

Disclosure of Wrongdoing and Reprisal Protection Provisions

Article I Definitions and Articles VI, VII, VIII

Chapter 192, Public Service, Toronto Municipal Code

The Toronto Public Service By-Law is Chapter 192, Public Service, Toronto Municipal Code.

The following provisions apply to City of Toronto Employees to whom this By-law applies.

Numbers in (brackets) are references to specific sections in the By-law.

1. Policy Statement (§ 192-31)

The purpose of the disclosure of wrongdoing and reprisal protection provisions is to facilitate the disclosure of wrongdoing that is contrary to the public interest, ensure through their application that all disclosures are investigated, and to protect from reprisal, to the fullest extent possible, those employees who in good faith report wrongdoing.

The City of Toronto will not tolerate wrongdoing or reprisals against employees who report wrongdoing and all employees have a duty to report suspected wrongdoing. Disclosures of wrongdoing will be investigated in accordance with these provisions in order to maintain public confidence in the public service, the delivery of City services and the use of City resources.

These provisions address 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 City policies such as health and safety and human rights and anti-harassment.

1. Definitions (§ 192-1)

Wrongdoing

Wrongdoing refers to serious actions that are contrary to the public interest including but not limited to:

- Fraud;
- Theft of City assets;
- Waste: mismanagement of City resources or assets in a wilful, intentional or negligent manner that contravenes a City policy or direction by Council;
- Violations of the City's Conflict of Interest provisions; and
- Breach of public trust.

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.

2. Responsibilities of the Auditor General (§ 192-32)

The Auditor General's Office is responsible to:

- Operate the Fraud and Waste Hotline, undertake preliminary review of allegations of wrongdoing and apply the *Disclosure of Wrongdoing and Reprisal Protection* provisions (and definition);
- Investigate or refer responsibility for investigations of alleged wrongdoing to the City Manager or designate;
- May provide oversight to investigations led by the City Manager or designate;
- Inform the City Manager of allegations of wrongdoing in a timely manner;
- Refer allegations that do not constitute wrongdoing under these provisions to the appropriate City official or Accountability Officer for investigation and appropriate action; and
- Investigate allegations of reprisals against employees under the *Disclosure of Wrongdoing and Reprisal Protection* provisions, in consultation with the City Manager or designate.

3. Responsibilities of the City Manager (§ 192-33)

The City Manager is responsible to:

- Lead and advance a culture rooted in the highest ethical standards for City employees;
- Ensure City employees understand their ethical rights and responsibilities, including their responsibilities under the *Disclosure of Wrongdoing and Reprisal Protection* provisions;
- Investigate or refer responsibility to City staff to investigate alleged wrongdoing, as referred by the Auditor General, and ensure these investigations are appropriately conducted;
- Ensure that City employees who, in good faith, report wrongdoing are protected from reprisal in accordance with *the Disclosure of Wrongdoing and Reprisal Protection* provisions;
- Report the results of investigations of alleged wrongdoing to the Auditor General;
- Investigate and resolve allegations of employee misconduct that do not constitute wrongdoing as defined in the *Disclosure of Wrongdoing and Reprisal Protection* provisions;
- Ensure comprehensive tracking of employee misconduct to identify trends, and improvements; implement corrective actions to strengthen management oversight and make improvements to internal control systems and procedures based on findings; and ensure regular reporting of these matters; and
- Ensure recommendations made by the Auditor General in their reports addressing wrongdoing are implemented on a timely basis including systemic issues identified by the Auditor General.

4. Responsibilities of Managers (§ 192-34)

Managers are responsible to:

- Promote ethical conduct and support ethical decision-making in their areas of responsibility;
- Undertake investigations of alleged wrongdoing seriously and appropriately;
- Report the results of investigations of alleged wrongdoing to the Auditor General;
- Investigate and resolve allegations of employee misconduct that do not constitute wrongdoing as defined in the *Disclosure of Wrongdoing and Reprisal Protection* provisions;
- Ensure that City employees under their supervision, who, in good faith, report wrongdoing are protected from reprisals in accordance with the *Disclosure of Wrongdoing and Reprisal Protection* provisions;

- Establish and maintain a system of internal controls to detect and prevent wrongdoing; and
- Be familiar with the types of wrongdoing that could occur within their area of responsibility and be proactive in taking steps to guard against such activities.

Managers will support and co-operate with the Auditor General's Office, other involved Divisions, and law enforcement agencies in the detection, disclosure and investigation of wrongdoing, including the prosecution of offenders.

5. Disclosure of Wrongdoing (§ 192-35)

All City employees who are aware that wrongdoing has occurred will immediately notify their manager, their Division Head, or the Auditor General's Office. Employees who report wrongdoing in good faith will be protected from reprisal as described in Section 13 to 15.

Any employee who knowingly makes a false complaint in bad faith or who knowingly makes a false or misleading statement that is intended to mislead an investigation of a complaint, may be subject to disciplinary action up to and including dismissal as determined by the City Manager in consultation with the City Solicitor and Human Resources.

City employees who disclose wrongdoing will fully co-operate with the Auditor General's Office, other involved Divisions 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.

a. Allegations received by City Management (§ 192-36)

Allegations of wrongdoing received by City management must be immediately reported to their Division Head or the Deputy City Manager or City Manager if the Division Head is implicated in the allegation. Allegations of wrongdoing received by Division Heads, Deputy City Managers or the City Manager will be immediately reported to the Auditor General.

b. Allegations Received by the Auditor General (§ 192-37)

When an allegation of wrongdoing is received by the Auditor General's Office that will be investigated, the Auditor General's Office will inform the City Manager in a timely manner. Reported allegations to the Auditor General that do not constitute wrongdoing as defined in the *Disclosure of Wrongdoing and Reprisal Protection* provisions, will be referred to the appropriate City official or Accountability Officer for investigation and appropriate action.

