

Disclosure of Wrongdoing and Reprisal Protection

Human Resources

Background:

In June 2014, City Council approved the *Toronto Public Service By-Law*¹ (TPSB). This legislation aims to strengthen the separation between the administrative and political components of Toronto's government and advances Toronto's public service as professional, impartial and ethical.

The Toronto Public Service By-law requires Agencies to adopt and implement Disclosure of Wrongdoing and Reprisal Protection policies that meet minimum policy requirements.

Policy Statement

The purpose of the Disclosure of Wrongdoing and Reprisal Protection Policy is to facilitate the disclosure of wrongdoing that is contrary to the public interest, to ensure that all wrongdoing disclosed is investigated, and to protect from reprisal to the fullest extent possible those employees who in good faith report wrongdoing.

The RTCCC will not tolerate wrongdoing or reprisals against employees who report wrongdoing. All employees have a duty to report suspected wrongdoing. Disclosed wrongdoing will be investigated in accordance with this Policy in order to maintain public confidence in our services and use of our resources.

This Policy addresses only those matters that are in the public interest and for which there are no established mechanisms for consideration and investigation. For example, it is not intended to address matters that can be dealt with through existing procedures established through Collective Agreements or RTCC policies such as Health and Safety or Human Rights and Anti-Harassment

Application: This Policy applies to all RTCC employees.

Definitions:

Wrongdoing: Wrongdoing refers to serious actions that are contrary to the public interest (i.e., affects other), including but not limited to:

- Fraud;
- Theft of City or the RTCC assets;
- Waste: mismanagement of the City or the RTCC resources or assets in a wilful, intentional or negligent manner that contravenes the RTCC policy or direction by City Council;
- Serious violations of TPS By-law including Conflict of Interest provisions; and or
- Breach of public trust.

Wrongdoing (additional definition and explanation): Includes:

- A contravention of a Federal or Provincial law *that may give rise to a prosecution*.

¹ The Toronto Public Service By-Law, Chapter 192 of the Toronto Municipal Code can be found at <http://www.toronto.ca/legdocs/municode/toronto-code-192.pdf>. The Toronto Public Service By-Law webpage can be found at www.toronto.ca/tpsbylaw

- Misuse of public funds or a public asset.
- Acts or omissions that create a grave and unreasonable danger to life, health, safety of persons or to the environment other than a danger that is inherent in the performance of the duties or functions of a public servant.
- Gross mismanagement in the public sector (e.g. gross waste of money, abuse of authority / public assets, etc.).
- Directing or counselling someone to commit a wrongdoing listed above.

Reprisal: Reprisal against an employee is any measure taken or threatened as a direct result of disclosing or being suspected of disclosing an allegation of wrongdoing, initiating or co-operating in an investigation into an alleged wrongdoing.

Reprisal includes but is not limited to:

- Disciplinary measures;
- Demotion of the employee;
- Suspension of the employee;
- Termination of the employee;
- Intimidation or harassment of the employee;
- Any punitive measure that adversely affects the employment or working conditions of the employee; and
- Directing or counselling someone to commit a reprisal.

What wrongdoing is not?

- The definition of wrongdoing refers to serious actions that are contrary to the public interest (i.e. affects others).
- Wrongdoing does not include issues that can be handled through other established processes or existing procedures, for example:
 - personal grievances, such as harassment, and discrimination;
 - Work related grievances, including issues related to staffing decisions;
 - Conflict of Interest; or
 - Issues related to occupational health and safety.

Disclosure of Wrongdoing:

All RTCC employees who are aware that a wrongdoing has occurred will immediately notify their manager, director, or the Executive Director (Agency Head).

Employees who report wrongdoing in good faith will be protected from reprisal.

Options for Reporting:

If an employee is not comfortable reporting a concern directly to his or her supervisor, then one of the following alternatives should be followed:

- Report the concern to any other member of the senior management team;
- Report the concern directly to the ED of the organization;
- Report the concern directly to the Board Chair.

Employees are encouraged to follow channels through management first, unless they have reason to believe that management may be involved or that the reporting of the matter may adversely affect them or are otherwise uncomfortable due to some aspect of the report. Any volunteer or member of the public who has any concern related to the operations of RTCCC may follow the procedures available under the Complaint Policy.

Allegations received by Management:

Allegations of wrongdoing received by management must be immediately reported to the Executive Director (Agency Head).

Reported allegations that do not constitute wrongdoing as defined in the *Disclosure of Wrongdoing and Reprisal Protection Policy* will be referred to the Executive Director (Agency Head) or the appropriate Division, City official including the Human Rights Office, or Accountability Officer(s) for investigation and appropriate action.

Investigating Alleged Wrongdoing:

All disclosures of alleged wrongdoing as defined in this *Disclosure of Wrongdoing and Reprisal Protection Policy* will be investigated in a timely manner, not to exceed more than 30 day following receipt of a complaint. The RTCC Executive Director or designate will direct the investigation depending on the nature and scope of the wrongdoing.

The RTCC Executive Director will notify the City's Executive Director of Human Resources who will provide advice to ensure investigations of alleged wrongdoing led by the RTCC Executive Director are appropriately conducted.

