



TSWELOPELE
LOCAL MUNICIPALITY
A MUNICIPALITY IN PROGRESS

FRAUD AND CORRUPTION POLICY

2021/2022

FINANCIAL YEAR

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1. DEFINITIONS

Municipality - means the **TSWELOPELE** Local Municipality, and when referred to as:

- a) A municipal entity, has the meaning assigned to it in section 1 of the Municipal Systems Act, and
- b) Geographic area means a municipal area determined in terms of the Local Government: Municipal Demarcation Act, 1998 [Act 27 of 1998].

Accounting Officer - means the person who is appointed by the Council as the head of the administration and accounting officer for the municipality in accordance with section 82 of the Structures Act.

CFO- means the Chief Financial Officer of the municipality;

Political Office Bearer - means the Mayor and the Speaker elected by the Council to such a post or position in accordance with the provisions of the Structures Act;

Council - means the Municipal Council of the Municipality, its legal successors in title and its delegates.

Staff - means the Council, Political Office Bearers and the other employees of the Municipality.

In this document, unless the context otherwise indicates, words and expressions denoting:

1. The singular shall include the plural and vice versa;
2. The male sex shall include the female sex and vice versa; and
3. A reference to a natural person shall include a legal person and vice versa.

Corruption - it is defined as any conduct or behavior where a person accepts, agrees or offers any gratification for him / her or for another person where the purpose is to act dishonestly or illegally. Such behavior also includes the misuse of material or information, abusing a position of authority or a breach of trust or violation of duty.

Maladministration – it is about poor governance. It is defined as an “act or omission committed by the administration or by an employee of the administration and which has the impact of infringing upon a person or institutions' right to fair administrative action or that results in manifestly inequitable, unfair, irregular or procedural treatment”.

Theft - it is defined as “unlawful and intentional misappropriation of another’s property or property which is in his/her lawful possession, with the intention to deprive the owner of its rights permanently”

Fraud - it is defined as “the unlawful and intentional making of a misrepresentation which causes actual and or potential prejudice to another”. The use of the term is in its widest possible meaning and is intended to include all aspects of economic crime and acts of dishonesty. In other words, fraud can be described as any conduct or behavior of which a dishonest representation and / or appropriation forms an element.

2. INTRODUCTION

This policy will provide Tswelopele Local Municipality's officials and other stakeholders [such as the public, service providers and non-governmental organizations] with essential information regarding the anti-corruption campaign and the responsibilities of the various role players in combating corruption.

This policy is established to facilitate the development of controls that will aid in the detection and prevention of fraud and corruption against Tswelopele Local Municipality.

Tswelopele Local Municipality recognizes the fact that: -

1. Criminal and other irregular conduct within the Municipality is detrimental to good, effective, accountable and transparent governance and can endanger the economic stability and have the potential to cause social damage;
2. There is a need for procedures in terms of which officials may, without fear of reprisals, disclose information relating to suspected or alleged criminal or other irregular conduct affecting the Municipality;
3. Every official have a responsibility to disclose criminal and any other irregular conduct in the workplace; and
4. It has a responsibility to take all reasonable steps to ensure that "Whistle Blowers" who disclose such information are protected from any reprisals as a result of such disclosure.

3. OBJECTIVES

The objective of this policy is to develop and foster a climate within the Tswelopele Local Municipality where all officials strives for the ultimate eradication of fraud, corruption, theft and maladministration by means of the application of the full spectrum of both pro-active and re-active measures at their disposals.

It is the intent of the Municipality to promote consistent organizational behavior by providing guidelines and assigning responsibilities for the development of controls and conduct of investigations.

This policy also sets down the stance of the Tswelopele Local Municipality to fraud and corruption as well as re-enforcing existing regulations aimed at preventing, reacting to, and reducing the impact of fraud, corruption, theft and maladministration where these dishonest acts exist. In order to remain in compliance with the protected disclosure Act, Tswelopele Local Municipality will:

1. Strive to create a culture which will facilitate the disclosure of information by officials 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 a result of such disclosure; and
2. Promote the eradication of criminal and other irregular conduct within the municipality.

