

MORETELE LOCAL MUNICIPALITY



FRAUD PREVENTION AND RESPONSE PLAN POLICY

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GLOSSARY OF TERMS

Throughout this document, unless otherwise stated, the words in the first column below have the meanings stated opposite them in the second column (and cognate expressions shall bear corresponding meanings):

“Municipality” Moretele Local Municipality

“Fraud” Includes, but is not limited to, the following:

(a) The following legal definitions:

- (i) Fraud, being “the unlawful and intentional making of a misrepresentation resulting in actual or potential prejudice to another”;
- (ii) Corruption which could be summarised as: “giving or offering; receiving or agreeing to receive; obtaining or attempting to obtain: any benefit tendered and/or solicited, which is not legally due to or by a person who has been charged with a duty or power by virtue of any employment, to do any act or omit to do any act in relation to that power or duty”; and
- (iii) Theft, being “the unlawful and intentional misappropriation of another person’s or entity’s property or property which is in such person’s or entity’s lawful possession, with the intention to deprive the owner permanently of his, her or its rights”.

(b) Fraudulent or corrupt acts, which may include:

System-related transgressions: for example, where a process or system exists which is prone to abuse by employees, the public or other stakeholders, such as:

- procurement fraud, for example irregular collusion in the awarding of tenders or orders for goods and/or services;
- irregularities in the effecting of transfer payments;

- deliberate non-compliance with the limits pertaining to any delegated authority;
- collusion in contracts management;
- revenue fraud;
- travel and subsistence fraud; and
- disclosure of confidential or proprietary information to outside parties.

Financial transgressions: for example, actions resulting in individuals or companies fraudulently obtaining money from the municipality, such as:

- syndicate fraud, for example interception of warrant vouchers;
- creditors fraud, for example diverting payments to incorrect creditors;
- suppliers submitting invalid invoices or invoicing for work not done;
- payroll fraud, for example the creation of “ghost employees”;
- theft of funds; and
- financially profiting from insider knowledge.

Equipment and resource-related transgressions: for example where the municipality’s equipment is utilised for personal benefit or is stolen: such as:

- theft of assets and stores, for example computers, face value forms, materials, fuel, equipment, vehicle spares, and so forth;
- personal use of resources, that is, use unrelated to work: for example telephones, internet, e-mail; motor vehicles; and
- irregular destruction, removal or abuse of records (including intellectual property).

Other transgressions: for example, activities undertaken by employees of the municipality, which may be against

municipal policies or fall below established ethical standards, such as:

- soliciting and/or accepting commission, or other rewards, gifts or favours from consultants or other suppliers;
- conflicts of interest;
- nepotism;
- favouritism; and
- deliberately omitting or refusing to report or act upon reports of any fraud.

The “Committee” The Fraud Prevention Committee established by the Council in terms of this policy.

“Hot-line” Telephonic facility to be established by and under the guidance of the Committee, with the intention of encouraging employees and other parties to report any suspected or perceived actual or likely fraudulent activities, confidentially if the reporting party so prefers: the details of this facility shall be widely disseminated by the Committee, and the Committee shall determine the procedures to be followed in recording and confidentially securing all communications received by this means.

“MFMA” Municipal Finance Management Act, Act No. 56 of 2003

1. Objectives

1.1 This policy is intended to set out the approach of the municipality towards the prevention and – where prevention is not always practically possible – the expeditious detection of fraud, and to reinforce existing policies and procedures aimed at preventing, reacting to, and reducing the incidence and/or impact of fraud.

1.2 To reflect the commitment of the municipality to rejecting fraud and to supporting and fostering a culture of zero tolerance towards fraudulent and related activities. By the adoption of this policy, the municipality irrevocably undertakes to combat all forms of fraud and corruption, to remain pro-active in the prevention of fraud, and promptly to take the required legal and disciplinary action whenever fraudulent activities are detected.

2. **SCOPE OF THE POLICY**

Persons to whom and events to which the policy applies

2.1 This policy applies to all alleged, attempted and actual incidents of fraud impacting or having the potential to impact on the municipality.

2.2 All employees, councillors and members of the community of the municipality must comply with the spirit and content of the policy.

