

HESSEQUA

Munisipaliteit / Municipality



WHISTLEBLOWING POLICY

*“As Hessequa Municipality our values determine who we are, as we serve our community, we must strive to live our values every day. Our values are: **Honesty** – we must lead by example. **Respect** – we embrace the diversity of our community and respect each individual. **Trust** – when we listen to the perspective of others without judgement and act with sincerity, we build trust in the municipality. **Caring** – it is important to approach work and our community with an attitude of caring. **Integrity** – remember to do the right thing, even when no one is watching.”*

*“As Hessequa Munisipaliteit bepaal ons waardes wie ons is, en moet ons daaglik streef om ons waardes uit te leef wanneer ons die Hessequa gemeenskap dien. Ons waardes is: **Eerlikheid** – ons moet ‘n voorbeeld vir ander wees. Wees deursigtig in wat jy doen. **Respek** – ons gryp die diversiteit van ons gemeenskap aan en respekteer elke individu. Respekteer jouself, jou kollegas en die werksplek. **Vertroue** – Wanneer ons na die perspektiewe van ander luister sonder om te oordeel en met opregtheid optree, bou ons vertroue in die Munisipaliteit. **Omgee** – dit is belangrik om ons werk en ons gemeenskappe met ‘n gesindheid van omgee te benader. **Integriteit** – onthou om te alle tye die regte dinge te doen.”*

“A caring, serving & growing Hessequa”

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Council's decision: 9.2

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Definitions And Abbreviations

“Act” means the Protected Disclosures Act, 2000 (Act 26 of 2000).

“Occupational detriment” in relation to an employee or a worker, 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 subjected to any civil claim for the alleged breach of a duty of confidentiality or a confidentiality agreement arising out of the disclosure of
- (i) a criminal offence; or
- (ii) information which shows or tends to show that a substantial contravention of, or failure to comply with the law has occurred, is occurring or is likely to occur;
- (i) being threatened with any of the actions referred to in paragraphs (a) to (h) above; or
- (j) being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities, work security and the retention or acquisition of contracts to perform work or render services.

“Policy” refers to this Whistleblowing Policy.

“protected disclosure”

means a protected disclosure as defined by section 1 of the Protected Disclosures Act, 2000 (Act 26 of 2000);

“Whistleblowing” means the act of organisational stakeholders (e.g., employees, members of the public or service providers), either former or current, calling attention to wrongdoing that has occurred, is occurring or is about to occur in an organisation.

1. INTRODUCTION

- 1.1 The Hessequa Municipality (Municipality) is committed to the highest standards of openness, ethical behaviour, integrity and accountability. The Municipality aims to promote a culture in which employees feel able to raise genuine and valid concerns without fear of victimisation, discrimination or disadvantage. Members of the public and service providers are also encouraged to raise concerns about our activities so that we can investigate and take appropriate action.
- 1.2 The Hessequa Municipality therefore recognises the fact that:
 - 1.2.1 Criminal and other irregular conduct within the Municipality is detrimental to good, effective, accountable and transparent governance;
 - 1.2.2 There is a need for procedures in terms of which employees should, without fear of reprisals, disclose information relating to suspected or alleged criminal or other irregular conduct;
 - 1.2.3 Every employee has a responsibility to disclose criminal and any other irregular conduct in the workplace; and
 - 1.2.4 Employees who disclose such information must be protected from any reprisals because of such disclosure.

2. OBJECTIVES OF THE POLICY

- 2.1 The Protected Disclosures Act came into effect on 16 February 2001. To remain in compliance with the Act, and its duty as a public body in terms of the Constitution of the Republic of South Africa to promote good governance, the Municipality will:
 - 2.1.1 Strive 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 clear guidelines for the disclosure of such information and protection against reprisals because of such disclosure; and
 - 2.1.2 Promote the eradication of criminal and other irregular conduct within the Municipality.
- 2.2 The Policy is intended to encourage and enable staff to raise concerns rather than overlooking a problem or blowing the whistle to inappropriate channels.
- 2.3 Furthermore, the policy aims to:

- 2.3.1 Provide avenues for staff to raise concerns;
- 2.3.2 Inform staff on how to take the matter further if they are dissatisfied with the response; and
- 2.3.3 Reassure staff that they will be protected from reprisals or victimisation for whistleblowing in good faith.

