

## **PROTECTED DISCLOSURE (WHISTLEBLOWER) PROCEDURE**

The City of Mount Pearl recognizes the importance of and is committed to the highest ethical standards. We do this by conducting our business with maximum integrity and by achieving full compliance with all applicable laws, policies, rules, and regulations. In line with this commitment, the City provides an avenue to raise any concerns about the subjects covered by this policy and to be assured that in making complaints the Discloser will be protected from reprisal or victimization for raising their concerns in good faith.

### **1.0 Protected Disclosure**

1.1 All City employees and members of Council have an obligation to conduct City-related activities in accordance with the City's statement of Core Values, which includes fairness and respect, service excellence and, accountability and the City's policies and procedures. As part of this obligation, and to protect the City and individuals from wrongdoing, City employees and members of Council are encouraged to report conduct that they reasonably believe to be wrongdoing and which they observe or encounter in the context of City-related activities.

1.2 Reporting of wrongdoing is a necessary and valuable service to the City and must not be cause for retaliation.

1.3 Any City employee and member of Council who has reasonable grounds to believe that another City employee(s) or member(s) of Council has committed wrongdoing is encouraged to make a Protected Disclosure in accordance with the Procedure for Filing a Protected Disclosure. The Protected Disclosure shall be made within twelve (12) months of discovering or observing the wrongdoing.

1.4 This policy does not replace other City policies and processes that allow reports of allegations of wrongdoing.

1.5 Nothing in this Policy relieves Directors from the responsibility of addressing situations of improper conduct in accordance with existing policies, procedures and guidelines.

1.6 Conduct in the workplace involving disruptive, threatening or violent behaviour where a City employee or member of Council's personal safety and security may be in danger must be reported immediately to respective supervisor, Director, Manager of Human Resources, Director Corporate Services or to legal authorities.

### **2.0 Confidentiality**

2.1 All persons involved in any process related to this Policy are required to maintain confidentiality. Confidential matters are handled in accordance with the *Access to Information and Protection of Privacy Act*, 2015, SNL 2015, C A-1.2 (*ATIPPA*), other privacy legislation to which the City is subject, and City policies.

2.2 Only persons with a *bona fide* need to know the details of a situation will have access and such access is limited to the scope of their responsibilities. Third parties attempting to gain or gaining access to personal information with respect to a Protected Disclosure, where such information is not needed to perform the scope of their responsibilities, does so in violation of this Policy and may be in violation of the *ATIPPA*.

2.3 A breach of confidentiality by persons involved in any process related to this Policy may be subject to discipline, legal action or other appropriate action.

2.4 Confidentiality may not apply to persons subject to extra-City judicial processes, or where disclosure is permitted or required by law, or where the well-being, safety and security of a person or persons is a concern. In such circumstances, information, as appropriate, would be shared only with those with a *bona fide* need to know.

2.5 The identity of a Discloser shall be kept confidential to the extent permitted by law and consistent with the need to conduct a proper investigation.

### **3.0 Frivolous or Vexatious Complaints**

3.1 A frivolous (i.e., devoid of merit) or vexatious (i.e., to intentionally annoy, embarrass, harass or harm) disclosure may result in disciplinary or other appropriate action against the Discloser.

### **4.0 Retaliation**

4.1 Definition - any threat of reprisal, attempt to intimidate or adverse behaviour or action, taken against a City employee or member of Council in response to that initial person having:

- invoked this Policy;
- participated or cooperated in any investigation under this Policy; or
- been associated with City employee(s) and member(s) of Council who invoked this Policy or participated in any of its processes.

4.2 No person shall retaliate against another for filing a Protected Disclosure or for being involved in any process under this Policy, including as a witness. The City considers retaliation at any stage to be a serious matter that may result in discipline or other appropriate action.

4.3 A breach of confidentiality by any person with respect to a Protected Disclosure may also constitute retaliation.

### **5.0 Records and Retention**

5.1 All records will be handled in accordance with *ATIPPA*, the City's Information Management and Privacy policies and related procedures and other privacy legislation applicable to the City.

5.2 The Director of Corporate Services shall be the official custodian of records created as a result of the filing of a Protected Disclosure and shall manage those records in accordance with the City's Information Management policy and procedures.

## **6.0 Reports**

6.1 The Director of Corporate Services shall provide an annual report to Council of Protected Disclosures, respecting the anonymity of Disclosers and Respondents. The report shall include:

- the number of reports filed by Disclosers;
- the number of reports investigated;
- the findings of investigations conducted pursuant to a report;
- any action taken pursuant to an investigation.

## **7.0 Procedure to File a Protected Disclosure**

7.1 Any City employee and member of Council may file a Disclosure Report Form to the Director of Corporate Services.

7.2 To file a report submit by e-mail or regular mail the disclosure in writing by completing the Disclosure form in Appendix A or in writing including the following information:

- the party(ies) involved;
- the nature of the wrongdoing;
- the date(s) of the wrongdoing;
- any other information necessary to evaluate the matter.

Alternatively, and to maintain absolute anonymity, a Discloser may submit their complaint electronically via a link that is conveniently displayed on the City's website.