3 The legal Frame work:

- The Constitution of the republic of South Africa act 108 of 1996
- The promotion of Administrative justice act number 3 of 2000
- Promotion of access to information act number 2 of 2000

4. THE POLICY

4.1 The municipality's declared approach to fraud is zero tolerance. All fraud will be investigated and followed up by promptly and vigorously applying the full extent of the law as appropriate, and any other appropriate remedies available to the municipalities. Suitable prevention and detection controls will also be developed and enforced. These include the existing financial and other controls as prescribed in the municipality's policies and procedures. The efficient and unremitting application of the Municipal Systems Act and the MFMA, the policies and procedures of the municipality and other government directives relating to local government, is accepted as being one of the most important duties of every employee and councillor.

5 REPORTING PROCEDURES AND RESOLUTION OF REPORTED INCIDENTS

- What should an employee, councillor or a member of the community do if he or she suspects that a fraudulent activity has taken or is likely to take place?

5.1 In order to limit the risks associated with widespread negative perceptions amongst employees, councillors and members of the community; this policy requires employees, councillors and members of the community to report all situations or activities that they perceive to be fraudulent to any manager or via the National fraud reporting hotline or report to the nearest Police station. This includes reporting all reasonable suspicions, allegations and actual perceived incidents of fraud. By encouraging such reporting, the municipality intends to promote a culture where all employees report fraud candidly without fear of victimisation or recrimination, and with confidence that these reports will be dealt with appropriately.

More research to be done comparing the current standards adopted by the big metros

5.2 In addition to their responsibilities as employees (as set out in paragraph 4.1), all managers must promptly and fully relay reports of fraud made to them to the Fraud Prevention Committee ("the Committee").

- 4.3 Should employees, councillors and members of the community wish to report allegations of fraud anonymously, they can do so by utilising the National fraud reporting hotline. The Committee shall decide on appropriate measures to deal with all reports made to it via the hotline.
- What should a member of the public or providers of goods and/or services do if they suspect fraud?
 - How will the municipality deal with allegations of fraud?
- 4.5 In the case of matters reported by employees, members of the public or providers of goods and/or services, the action taken by the municipality will obviously depend on the nature of the matter concerned. Thus the matters reported may be:
- ✓ investigated internally in the first instance, if clarification and/or further evidence is required; or
 - ✓ Referred to the South African Police Service (“SAPS”) or other law enforcement agency, if reasonable evidence of an actual or likely transgression exists.
- 4.6 Any alleged fraud committed by an employee or any other person will be responded to by a thorough investigation (as set out in Section 5 below), and to the full extent of the law, including (where appropriate) consideration of:
- (a) in case of employees, taking disciplinary action within a reasonable period of time after the incident;
 - (b) instituting civil action to recover losses;
 - (c) initiating criminal prosecution by reporting the matter to the SAPS or any other relevant law enforcement agency; and
 - (d) pursuing any other appropriate and legal remedy available.
- 4.7 Managers are required to ensure that losses or damages suffered by the municipality as a result of all reported acts committed or omitted by an employee or any other person are recovered from such an employee or other person if he or she is found to be liable in the circumstances.

4.8 The municipal manager shall also ensure that the following steps are taken with regard to financial misconduct in line with the provisions of the Municipal Systems Act and the MFMA:

- (a) ensuring that disciplinary proceedings are carried out in accordance with the relevant prescribed requirements;
- (b) ensuring that disciplinary proceedings are instituted within 30 days after the relevant financial misconduct is established;
- (c) annually submitting to the Auditor-General a schedule of:
 - (i) the outcome of any disciplinary hearings and/or criminal charges;
 - (ii) the names and ranks of officials involved; and
 - (iii) the sanctions and any further actions taken against these officials;
- (d) in terms of Section 62(1)(e) of the MFMA, on discovering any unauthorised, irregular, fruitless and wasteful expenditure, ensuring that disciplinary or, when appropriate, criminal proceedings are instituted against any official of the municipality who has allegedly committed an act of financial misconduct or an offence;
- (e) taking the following into account when determining the appropriateness of disciplinary steps against an official:
 - (i) the circumstances of the transgression;
 - (ii) the extent of the expenditure and/or loss involved;
 - (iii) the nature and seriousness of the transgression; and
- (f) reporting any losses to the SAPS, the MEC for Local Government and the Auditor-General. (In terms of Section 32 of the MFMA, the accounting officer is responsible for promptly informing the Mayor, the MEC for Local Government in the province and the Auditor-General, in writing, of any unauthorised, irregular, or fruitless and wasteful expenditure incurred by the municipality, whether any person is responsible or under investigation for such unauthorised, irregular or fruitless and wasteful expenditure, and the steps that have been taken to recover or rectify such expenditure and to prevent a recurrence of such expenditure. In terms of this Section the accounting officer must also report to the South African Police Service all cases of alleged irregular expenditure that constitute a criminal offence, and theft and fraud that occurred in the municipality).