3. SCOPE OF THE POLICY

3.1 There are existing grievance procedures in place to enable employees to raise grievances relating to their employment. This Policy is intended to cover concerns that fall outside the scope of grievance procedures. These concerns indicated in the Act, are the following:

- 3.1.1 That a criminal offence has been committed, is being committed or is likely to be committed;
- 3.1.2 That a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
- 3.1.3 That a miscarriage of justice has occurred, is occurring or is likely to occur;
- 3.1.4 That the health or safety of an individual has been, is being or is likely to be endangered;
- 3.1.5 That the environment has been, is being or is likely to be damaged;
- 3.1.6 Unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, (Act 4 of 2000);
- 3.1.7 That the Codes of Conduct or the Codes of Ethics are not adhered to;
- 3.1.8 That there is a conflict of interest that is not reported;
- 3.1.9 That there is improper or illegal use of authority;
- 3.1.10 That fraud, waste, or misuse of municipal property, resources, or time are occurring; or
- 3.1.11 That any matters referred to in paragraphs 3.1.1 to 3.1.10 have been, are being or are likely to be deliberately concealed.

3.2 The following prohibited activities must also be reported:

- 3.2.1 Intentional falsification of records (including failure to disclose material facts or making false or misleading entries or statements with the intent to deceive on any Municipal document or other official document, report, or form, including but not limited to, Municipal financial records and environmental regulatory reporting, or the willful and unauthorised

destruction and/or mutilation of any Municipal document or other official document, report, or form, including Municipal financial records, other than in accordance with the Municipality's record retention policy and/or applicable law.

- 3.2.2 Intentionally submitting false claims for payment or reimbursement.
- 3.2.3 Knowingly submitting and/or signing a timesheet that contains false information.
- 3.2.4 Forgery or intentional unauthorized alteration of a municipal document or other official document, application, report, or form, including but not limited to the municipality's financial documents.
- 3.2.5 Improprieties in the handling or reporting of financial transactions for the Municipality.
- 3.2.6 Authorising or receiving payment by the Municipality for goods not received or services not performed.
- 3.2.7 Computer related activity involving unauthorized alteration, destruction of data, forgery, or manipulation of data or misappropriation of Municipal-owned software.
- 3.2.8 Signing of documents without proper delegation.

4. THE POLICY

4.1 Protected Disclosures Act

Section 2 of The Protected Disclosures Act defines the "Objects of the Act" as follows:

- 4.1.1 To protect an employee from being subjected to an occupational detriment on account of having made a protected disclosure;
- 4.1.2 Occupational detriment includes being subjected to any disciplinary action, being dismissed, suspended, demoted, harassed, intimidated, transferred against one's will, refused transfer or promotion, having a term or condition of one's employment or retirement altered to one's disadvantage, being refused a reference, or being provided with an adverse reference from the Municipality, being denied appointment to any employment, profession or office, being threatened with any of the above or being otherwise adversely affected in one's employment with the Municipality, including employment opportunities and work security;
- 4.1.3 To provide for remedies in connection with any occupational detriment suffered on account of having made a protected disclosure; and

- 4.1.4 To provide for 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.
- 4.1.5 This Policy is developed based on the principal objects of the Protected Disclosures Act, which encourages and places a duty on employees to disclose any acts of misconduct without fear of any recriminations or reprisals.

What actions can constitute 'occupational detriment'?	
The Act as amended defines as occupational detriment the threat or the carrying out of any of the following actions having an adverse impact on the employment status of an employee or worker in response to their making a protected disclosure	
Any disciplinary action	Refusal of transfer or promotion
Dismissal, suspension, demotion, harassment, or intimidation	Disadvantageous alteration of a term or condition of employment or retirement
Transfer against employee's will	Denial of appointment to any employment, profession, or office
Refusal of or provision of an adverse reference	Subjection to civil claim for the alleged breach of a duty of confidentiality arising from the disclosure of a criminal offence or a contravention or failure to comply with the law
AND / OR	
"being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities, work security and the retention or acquisition of contracts to perform work or render services."	

Protected Disclosures Amendment Act (Act 5 of 2017)

4.2 Harassment or Victimisation

- 4.2.1 The Municipality will not tolerate harassment or victimisation and will act to protect employees when they raise a concern in good faith. Any act of harassment or victimisation should be reported to the Municipal Manager. "Harassment or victimisation" includes any acts falling under the definition of 'occupational detriment', referred to above. This does not mean that if an employee is already the subject of disciplinary or other action, that action will be halted because of their whistleblowing.
- 4.2.2 The Ethics Institute of South Africa recognizes retaliation or victimisation as a generic category for all negative consequences experienced because of

whistleblowing. It is a form of punishing an employee for reporting misconduct in the organisation. Retaliation for disclosure includes acts or omissions directed at the whistleblower or the whistleblower’s family, associates, or interests, and can involve threats, disciplinary charges, demotion, suspension or other forms of detrimental action or negative treatment.