The RTCC Executive Director will periodically report on the status of any on-going investigation of alleged wrongdoing to the City's Executive Director of Human Resources and the Board of Management, including the final outcome of the investigation.

Decisions to prosecute or refer the investigation results to the Toronto Police Service or other regulatory agencies for independent investigation will be made through a consultative process between the City Manager, City Solicitor and the City's Executive Director of Human Resources.

Expectations of Employees:

It is expected that the RTCC employees will fully co-operate with the investigation and law enforcement agencies during the course of an investigation and will make all reasonable efforts to be available to assist the above noted persons with the investigation.

RTCC employees contacted by the media with respect to a wrongdoing investigation shall not comment and will refer the media to the Executive Director.

Reprisal Protection:

No person shall take a reprisal against a RTCC employee because the employee:

- has sought information or advice about making a disclosure about wrongdoing;
- has made a disclosure about wrongdoing in good faith;
- has acted in compliance with the Disclosure of Wrongdoing and Reprisal Protection Policy;
- has initiated or co-operated in an investigation or other process related to a disclosure of wrongdoing;
- has appeared as a witness, given evidence or participated in any proceeding relating to the wrongdoing, or is required to do so;
- has alleged or reported a reprisal; or
- is suspected of any of the above actions.

Reprisal protection may not be able to be extended to employees whose identity cannot be confirmed.

Investigating Reprisal:

A RTCC employee who believes that they are the subject of a reprisal following a disclosure of wrongdoing shall notify the RTCC Executive Director immediately. If the reprisal involves a Member of City Council or a Member of a Local Board, the employee shall notify the Integrity Commissioner immediately.

A RTCC employee informed of, or who becomes aware of a reprisal against an employee, has a duty to notify the RTCC Executive Director or, in the case of a Member of a Local Board, the Integrity Commissioner. Where the RTCC Executive Director receives such disclosures, they will immediately notify the City's Executive Director of Human Resources or Integrity Commissioner and will undertake to ensure that the employee is protected from any further reprisal.

Allegations of reprisal will be the subject of investigation. The RTCC Executive Director will lead the investigation of alleged reprisals involving staff in consultation with the City's Executive Director of Human Resources. The Integrity Commissioner will lead the investigations of alleged reprisals involving Members of City Council or Members of Local Boards.

Where the investigation substantiates the allegations of reprisals, the RTCC Executive Director will inform the City's Executive Director of Human Resources and the employee(s) involved will be subject to disciplinary action up to and including dismissal as determined by the RTCC Executive Director in consultation with the City Solicitor and Executive Director of Human Resources.

The RTCC Executive Director will consult with the City's Executive Director of Human Resources and Solicitor to determine and take appropriate actions to stop, reverse or remedy a reprisal against an employee.

Allegations Against Agency Head:

Where it is alleged that the Ralph Thornton Community Centre Executive Director (Agency Head) has committed wrongdoing, improperly breached confidentiality under the policy or committed a reprisal, the Board Chair will be notified of the allegation. The Board Chair will notify the City Manager's Office of the allegation.

The Board Chair will consult with the City Manager's Office for advice on how to manage the investigation. The investigation may include retaining a third-party investigator to conduct an investigation. The results of the investigation will be shared with the Board of Management and the City Manager's Office

Allegations Against a Board Member:

Where it is alleged that a Member of the Agency Board has committed wrongdoing, improperly breached confidentiality under this Policy or committed a reprisal, the City's Integrity Commissioner is responsible for receiving, reviewing, investigating and reporting pursuant to the *City of Toronto Act, 2006* and *Code of Conduct for Members of Local Boards*.

Board Members and the Agency Head will cooperate with the Integrity Commissioner during investigations of wrongdoing and provide the Integrity Commissioner with access to information.

Reporting

The RTCC Executive Director will track and report annually to The RTCC Board of Management through the Human Resources Governance Committee on the disclosure, investigations and resolution of allegations of wrongdoing in accordance with The RTCC Human Resources Reporting Framework, the RTCC Annual Planning / Reporting Cycle and other relevant City obligations.

Implementation

All RTCC employees will receive a copy of this policy at the time of orientation. All existing employees will receive a copy of the policy as well and it will be circulated.

The RTCC mandatory training requirements will be amended to ensure all new employees receive Ethics training (TPS Values, Conflict of Interest, Political Activity and Wrong-Doing and Reprisal Protection) within 30 days of start of employment.

Compliance

- Post relevant policy on the RTCC policy sharing site
- Distribute policy on an annual basis to all staff

Related Policies

- Toronto Public Service By-law, Chapter 192, Toronto Municipal Code
- Code of Conduct for Members of Local Boards, City of Toronto
- Code of Conduct Complaint Protocol for Members of Local Boards (Restricted Definition) including Adjudicative Boards
- CODE OF CONDUCT COMPLAINT PROTOCOL Conflict of Interest Policy
- Human Rights and Anti-Discrimination Policy

Related Links (External)

Toronto Public Service By-law:

<http://www.toronto.ca/legdocs/municode/toronto-code-192.pdf>

Toronto Public Service By-law Webpage:

www.toronto.ca/tpsbylaw

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.co?item=2014.EX42.2>

<http://www1.toronto.ca/cityoftoronto/lobbistyregistrar/files/pdf/code-conduct-local-boards.pdf>