The following four response steps shall serve as an additional guideline to the Committee when faced with a report of likely or actual perceived fraud:

Step 1:

- (a) Evaluate the information or allegation;
- (b) Identify the issues and their implications; and
- (c) Consider all appropriate options for addressing the matter, as well as their implications.

Step 2:

- (a) Secure the assets at risk by notifying parties holding assets or relevant documentary records;
- (b) Where appropriate, eliminate any immediate risk by suspending or removing the suspect from a position of authority (in accordance with prescribed labour law provisions);
- (c) Ensure that all accounting and other documents and records are secured and back-ups of relevant computer data are made; and
- (d) Secure the contents of the offices where the suspect is employed, such as physical files, computer data and other items of potential evidential value.

Step 3:

- (a) Trace and secure the documentation that was under the control of the suspect; and
- (b) Commence the detailed investigation process, utilising the appropriate resources.

Step 4:

- (a) In conjunction with the responsible manager (if appropriate), initiate processes to recover losses suffered through alleged fraud or other misconduct;

- (b) Where applicable, contact the SAPS or other appropriate authority for assistance; and
- (c) Review current accounting and administrative procedures to address any weaknesses and institute the necessary improvements.

5. RESPONSIBILITY TO CONDUCT INVESTIGATIONS INTO SERIOUS CASES OF FRAUD

- 5.1 The responsibility to initiate investigations into serious cases of fraud shall reside with the chairperson of the Committee. The chairperson will decide, in consultation with the municipal manager and other members of the Committee, whether immediately to report serious cases to the SAPS or other law enforcement agency, and/or whether to secure the initial assistance of external providers of forensic investigation services.

6. CONFIDENTIALITY

- 6.1 All reports of fraud shall be treated confidentially. The progress of investigations shall not be disclosed or discussed with any person(s) other than those who have a legitimate right to such information. This is important in order to avoid compromising the reputations of suspected persons who are subsequently exonerated of any wrongful conduct. The chairperson of the Committee in consultation with members of the committee shall be responsible for supplying appropriate feedback on the progress of investigations to all relevant parties on a “need to know” basis.
- 6.2 No employee is authorised to supply any information with regard to reports of fraud covered within this policy to the media, or any other party, without the express permission of the municipal manager.

7. PUBLICATION OF SANCTIONS

- 7.1 The Committee shall decide whether any information relating to corrective actions taken or sanctions imposed regarding incidents of fraud should be brought to the attention of other employees or made public through any other means, except where disclosure is legally compulsory in terms of the MFMA.

8. COMPOSITION OF FRAUD PREVENTION COMMITTEE

- 8.1 The committee will consist of the:
- ✓ chairperson – Municipal speaker
 - ✓ Secretary – Municipal official delegated by Municipal Manager
 - ✓ Legal advisor – office of the Municipal manager
 - ✓ Labour representative – Labour union
 - ✓ A councillor who is not an executive committee member
 - ✓ Internal auditor – From the Municipality
 - ✓ A member of the community – speaker to nominate
- 8.2 The Committee shall meet at least once quarterly and submit its reports to council.
- 8.3 The municipal manager shall ensure that appropriate confidential records of all proceedings are maintained.
- 8.4 The quorum for a meeting shall be any three (3) members, and in the absence of the Mayor the meeting shall elect its own chairperson.

9. PROTECTION OF WHISTLE BLOWERS

- 9.1 In compliance with the Protected Disclosures Act, the Committee shall ensure that no employee suffers any penalty or retribution for reporting in good faith any suspected or actual perceived incident of fraud.

Measures for protection and Sanctions for contravening policy

Guidelines:

Discreet Disclosure

In the case where a person is contemplating making a disclosure but is concerned about contacting (or being seen with) the Fraud prevention committee members, they can contact the Fraud prevention committee members (remotely) to arrange a meeting in a discreet location usually away from the work environment.