7.3 Upon receipt of the Disclosure, the Manager of Human Resources shall respond in writing to the Discloser acknowledging receipt of the Protected Disclosure, within five (5) Days and shall proceed to the Procedure for Investigation of Alleged Wrongdoing.

7.4 The City will ensure the parties involved in the Disclosure have no affiliation with the person assigned to lead the investigation. An affiliation will be deemed to exist where a person is related to the investigation lead by blood or adoption, or is or has been related by marriage or common-law marriage, or with whom they have or has had in the previous five years a financial, intimate, other close or substantial professional relationship.

7.5. Any Discloser who experiences any type of Retaliation as a result of making a Protected Disclosure should immediately inform the Manager of Human Resources, the Director of Corporate Services or their respective Director.

## **8.0 Procedure for Investigation of Alleged Wrongdoing**

8.1 The Manager of Human Resources shall review the allegation(s) and within fifteen (15) working days decide whether further action is warranted. In making this determination consultation may occur with officials within the City and shall consider such factors as whether:

- the subject matter of the Disclosure would more appropriately be dealt with, initially or completely, according to another City established process;
- the Disclosure is frivolous, vexatious, made in bad faith or does not deal with a sufficiently serious subject matter;
- so much time has elapsed between the date when the subject matter of the Disclosure arose and the date when the Disclosure was made that investigating it would not serve a useful purpose;
- the Disclosure does not provide adequate particulars about the wrongdoing as required by the Procedure for Filing a Protected Disclosure; or
- there is another valid reason for not pursuing further action.

8.2 If no relevant City regulation, policy or procedure or collective agreement language exists, this procedure applies.

8.3 Where it is concluded that no further action is warranted they shall notify the Discloser in writing.

8.4 Where it is concluded that an investigation is warranted for the wrongdoing in question, the Manager of Human Resources, the Director of Corporate Services or an external investigator shall oversee the investigation in accordance with sections 8.5 to 8.13 outlined below.

8.5 No person will be selected where there is a real or perceived conflict of interest or reasonable apprehension of bias. Normally, investigators should be able to submit their report within 60 days of being appointed.

8.6 In the case of Disclosure made against the Chief Administrative Officer, Mayor or Members of Council any appointed Investigator shall be external to the City.

8.7 The investigator appointed under section 8.5 shall use such investigative processes they deem appropriate to the nature of the allegation(s).

8.8 The Manager of Human Resources or Director of Corporate Services shall ensure that the investigator is provided relevant information, documentation and the support necessary to conduct a thorough investigation.

8.9 The investigator shall conduct a thorough investigation with impartiality and objectivity, and in a manner that shall ensure fair treatment for and, to the extent possible, the confidentiality of the Respondent and the Discloser.

8.10 The investigator shall advise all persons interviewed to treat all information, evidence and proceedings as confidential.

8.11 All City employees and members of Council including Disclosers, Respondents shall cooperate with the investigator and respond in a timely fashion to the investigator's request for information or meetings.

8.12 Upon completing an investigation, the investigator shall prepare a report containing their findings and any recommendations about the Disclosure and the wrongdoing, and submit that report to the Manager of Human Resources or the Director of Corporate Services.



8.13 Except as required by law, regulations or policies, the Manager of Human Resources or the Director of Corporate Services shall disclose the report to:

- the Respondent, if named;
- such other persons, if they have a bona fide need to know the results of the investigation to perform their duties.

The investigation overseer shall maintain a record of the distribution of the report.

8.14 The Manager of Human Resources or the Director of Corporate Services shall report on the status of the investigation to the Discloser in the manner and at the time they consider appropriate.

8.15 If, based on the investigator's report, it is determined that further action is required, they shall ensure proceedings are initiated in accordance with the relevant regulations, policies, or collective agreement.

8.16 On completion of the investigation, the investigator shall deposit all records with the overseer who shall be the official custodian of such records charged with preserving their confidentiality. All records pertaining to a Discloser's report and the Investigator's report shall be securely disposed of in accordance with the City's Retention and Disposal Schedule.

  

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Steve Kent, Chief Administrative Officer

August 7, 2018

Date

## Appendix A - Disclosure Report Form

Your name (optional – you may submit your complaint anonymously and/or online via the City's website): \_\_\_\_\_

Telephone Number (optional): \_\_\_\_\_

E-mail (optional): \_\_\_\_\_

*The City will treat all reports made under this policy as confidential to the fullest extent that is consistent with conducting a full and fair investigation. Even if you make a report under this policy and disclose your identity, the City will exercise care to keep confidential your identity until a formal investigation is launched. At that point, your identity will be disclosed to other individuals only to the extent necessary to conduct a complete and fair investigation.*

Describe Wrongdoing Activity:

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Date you became aware of Wrongdoing Activity: \_\_\_\_\_

Wrongdoing Activity is: ☐ Ongoing ☐ Completed ☐ Unclear whether ongoing or completed

Department suspected of Wrongdoing Activity:

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Individual(s) suspected of Wrongdoing Activity:

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How did you become aware of the Wrongdoing Activity?

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Describe steps, if any, you took prior to completing this Report Form (e.g., informed supervisor)

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What outcome/action would you like to see to address the disclosure?

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