4.2.3 Retaliation can take on different forms – many of which are so subtle that whistleblowers sometimes only realise long after the fact that the personal disadvantages they have suffered for speaking up, were retaliation. Below are some of the actions or behaviours that constitute retaliation. The list is non-exhaustive.

	Types of retaliation
	Adjusting job duties that impact the whistleblower negatively
	Blacklisting (a sector- or industry-wide agreement, formal or informal, that prevents an individual from finding alternative employment)
	Bullying or harassment (e.g., receiving harassing calls or emails)
	Demotion
	Dismissal
	Hostility (e.g., shaming employee in front of colleagues)
	Social isolation from colleagues
	Terms or conditions of employment or retirement altered to the whistleblower's disadvantage
	Transfer of employee against his/her will
	Trumped-up disciplinary charges
	Unfair performance evaluation

Source: The Ethics Institute (TEI) - The Whistleblowing Non-retaliation Toolkit 2022

4.3 Confidentiality

4.3.1 The Municipality will do its best to protect an individual's identity when

he/she raises a concern and will ensure that their identity will not be disclosed. It must be appreciated, however, that the investigation process may reveal the source of the information and a statement by the employee may be required as part of the evidence. Furthermore, there is a possibility that the employee may be required in due course to provide evidence at a hearing or trial.

4.4 Anonymous Allegations

4.4.1 Anonymous reporting is a process whereby employees can submit a whistleblowing report without revealing their identity.

4.4.2 The Municipality encourages employees to put their names to allegations. Concerns expressed anonymously are difficult to investigate; nevertheless, they will be followed up at the discretion of the Municipality. This discretion will be applied by considering the following:

- 4.4.2.1 seriousness of the issue raised;
- 4.4.2.2 credibility of the concern;
- 4.4.2.3 likelihood of confirming the allegation; and
- 4.4.2.4 sufficiency of information provided.

4.4.3 Employees who do utilize the hotline also need to be aware of the fact that it will not be possible for the employee to be advised of the steps taken by the Municipality arising from the allegation.

4.4.4 The table below illustrates the difference between confidential and anonymous reporting:

Confidential reporting	Anonymous reporting
This means that the person receiving a report will know the identity of the whistleblower, but will not make it known to anyone else without permission from the person reporting wrongdoing - unless there is an overriding legal obligation to do otherwise.	This means that the whistleblower does not state his or her name when reporting unethical conduct. No one will thus know who reported the wrongdoing.

Source: *The Ethics Institute (TEI) - Whistleblowing Management Handbook 2020*

4.5 False Allegations - Allegations not made in Good Faith

4.5.1 Employees or other parties must understand that they need to make the

allegations in good faith.

- 4.5.2 **"Good faith"** means that the employee must have reasonable grounds to believe that the allegations are true.
- 4.5.3 This does not mean that the employee has to prove that the allegations are correct. It simply requires that the employee believes them to be correct and that this is likely given the circumstances surrounding the allegations.
- 4.5.4 Accordingly, employees must guard against reporting "rumours" or "hunches", or suspicions that they "smell a rat" without information confirming such rumours or hunches.
- 4.5.5 Most importantly, employees must guard against deliberately making allegations which the employee knows or suspects to be false and/or which are made with malicious intent. Such allegations prevent the employee from benefiting from the protection of the Protected Disclosures Act.

5. REPORTING OF CONCERNS

- 5.1 For minor issues, employees should normally raise their concerns with their direct supervisor. In general, however, the whistleblowing procedure is expected to be used for potentially more serious and sensitive issues (e.g. fraud and corruption).
- 5.2 The first step will be for the employee to immediately report the matter to the Municipal Manager. If a matter is reported to a person in a supervisory capacity, he/she has a duty to report it immediately to the Municipal Manager.
- 5.3 Alternatively, allegations may also be reported anonymously by way of submitting a report through the prescribed whistleblowing mechanisms referred to below.
- 5.4 It is the responsibility of the person appointed by the Municipal Manager to consider the allegation and conduct a preliminary investigation to establish whether there is merit to such allegation. Should it be found that there is merit to the allegation, the appointed person must conduct a full investigation into the matter and may consult with other departments, such as Human Resources and/or Legal Services, to obtain guidance where necessary.
- 5.5 Upon completion of the investigation, the person appointed by the Municipal Manager must compile a detailed written report with his/her findings, supporting

evidence, proposed recommendations on remedial action, including consequence management actions and the improvement of internal controls (where relevant), and submit it to the Municipal Manager.

