



KWADUKUZA LOCAL MUNICIPALITY

WHISTLE BLOWING POLICY

FINANCIAL YEAR 2020/2021

TABLE OF CONTENTS

<u>CONTENTS</u>	<u>PAGE</u>
1. Introduction	2
2. Policy background	2
3. Legal Mandate	2-3
4. Scope and application	3
5. Policy objectives	3-4
6. Policy principles	4
6.1 Protection	4
6.2 Harassment and Victimisation	4
6.3 Confidentiality	4
6.4 Anonymous allegations	5
6.5 False Allegations	5
7. Reporting of concerns/Complaints	5
8. Processing of information reported	5-6
9. Fraud resolutions	6
10. Disciplinary processing	6
11. Policy implementation	6
12. Monitoring and evaluation	7
13. Formal Policy approval	7

1. INTRODUCTION

In South Africa the Protected Disclosures Act no 26 of 2000 makes provision for procedures in terms of which stakeholders/members of the public and employees in both the public and private sector who disclose information of unlawful or corrupt conduct by their employers or fellow employees are protected from occupational detriment.

This law is to encourage honest employees and other stakeholders/members of the public to raise their concerns and report wrongdoing within the workplace without fear.

KwaDukuza Municipality recognises that:

- Criminal and other irregular conduct within the municipality is detrimental to good, effective, accountable and transparent governance and can endanger the economic stability of KwaDukuza Municipality and have the potential to cause social damage,
- There is a need for procedures in terms of which employees and other stakeholders may, without fear of reprisals, disclose information relating to suspected or alleged criminal or other irregular conduct affecting KwaDukuza Municipality,
- Every employer and employee has a responsibility to disclose criminal and any other irregular conduct in the work place.
- Every employer has a responsibility to take all necessary steps to ensure that all employees and other stakeholders who disclose such information are protected from any reprisal as a result of such disclosure.

2. POLICY BACKGROUND

The purpose of this policy is to provide a means by which employees and other stakeholders within KwaDukuza can be able to raise concerns where they have reasonable grounds for believing that there is fraud and corruption.

The Protected Disclosures 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. Management encourages employees and other stakeholders within KwaDukuza to raise matters of concern responsibly through the procedures laid down in this policy document.

3. LEGAL MANADATE

This policy should be read in conjunction with the following prescripts:

- ❖ Labour Relations Act 1995, as amended.
- ❖ Protected Disclosures Act, 2000 as amended.
- ❖ The Prevention and Combating of Corrupt Activities Act, 2004 as amended.

- ❖ The Promotion of Access to Information Act, 2000 as amended.
- ❖ The Promotion of Administrative Justice Act, 2000 as amended.
- ❖ The Municipal Finance Management Act, No 56 of 2003.
- ❖ The Code of Conduct for the Municipality.
- ❖ The Public Service Anti-Corruption Strategy.
- ❖ The Public Service Act, 1994 as amended.
- ❖ The Financial Intelligence Centre Act, 2001 as amended.
- ❖ The Constitution of the Republic of South Africa, 1996 as amended.
- ❖ Electronic Communications and Transaction Act, 2002 as amended.

4. SCOPE AND APPLICATION

The provisions of this policy apply to all officials/employees of the Municipality employed in terms of relevant local government legislations/regulations for senior managers and staff members below section 56/57 and other stakeholders within KwaDukuza.

The policy is designed to deal with complaints and tip offs raised in relation to issues of fraud, corruption, misconduct and malpractice within KwaDukuza Municipality. The 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 Corporate Services Business Unit.

The policy covers all genuine complaints/information submitted including:

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

(Not subjected or limited to the list 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.

5. POLICY OBJECTIVES

5.1 In order to remain in compliance with the Protected Disclosures Act, the Municipality will:

- 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 as result of such disclosure; and

- Promote the eradication of criminal and other irregular conduct within KwaDukuza Municipality

5.2 The policy is intended to encourage and enable employees and other stakeholders within KwaDukuza Municipality to raise concerns rather than overlooking a problem or blowing the whistle to inappropriate channels.

5.2 Furthermore the policy aims to:

- Provide avenues for employees and other stakeholders within KwaDukuza Municipality to raise concerns and receive feedback on any action taken;
- Inform employees and other stakeholders within KwaDukuza Municipality how to take the matter further if they are dissatisfied with the response; and
- Reassure employees and other stakeholders within KwaDukuza Municipality that they will be protected from reprisals or victimisation for whistleblowing in good faith.

6 POLICY PRINCIPLES

6.1 Protection

Section 2 of the Protected Disclosures Act clearly defines the “objectives of the Act” as follows:

- To protect employee from being subjected to an occupational detriment on account of having made a protected disclosure,
- To provide for **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/her colleagues, other stakeholders and employer.

6.2 Harassment or Victimisation

KwaDukuza Municipality acknowledges the fact that the decision to report a concern can be a difficult one to make, not least because of fear of reprisal from those responsible for the irregularity. KwaDukuza Municipality will not tolerate harassment or victimisation and will take action to protect employees and other stakeholders when they raise a concern in good faith. Any act or victimisation should be reported to the line manager responsible or Business Unit Head.