Anonymous Disclosure

In some exceptional circumstances, the whistleblower may wish for their identity to remain unknown even to the Fraud prevention committee members. In this case, the assessment and investigation of the disclosure may be more difficult without the ongoing authority and cooperation of the whistleblower; however, the allegation will still be investigated if the Fraud prevention committee members believe the allegation serious enough to warrant 'anonymous investigation'.

To facilitate this, Moretele local Municipality will implement the following processes:

Anonymous Online Disclosure

Moretele local Municipality will provide, for the benefit of whistleblowers wishing to remain anonymous, the ability to make a disclosure to the Fraud prevention committee members via the Whistleblower site. The site has been designed to ensure that the identity of the whistleblower may not be divulged to any party involved in the process. The Whistleblower site can be accessed through your local Municipality intranet.

Protected Disclosure Hotline

The relevant Fraud prevention committee member's direct dial telephone line may be used by whistleblowers who wish to remain unidentified.

Anonymous (Registered) Mail

Moretele local Municipality will take receipt of registered mail through the postal system that allows the whistleblower to remain anonymous by withholding their name and contact details. Registered mail should be sent to the Secretary of the Committee with an indication of Private and Confidential on the envelope. This mail will be delivered to the Secretary of the Committee by the Mail/Image Center unopened.

Disclosure Methods

There are many methods by which whistleblowers may make a disclosure, from a phone call to a casual chat in the lunchroom, to a written disclosure posted to the Fraud prevention committee members. This section aims to provide a few

examples of the possible methods and provide assistance to whistleblowers who are unsure of how to make a disclosure.

Disclosure of suspected improper activity or detrimental action can be made through formal or informal channels:

Formal

There are a number of formal methods of making a disclosure, including:

Completion of the formal Protected Disclosure Document:

This is a questionnaire style document that asks questions directly related to the disclosure that the Fraud prevention committee members will require. Blank copies of this document will be made available to staff at all times via the Municipality's intranet.

A personally written formal disclosure;

A formal meeting with the Fraud prevention committee members;

Anonymous disclosure using either:

- Anonymous email address;
- Protected disclosure hotline; or
- Anonymous (registered) mail.

A phone call maintaining a sense of formality; or

A formal email.

Informal

There are also many informal ways to make a disclosure, which might include:

An informal meeting with the Fraud prevention committee members;

A casual phone call;

Casual discussion;

Casual email; or

Any other communication chosen by the person making the disclosure.

DEFINING ROLES AND RESPONSIBILITIES

It is important that the roles and responsibilities of all parties associated (or potentially associated) with the whistle blowing process are clearly defined and transparent. Having clearly defined roles and responsibilities for all parties involved will reduce the potential for misunderstanding, miscommunication and mismanagement of the whistle blowing process.

- 9.2 All employees, councillors and members of the community must refrain from making allegations that are false, malicious, frivolous and/or vexatious.

Where allegations are discovered to be such, any employee who made the allegations must be subjected to firm disciplinary action, and in the case of external parties, appropriate legal and/or other action must be taken.

10. APPLICATION OF PREVENTION CONTROLS AND DETECTION MECHANISMS

10.1 In respect of all reported incidents of fraud, managers shall immediately review and, where possible, improve the controls that have been breached in order to prevent similar irregularities from taking place in future, and shall take such actions in consultation with the municipal manager, chief financial officer and labour forum.

11. CREATING AWARENESS

11.1 It is the responsibility of all managers to ensure that all employees are made aware of this policy and receive appropriate training and education on a regular basis in regard to the municipality's various risk management and fraud prevention policies.

12. ADMINISTRATION

12.1 The committee reporting directly to council shall be responsible for implementing this policy, and shall be supported – and where necessary guided – in such implementation by the council.

12.2 The Committee is responsible for the revision and interpretation of this policy. The sitting of council shall review the policy annually and recommend appropriate changes to the committee should there be a requirement

13. **Dispute resolution and interpretation of this policy**

- If the dispute is raised by an employee, it shall follow dispute resolution procedures guided by the South African local government bargaining council.

- If it is raised by a councillor or a member of the community it shall go to the labour court because they are not covered by the South African local government dispute resolution procedures.