- 5.6 Where confidentiality is sought, staff may report their suspicions directly via the Fraud Hotline. The Fraud Hotline is available 24 hours a day on a daily basis and all information received is treated in the strictest of confidence. Concerns are better raised in writing. Refer to **Annexure A: Whistleblowing Complaint form**. Follow the procedure in 5.2 above.
- 5.7 The form will also be available on the municipal website and at all Administrators, Internal Audit Department, Risk Management Department and the Legal and Administration Services Department.
- 5.8 The background and history of the concern, giving names, dates and places where possible should be stated and the reason why the individual is particularly concerned about the situation.
- 5.9 Those who are uncomfortable to put their concern in writing can telephone the Hessequa Municipality's Fraud Hotline number **0800 637 775**.
- 5.10 Those who wish to put their concern in email can email the fraud hotline with email address: hesequamunicipality@behonest.co.za
- 5.11 The earlier the concern is reported, the easier it is to act and initiate recovery procedures where necessary.
- 5.12 Employees are not expected to prove the truth of an allegation, however, they will need to demonstrate to the person contacted that there are sufficient grounds for concern.
- 5.13 Advice and guidance on how matters of concern may be pursued can be obtained from Human Resources, alternatively the Manager: Legal and Administration Services.

6. HOW THE COMPLAINT WILL BE DEALT WITH

- 6.1 The action taken by the Municipality will depend on the nature of the concern. The possible actions may, among others, be:

- 6.1.1 investigation by the relevant Director;
- 6.1.2 investigation by outsource/co-source investigation to a consultant forensic firm and/or
- 6.1.3 refer the matter to SAPS or another relevant law enforcement agency.
- 6.2 In order to protect Individuals and the Municipality, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take.
- 6.3 Some concerns may be resolved without the need for an investigation.
- 6.4 The amount of contact between the body investigating the issues and the persons raising the concern will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, further information will be sought from the individual.
- 6.5 The Municipal Manager, upon receiving a report of the alleged/suspected fraud or corruption, will inform the complainant in writing:
 - 6.5.1 Acknowledging that the concern has been received.
 - 6.5.2 Indicating how he/she proposes to deal with the matter and whether any initial enquiries have been made.
 - 6.5.3 Giving an estimate of how long it will take to provide a final response.
 - 6.5.4 Informing him/her whether further investigations will take place, and if not, why not.
- 6.6 The Municipality accepts that employees need to be assured that the matter has been properly addressed. However, the progression of investigations will be handled in a confidential manner and will not be disclosed or discussed with any persons other than those who have a legitimate right to such information.
- 6.7 A incident register containing the matters reported confidential will be kept at the Legal and Administration Services Department.

7. CREATING AWARENESS

- 7.1 For the Policy to be sustainable, it must be supported by a structured education, communication and awareness programme.
- 7.2 It is the responsibility of all directors and managers to ensure that all employees are

made aware of and receive appropriate training and education regarding the Whistleblowing Policy.

8. REVIEW AND APPROVAL

The Policy takes effect from the date of its adoption by the Municipal Council and must be reviewed at least every three (3) years or when the need arises.

WHISTLEBLOWER COMPLAINT FORM

(Optional) Name: _____

(Optional) Address: _____

(Optional) Work Phone: _____

(Optional) Home/Cell Phone: _____

Are you an employee of Hessequa Municipality? Yes ____ No ____

If yes, what is your position or relationship to the Municipality? _____

1. Identify the person or persons against whom your allegations are made.

2. Describe the nature of your complaint, the incident(s) or event(s), date(s), time(s), and place(s). Attach additional pages to this complaint if necessary.

3. Identify others who may have observed or witnessed the incident(s) that you described.

4. Do you have any documents that support your allegation? (Please list and attach copies).

FOR ALL COMPLAINTS NOT INVOLVING THE MUNICIPAL MANAGER

You may submit this report to Internal Audit, the Chief Risk Officer, the Internal Investigator, the Director or Municipal Manager.

FOR ALL COMPLAINTS INVOLVING THE MUNICIPAL MANAGER:

You may submit this report to Internal Audit, the Chief Risk Officer, the Internal Investigator or the Executive Mayor.