

Whistle Blower Protection Policy

Date:	May 9, 2011
To:	Executive Committee
From:	City Manager
Wards:	all
Reference Number:	

SUMMARY

The purpose of this report is to recommend the implementation of the attached Whistle Blower Protection Policy for the Toronto Public Service as requested by the Executive Committee on March 21, 2011.

The Fraud Prevention Policy issued by the City Manager on March 12, 2007, contains a whistle blower protection clause. The proposed Whistle Blower Protection Policy clarifies the protection from reprisal provided to City of Toronto employees and compliments the Fraud Prevention Policy which provides mechanisms for reporting instances of fraud to the Auditor General. The policy will protect employees of the City from reprisal who make a good faith report of fraud and extend that protection to employees who report wrongdoing including waste and gross mismanagement.

RECOMMENDATIONS

The City Manager recommends that:

1. City Council adopt the Whistle Blower Protection Policy as attached in Appendix 1 of this report.
2. City Council authorize the City Solicitor to prepare and introduce in Council any bills required to enact the Whistle Blower Protection Policy as a by-law under the City of Toronto Municipal Code.

3. City Council authorize the City Manager, in consultation with the Auditor General and the City Solicitor, to amend the Fraud Prevention Policy as required to reflect the new Whistle Blower Protection Policy and by-law.
4. City Council request the City Manager to consult with the Accountability Officers and report to Council on the implications of this policy and by-law as it relates to the Accountability Officers.

Financial Impact

There are no financial implications of this policy.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At the Executive Committee of March 21, 2011, the City Manager was requested to provide recommendations to strengthen protection for Whistleblowers who report instances of fraud, waste and mismanagement of City resources.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.EX4.14>

On March 8 and 9, 2011, City Council adopted a recommendation from the Audit Committee requesting the City Manager to ensure that ethics training include guidance to all staff on what constitutes retribution and the importance of protecting employees who report allegations of wrongdoing .

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.AU1.5>

On March 8 and 9, 2011, City Council also adopted a recommendation from the Audit Committee requesting the City Manager to reinforce staff's awareness of the Whistleblower Protection provisions in the Fraud Prevention Policy and to add to the Fraud Prevention Policy specific details relating to the consequences of non-compliance with the policy, in particular, contravention of the Whistleblower Protection provision.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.AU1.6>

ISSUE BACKGROUND

In June 2000, City Council requested the Auditor General to set up a Fraud and Waste Hotline and report annually on its operation. In 2006 the Auditor General reported on the importance of whistle blower protection for employees who called the Fraud and Waste Hotline.

In March 2007, the City Manager implemented a Fraud Prevention Policy. The Fraud Prevention Policy contains a whistle blower protection clause to protect employees from reprisals for reporting instances of fraud to the Auditor General. The Auditor General

has asked for additional training and awareness of the whistle blower protection clause of the Fraud Prevention Policy.

On March 7, 2011, the Mayor requested recommendations from the City Manager to strengthen the protection for Whistleblowers who report instances of waste and mismanagement of City resources.

COMMENTS

The Toronto Public Service Framework and Charter of Expectations for employees identify and articulate the standards by which employees of the Toronto Public Service conduct themselves. Employees of the City of Toronto are expected to act with integrity as they apply their judgement and discretion when serving the public. They are expected to use City property and resources in a responsible and transparent manner with a view to the value of service provided to the taxpayer.

The Auditor General has operated a Fraud and Waste Hotline for the past 10 years to allow members of the public and employees to report suspected cases of fraud or wasteful use of City resources.

The Auditor General's Fraud and Waste Hotline was set up in a similar way to the legislative requirements of other orders of government requiring the use of anonymous reporting mechanisms. For example:

The Sarbanes-Oxley Act of the United States was passed in 2002 requiring publicly traded companies to establish confidential reporting mechanisms for employees. Canadian securities legislation requires similar programs for employees of publicly traded companies in Canada.