This policy is intended to encourage and enable officials to raise concerns within Tswelopele Local Municipality rather than overlooking a problem or blowing the whistle through inappropriate channels. Furthermore this policy aims to: -

1. Provide avenues for officials to raise concerns and receive feedback on any action taken;
2. Inform officials on how to take the matter further if they are dissatisfied with the response; and
3. Reassure officials that they will be protected from reprisals or victimization for blowing whistle in good faith.

4. SCOPE OF THE POLICY

This policy should be read in conjunction with the Code of Conduct. Tswelopele Local Municipality has zero tolerance for the commission or concealment of fraudulent or illegal acts. Allegations of such acts will be investigated and pursued to their logical conclusion, including legal action, criminal prosecution, and disciplinary action where warranted.

This policy applies to all fraud, corruption, theft, maladministration or suspected irregularities involving the following persons or entities:

- a) All officials;
- b) Consultants, suppliers, contractors and other providers of goods and/or service;
- c) Non-Governmental Organizations and other parties receiving benefits from the Municipality;
- d) Political Office Bearers (including Councilors)

5. DIMENSIONS OF CORRUPTION

Corruption may take various forms in the Municipality and elsewhere in society. The following are examples of different types of corruption.

Bribery

Bribery involves the promise, offering or giving of a benefit that improperly affects the actions or decisions of official. This benefit may accrue to official, another person or an entity. A variation of this manifestation occurs where a political party or government is offered, promised or given a benefit that improperly affects the actions or decisions of the political party or government

Embezzlement

This involves theft of resources by persons entrusted with authority and control of such resources.

Fraud

This involves actions or behavior by official or other person or entity that fools others into providing a benefit that would normally accrue to the official, or other persons or entity.

Extortion

This involves coercing a person or entity to provide a benefit to official, another person or an entity in exchange for acting [or failing to act] in a particular manner.

Abuse of power

This involves official using his or her vested authority to improperly benefit other official, person or entity [or using vested authority to improperly discriminate against another official, person or entity].

Conflict of interest

This involves official acting or failing to act on a matter where the official has an interest or another person or entity that stands in a relationship with the official has in interest.

Abuse of privileged information

This involves the use of privileged information and knowledge that an official possesses as a result of his or her office to provide unfair advantage to another person or entity to obtain a benefit, or to accrue a benefit him or herself.

6. ACTIONS CONSTITUTING FRAUD, CORRUPTION, THEFT AND MALADMINISTRATION

The term fraud, corruption, theft and maladministration refer to, but are not limited to:

- a) Any dishonest, fraudulent or corrupt act;
- b) Theft of funds, supplies, or other assets;
- c) Maladministration or financial misconduct in handling or reporting of money or financial transactions;
- d) Making a profit from insider knowledge;

- e) Disclosing confidential or proprietary information to outside parties;
- f) Irregularly accepting or requesting anything of a material value from contractors, suppliers, or other persons providing services/goods to the Municipality;
- g) Irregularly offering or giving anything of a material value to contractors, suppliers, or other persons providing services/goods to the Municipality;
- h) Destruction, removal, or abuse of records, furniture, and equipment;
- i) Deliberately omitting to report or act upon reports of any such irregular or dishonest conduct;
- j) Acts of financial misconduct contemplated in terms of chapter 15 of the MFMA;
- k) Incidents of unauthorized, irregular or fruitless and wasteful expenditure as defined in the MFMA; and
- l) Any similar or related irregularity;
- m) Any Financial Misconduct prescribed under Chapter 15 of the MFMA.

7. LEGAL FRAMEWORK

The following legislation and policies, amongst others, have been considered:

1. Prevention and Combating of Corrupt Activities Act, no 12 of 2004
2. Municipal Finance Management Act, no 56 of 2003 [MFMA]
3. Protected Disclosure Act 26 of 2000
4. Promotion of Administration of Justice Act, no 3 of 2000
5. Municipal Structures Act, no 117 of 1998

6. Municipal Systems Act, no 32 of 2000
7. Promotion to Access to Information Act, no 2 of 2000
8. National Treasury guidelines

8. POLICY

It is the policy of the Tswelopele Local Municipality to have zero tolerance on fraud, corruption, theft, maladministration or any other dishonest activities of a similar nature. In addition, these will be investigated and followed up by the application of all remedies available within the full extent of the law.

