before any investigation is conducted.

The municipality accepts that whistle-blowers need to be assured that the reported matters have been properly addressed. Thus, subject to legal considerations, the municipality will inform whistle-blowers of the outcome of investigations conducted as a result of their disclosure.

If you are unhappy with the municipality's response, remember you can go to the other levels and bodies detailed in this policy. While we cannot guarantee that the municipality will respond to all

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matters in the way you might wish, the municipality commit to handle every matter fairly and properly.

## 9. CREATING AWARENESS

It is the responsibility of all Managers to ensure that all employees are made aware of, and receive appropriate training and education with regard to this policy.

This policy should also be publicized following the process that is being followed by the municipality to ensure that community members and other third parties are aware of it.

## 10. ADMINISTRATION

The custodian of this policy is the Municipal Manager, who is supported in its implementation by the Council and all Executive Management, all Managers and staff of Matjhabeng Local Municipality. The Municipal Manager is responsible for the administration, revision and interpretation of this policy. The policy will be reviewed as and when necessary preferably annually together with Anti-Fraud & Anti-Corruption Strategy of the municipality.

## 11. ADOPTION OF THE POLICY

**Adopted by:**

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**Municipal Manager (Mr E. T. Tsoaeli)**

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**Date**

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**Executive Mayor (Cllr Nkosinjani Speelman)**

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**Date**