This does not mean that if an employee is already the subject of a disciplinary or other action, that action will be halted as a result of their whistle blowing.

6.3 Confidentiality

All the information received and investigated relating to fraud and corruption will be treated confidentially. The progression of the investigation will be handled in a confidential manner and will not be disclosed or discussed with any person(s) other than those who have a legitimate right to such information. This is important in order to protect the rights of all person(s) until the conclusion of the investigation. This is

important in order to avoid harming the reputation of the suspected person who is subsequently found innocent of wrong doing.

6.4 Anonymous Allegations

KwaDukuza 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 in consultation with other law enforcement agencies. This discretion will be applied by taking into account the following:

- Seriousness of the issue raised,
- Credibility of the concern, and
- Likelihood of confirming the allegation.

6.5 False Allegations

Employees or other parties must understand the implications (resources and costs) of undertaking investigations and should therefore guard against making allegations which are false and/or made with malicious intent.

7 REPORTING OF CONCERNS/COMPLAINTS

7.1 For some minor issues (e.g. personal use of Municipalities equipment etc.), the employee should raise the concerns with their immediate supervisor/manager. In general, however, the whistle blowing procedure is expected to be potentially more serious and sensitive to issues (e.g. fraud and corruption).

7.2 The first step will be for the employee to approach his/her immediate supervisor/manager unless the supervisor/manager or senior management is the subject of the complaint, in which case management at higher level should be informed. Should the complaint be found by the manager to be substantiated, he/she should refer to the Business Unit Head who will determine whether the matter should be investigated internally or referred to the appropriate external body (e.g. the SAPS)

7.3 Concerns are better raised in writing. The background and history of the concern, giving names, dates and places where possible, should be set out and the reason why the individual is particularly concerned about the situation. Those who are uncomfortable to put their concern in writing can call the Anti-Fraud and Corruption Hotline number. The earlier the concern is reported, the earlier it is to take action and initiate recovery procedure where necessary.

7.4 Employees are not expected to prove the truth of an allegation they will need to demonstrate to the person contacted that there are sufficient grounds for concern.

8. PROCESSING OF INFORMATION REPORTED

8.1 All incidents and allegations of unlawful conduct shall be investigated and followed up by the application of all remedies available within the full extent of the law as well as the application of appropriate prevention and detection controls.

The action taken will depend on the nature of the concern. The matters raised may be:

- Referred to one of the country's Law Enforcement Agencies, e.g. SAPS
- Or through the appointment of an independent investigator appointed by the Municipality to carry out the investigation.

8.2 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 should it take.

8.3 Some concerns may be resolved by agreed action without the need for investigation.

8.4 The Municipality shall write to complainants who have identified themselves:

- Acknowledging that the concerns have been received, and
- Informing them whether further investigations will take place, and if not, why not.

8.5 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.

8.6 KwaDukuza 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 and discussed with any person other than those who have a legitimate right to such information. This is important in order to avoid damaging the reputation of suspected persons who are subsequently found innocent of wrongful conduct.

9. FRAUD RESOLUTION

Fraud resolution will include consideration of the following:

- Taking disciplinary action
- Instituting recovery of financial losses, including formal civil action
- Initiating criminal prosecution by reporting the matter to SAPS or any other relevant Law Enforcement Agency including the Hawks or Special Investigation Unit (SIU), and
- Any other appropriate legal remedy available

10. DISCIPLINARY PROCEEDINGS

The purpose of discipline is to ensure that the KwaDukuza Municipality achieves its objectives in an orderly fashion, ensuring a safe and stable workplace.

All disciplinary proceedings will take place in accordance with the procedures as set out in the disciplinary procedures of the Municipality.

The outcome may involve a person/s receiving counselling, a written warning, a final written warning, and suspension without pay, demotion and/or the termination of their services

11. POLICY IMPLEMENTATION

It is the responsibility of the Business Unit Heads and Managers to ensure that all employees and relevant stakeholders are made aware of the policy. Workshops shall be conducted on the Policy.

12. MONITORING AND EVALUATION

The KwaDukuza Municipality Integrity and Risk and Ethics Management section located in the office of the Municipal Manager shall monitor and evaluate the implementation of the policy. The policy will be reviewed annually or as and when the need arises. The policy shall be reviewed to factor in changes in legal frameworks, organizational development, as well as outcomes of monitoring and evaluation.

The amendment of this policy or any of the provisions thereof shall be reduced in writing and approved by the delegated official. KwaDukuza Municipality Integrity and Ethics Management section shall be responsible to facilitate the review of the policy.

13. FORMAL APPROVAL

The Whistle blowing policy is formally approved by Municipal Council and implemented by KwaDukuza Municipality with effect from date of signature.

Whistle Blowing policy Approval by:	
-----	-----
N.J Mdakane	
Accounting Officer	Date
Whistle Blowing policy adopted KDM Council:	
C428	04/08/2020
-----	-----
Resolution No	Date

National Anti-Corruption Hotline number: 0800 701-701