Appropriate prevention and detection controls will be applied. These include the existing controls and checking mechanisms as prescribed in existing policies, procedures and other relevant prescripts to the activities and systems of internal control. It is the responsibility of officials to report all incidents of fraud, corruption, theft, maladministration or any other dishonest activities of a similar nature. All incidents should be reported by using the appropriate lines of authority. The Tswelopele Local Municipality will take appropriate legal recourse to recover losses or damages arising from fraud, corruption, theft or maladministration.

9. FRAUD PREVENTION APPROACH

A comprehensive approach to the management of fraud and corruption risks with specific focus on the following:

1. Understanding fraud risks that can undermine the municipality's objectives;
2. Determining whether fraud and corruption prevention programs and controls are also adequately effective in reducing instances of fraud;
3. Gaining insight into better ways of designing and evaluating controls to prevent, detect and respond appropriately to fraud and corruption;
4. Reducing exposure to liability, sanctions and litigation that may arise from violations of law or stakeholder expectations;
5. Deriving practical value from the development of a sustainable process of managing fraud, corruption risk, and improving performance;
6. Achieving the highest level of business integrity through sound corporate governance, internal control and transparency.

10. RESPONSIBILITY TO CONDUCT INVESTIGATIONS

The responsibility to conduct investigations relating to the actions listed in this policy resides with the human resources manager within the Municipality who can have the advisory and supporting assistance from relevant departments within the municipality and the following institutions:

1. External and Internal Audit Services;
2. State Attorney;
3. External investigating agencies, for example the South African Police Services, where matters fall within their mandate;
4. External consultants, for example Forensic Accounting consultants;
5. Office of the National Director of Public Prosecutions;
6. Special Investigating Units established under any law;
7. The Public Protector; and
8. Any other authority as determined by Council.

The Municipality will make all evidence collected during the course of an investigation available to legal and law enforcement agencies if necessary and will pursue the prosecution of all parties involved in criminal activities.

11. REPORTING PROCEDURES AND RESOLUTION OF REPORTED INCIDENTS

11.1 It is the responsibility of all officials of the Tswelopele Local Municipality to report all incidents of fraud, corruption, theft, maladministration and other suspected irregularities of this nature to relevant Directors following the appropriate reporting lines. If the applicable official is not comfortable reporting such matters to the relevant Director the matter can be reported in writing to the human resources manager or Accounting Officer.

11.2 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. The earlier the concern is reported, the easier it will

make to take action and initiate recovery procedures where necessary. Whistle blowers will not be expected to prove the truth of an allegation, however they may be required to demonstrate that there are sufficient grounds for concern. Whistle blowers must report the suspected incidents through one of the following:

11.2.1 Non-Anonymous Reporting

- Report in writing, verbally or telephonically to the relevant director
- Report in writing, verbally or telephonically to the Manager: Human resources
- Report in writing to the Accounting Officer.

11.2.2 Anonymous Reporting

- The confidential Fraud Hotline: **0800 701 701**
- Anonymous letter to Accounting Officer or Manager: Human resources

11.3 It is the responsibility of the Accounting Officer to immediately report all reported incidents to Provincial Treasury. This reporting must take place as follows:

1. All incidences reported to the Directors and to the Manager: Human Resources must be forwarded to the Accounting Officer
2. The Accounting Officer will report all incidences telephonically to the Provincial Treasury within twenty four hours of receiving the report; and

3. This telephonic report must be followed by a detailed written report to be submitted within seven days after reporting of an incident.

11.4 All incidents alleged to have been committed by the Accounting Officer or any member of the political office should be reported anonymously to the confidential Fraud Hotline, refer bullet 11.2.2 above.

11.5 All incidents where an official is alleged the Manager: human resources will initiate an investigation with the direction of the Municipal Manager and then if necessary instigate necessary disciplinary actions in terms of the disciplinary code and procedure of the Municipality. The human resources manager must in writing report all disciplinary proceedings' outcomes within 48 hours to the Accounting Officer. The following details should be included in the report:

- a) The name and position of the official against whom proceedings are instituted;
- b) The disciplinary charges, indicating the type of misconduct the official as alleged to have committed;
- c) The findings of the disciplinary hearing;
- d) Any sanction imposed on the official; and
- e) Any further action to be taken against the official, including criminal charges or civil proceedings.