6. Confidentiality (§ 192-38)

The identity of individuals involved in an investigation, including the identity of an individual alleging wrongdoing and the identity of an individual alleged to have committed wrongdoing, will be protected to the fullest extent possible.

The Auditor General's Office and all City employees and officials, aware of or participating in an investigation of wrongdoing shall treat all information received confidentially. All reasonable efforts will be made to maintain confidentiality. Investigation results will not be disclosed or discussed with anyone other than those who have a legitimate need to know and such disclosures shall be restricted to what must be disclosed to ensure a thorough, effective and complete investigation or as otherwise required by law.

Individuals who improperly breach confidentiality will be subject to legal action or disciplinary action up to and including dismissal as determined by the City Manager in consultation with the City Solicitor and Human Resources.

7. Anonymous Reporting (§ 192-39)

Employees may remain anonymous when reporting suspected wrongdoing.

8. Investigations (§ 192-40)

All disclosures of alleged wrongdoing as defined in the *Disclosure of Wrongdoing and Reprisal Protection* provisions will be investigated by the Auditor General who may refer responsibility to the City Manager or designate for the investigation depending on the nature and scope of the wrongdoing.

The Auditor General's Office may provide oversight of alleged wrongdoing investigations led by the City Manager or designate. The responsibility to ensure such investigations are appropriately conducted remains with the City Manager.

The City Manager or designate will periodically report on the status of any ongoing investigation of alleged wrongdoing to the Auditor General and will report the outcome of the investigation to the Auditor General.

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 Auditor General, City Manager, City Solicitor and the Executive Director of Human Resources.

a. Expectations of Employees (§ 192-41)

It is expected that employees will fully co-operate with the Auditor General's Office, the City Manager or designate, other involved Divisions 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.

City employees contacted by the media with respect to a wrongdoing investigation shall refer the media to the Director of Strategic Communications or designate.

b. Access to Information (§ 192-42)

Within the scope of an investigation, the Auditor General and the City Manager or designate(s) will have:

- Free and unrestricted access to all City records, employees and premises, whether owned or rented; and
- The authority to examine, copy, or remove all or any portion of the contents of electronic or hard copy files, desks, cabinets, and other City property without prior knowledge or consent of any individual who might use or have custody of any such items in accordance with applicable City policies.

9. Right to Respond (§ 192-43)

The individual against whom allegations are being made will be given a reasonable opportunity to respond to those allegations as part of the investigation. This requirement is subject to any Collective Agreement provisions respecting the rights of employees in the disciplinary process.

10. Following an Investigation of Alleged Wrongdoing**a. Minimizing Future Risk (§ 192-44)**

Upon conclusion of an investigation, recommendations may be made by the Auditor General to the City Manager in order to minimize future risk.

b. Disciplinary Action for Wrongdoing (§ 192-45)

If alleged wrongdoing by an employee is substantiated through an investigation, the employee will be subject to disciplinary action up to and including dismissal as determined by the City Manager in consultation with the City Solicitor and the Executive Director of Human Resources.

11. Tracking and Reporting (§ 192-46)

The Auditor General will track and report annually to City Council through the Audit Committee on the disclosure, investigations and resolution of allegations of wrongdoing.

12. Reprisal Protection (§ 192-47)

No person shall take a reprisal against a City 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* provisions;
- 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.

13. Reporting and Investigating Reprisal (§ 192-48)

A City employee who believes that they are the subject of a reprisal following a disclosure of wrongdoing shall notify the Executive Director of Human Resources, City Manager or the Auditor General 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 City employee informed of, or who becomes aware of a reprisal against an employee, has a duty to notify the Executive Director of Human Resources, City Manager, the Auditor General or the Integrity Commissioner. Where the Executive Director of Human Resources or City Manager receives such disclosures, they will notify the Auditor General or Integrity Commissioner immediately and will undertake to ensure that the employee is protected from any further reprisal.

Allegations of reprisal will be the subject of investigation. The Auditor General will lead the investigations of alleged reprisals involving staff in consultation with the City Manager. The Integrity Commissioner will lead the investigations of alleged reprisals involving Members of City Council or Members of Local Boards.

14. Following an Investigation of Reprisal (§ 192-49)

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

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

15. Special Investigations

a. Members of City Council and their Staff (§ 192-50)

Where it is alleged that a Member of City Council or their staff has committed wrongdoing, improperly breached confidentiality under these provisions or committed a reprisal, the 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 City Council*.

Members of City Council and their staff will cooperate with the Integrity Commissioner during investigations of wrongdoing and provide the Integrity Commissioner with access to information.

b. Senior Employees (§ 192-51)

Where it is alleged that the City Manager, City Clerk or City Solicitor has committed wrongdoing, improperly breached confidentiality under these provisions or committed a reprisal, the Auditor General will retain a third party investigator and transmit their findings to City Council.

c. Accountability Officers and their Staff

Where it is alleged that an Accountability Officer or their staff has committed wrongdoing, improperly breached confidentiality under these provisions or committed a reprisal, a third party investigator will be used and their findings will be reported to City Council.

16. Related Policies

- Code of Conduct for Members of Council, City of Toronto
- Toronto Municipal Code, Conflict of Interest Provisions

Adopted by: City Council
Date adopted: August 28, 2014
By-law in force date: December 31, 2015