The Canadian Criminal Code (R.S.C., 1985, c.46) Section 425.1 was amended to protect employees from employment-related retribution for whistle-blowing related to significant fraud or health and safety issues.

The Public Servants Disclosure Protection Act (S.C. 2005, c.46) established a mechanism for reporting wrongdoing in the Federal Public Service and protected federal employees from retribution.

The Public Service of Ontario Act, 2006 (S.O. 2006, Chapter 35, Schedule A, Part VI) Section 139.(1) provides protection from reprisals for Ontario Public Service employees who report wrongdoing.

Many Canadian municipal governments have implemented similar whistle blower protection programs including Calgary, Edmonton, Hamilton, Ottawa, and Vancouver.

The City of Toronto Fraud Prevention Policy includes protection against reprisals for employees who report fraud to the Auditor General. The new Whistle Blower Protection

Policy separates the protection mechanism from the reporting mechanism and clarifies the application and implementation of the whistle blower protection. The Whistle Blower Protection Policy extends the protection from reprisal to include instances where an employee reports wrongdoing or waste. The Fraud Prevention Policy will be updated to reflect the new Whistle Blower Protection Policy.

APPLICATION

This policy will apply to all City of Toronto employees which includes the non-union management and exempt employees, all members of bargaining units (TCEU – CUPE Local 416, CUPE Local 79, TPFPA Local 3888, and CUPE Local 2998). All employees in the offices of elected officials and in the offices of the accountability officers are protected by the provisions of this policy.

The City Manager will consult with the Accountability Officers and City Solicitor and report back to council on the implications of Whistle Blower protection as it relates directly to the Accountability Officers themselves.

Definitions

This policy protects employees from reprisals or retaliation when they report wrongdoing, including fraud and waste or illegal lobbying under the Lobbying by-law. Fraud is defined by the Fraud Prevention Policy as the misuse, or attempt to misuse a City asset for personal gain or purposes unrelated to City business. Waste is the gross mismanagement of City resources in a manner that contravenes a City policy or direction by Council. Reprisals include harassment, intimidation, dismissal, suspension, demotion or discipline of an employee.

Implementation

Any City of Toronto employee who believes that they are the subject of a reprisal related to their good faith reporting or suspected reporting of wrongdoing shall notify the Executive Director of Human Resources or the City Manager of the alleged reprisal for investigation.

Any manager or supervisor who becomes aware of a possible reprisal against any employee who made a report of serious wrongdoing will be required to notify the Executive Director of Human Resources or the City Manager.

Any allegations of reprisals will be the subject of investigation. Where an investigation substantiates the allegation of reprisals resulting from a report to the Fraud and Waste Hotline, the Auditor General will lead the investigation in consultation with the City Manager. A complaint of maladministration to the City's Ombudsman, which may contain a whistle blowing aspect, will be led by the Ombudsman in consultation with the City Manager or designate.

Where an allegation arises outside the Fraud and Waste Hotline or complaint of maladministration to the Ombudsman, the investigation will be led by Human Resources in consultation with the City Solicitor. Investigations may be conducted by an independent external investigator if necessary.

In the event that reprisals are alleged to have been committed by a member of council, the Integrity Commissioner will be notified in order to investigate and disclose the situation to Council as necessary.

The Fraud Prevention Policy will be updated to align it to the substance of this Whistle Blower Protection Policy. Existing training programs and orientation for new employees will be updated to include a focus on Whistle Blower protection for employees. The new Whistle Blower Protection Policy will be communicated to all employees by their managers and supervisors. Other communication vehicles such as the City Intranet, Monday Morning News and direct communication with Division Heads will be used to increase awareness of this new policy.

CONTACT

Bruce L. Anderson
Executive Director, Human Resources
(416) 397-4112
banders2@toronto.ca

Brad Salavich
Senior Policy Consultant, Human Resources
(416) 392-5020
bsalavi@toronto.ca

SIGNATURE

Joseph P. Penachetti
City Manager

ATTACHMENTS

Appendix 1: Whistle Blower Protection Policy