11.6 It is advised that all whistle blowers should keep a copy of the letters used to report incidents of fraud.

11.7 All reported incidents that could lead to laying of criminal charges will be reported within 48 hours to the South African Police Services by the Accounting officer.

11.8 The Accounting Officer is also required to ensure that losses or damages suffered by the Municipality as a result of an act committed or omitted by official must be recovered from such official. The Accounting Officer must determine the amount of the loss or damage and, in writing request that official to pay the amount within 90 days in reasonable installments from his/her salary. If the official fails to comply with the request, the legal process will then be initiated by the Accounting Officer.

12. PROTECTION OF WHISTLE BLOWERS

12.1 Whistle blowing is the process by which official or other individuals can raise a concern about serious malpractice within an organization. It is similar to an early warning system and a means of enabling stakeholders to find out when something is going wrong timely to take corrective action.

12.2 An official who suspects or reports suspected dishonest activity or such activity which he has witnessed should be given the opportunity to remain anonymous should he so require.

12.3 Whistle blowers that might be victimized and subjected to an occupational detriment for blowing the whistle on indecencies are protected under provisions of Protected Disclosures Act, 26 of 2000.

12.4 Allegations made by officials that are false and made with malicious intentions are discouraged. Where such malicious or false allegations are discovered, the official who made the allegations will be subjected to a firm disciplinary action and may not be protected by the Protected Disclosures Act.

13. HARASSMENT OR VICTIMISATION

The Municipality acknowledges the fact that the decision to report a concern can be a difficult one to make because of fear of reprisal from those responsible for the irregularity. The Municipality do not tolerate harassment or victimization and will take action to protect official when they raise concerns in good faith. Any act of harassment or victimization should be reported to Manager: human resources or the Accounting Officer. This does not mean that if the official is already subjected to disciplinary or other action, that action will be halted as a result of blowing the whistle.

14. CONFIDENTIALITY

All information relating to alleged incidents reported will be treated confidentially. The progression of investigations will be handled in a confidential manner and will not be disclosed or discussed with any other person[s] other than those who have a legitimate right to such information. This is important in order to avoid harming

the reputations of suspected persons who are subsequently found innocent of wrongful conduct.

No official is authorized to supply any information with regard to the issues covered within this policy to the media without the express permission of the Accounting Officer.

15. ANONYMOUS ALLEGATIONS

Tswelopele Municipality encourages officials to put their names to internal allegations as incidents reported anonymously can at times be difficult to investigate. Nevertheless internal incidents formally reported will be followed up at the discretion of the accounting officer. This discretion will be applied by taking into account the following:

1. Seriousness of the alleged incident;
2. Creditability of the incident; and
3. Likelihood of confirming the allegation.

16. FALSE ALLEGATIONS

Officials or other parties who wish to whistle blow must understand the implications [resources and costs] of undertaking investigations and should therefore guard against making allegations which are false or with malicious intent.

17. APPLICATION OF PREVENTION CONTROLS AND DETECTION MECHANISMS

In all instances where incidents of fraud, corruption, theft, maladministration and other similar irregularities of this nature take place all Directors are required to immediately review the controls which are weak or have been breached in order to prevent similar irregularities from occurring in the future. The Senior Internal Auditor or Risk and Compliance officer may be consulted for assistance in this regard.

18. TRAINING, EDUCATION AND AWARENESS

In order for this Policy to be sustainable, it will be communicated to all officials via email or training and awareness sessions which will be scheduled for the period. It is the responsibility of all Directors to ensure that all officials attend the scheduled training and awareness sessions when communicated.

19. ADMINISTRATION

The custodian of this policy is the Accounting Officer and all directors will support in ensuring implementation.

The Accounting Officer is responsible for the administration, revision, interpretation and application of this policy. It will be reviewed annually and revised as required.

Developed by:

D Doyi
RISK AND COMPLIANCE OFFICER

DATE

Recommended by:

MRE MOGOPODI
MUNICIPAL MANAGER

DATE

Approved by APR Committee:

CHAIRPERSON: APR COMMITTEE

DATE