



HUMAN RESOURCE POLICY PROTECTED DISCLOSURE

Policy No: NLMHRER005	Effective Date: 01 April 2008
Approved:	Review Date: 01 April 2009

Notwithstanding the review date herein, this policy shall remain effective until such time as approved otherwise by Council and may be reviewed on an earlier date if necessary, subject to Labour Law Dispensation or operational requirements.

1. SCOPE

This Policy should, where applicable, be read with the Confidentiality Policy and the Protected Disclosures Act, 26 of 2000, as amended.

This Policy is applicable to all employees of Ngwathe Municipality.

2. OBJECTIVES

The objective of this Policy is to provide guidelines for procedures in terms of which employees may disclose information regarding unlawful or irregular conduct by Councilors of Ngwathe or other employees of Ngwathe and to provide for the protection of employees who make such disclosures.

3. POLICY

3.1 It is the Policy of Ngwathe:

3.1.1 To encourage disclosure of criminal and any other irregular conduct in the workplace;

3.1.2 To create a culture which will facilitate the disclosure of information by employees relating to criminal and other irregular conduct in Ngwathe workplace in a responsible manner; and

3.1.3 To promote the eradication of criminal and other irregular conduct in Ngwathe.

3.1.4 To protect Ngwathe employees who make disclosures in terms of this policy.

4. DEFINITIONS

4.1 “**DISCLOSURE**” - means any disclosure of information regarding any conduct of Councillors of Ngwathe, or employees of Ngwathe, made by any employee who has reason to believe that the information concerned may show or tend to show one or more of the following:

4.1.1 That a criminal offence has been committed is being committed or is likely to be committed;

4.1.2 That a person has failed is failing or is likely to fail to comply with any legal obligation to which that person is subject;

4.1.3 That miscarriage of justice has occurred, is occurring or is likely to occur;

4.1.4 That the health or safety of an individual has been is being or is likely to be endangered;

4.1.5 That the environment has been is being or is likely to be damaged;

4.1.6 Unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 Act 4 of 2000 as amended.

4.2 **“OCCUPATIONAL DETRIMENT”** – In relation to the working environment of an employee, means:

4.2.1 Being subjected to any disciplinary action;

4.2.2 Being dismissed, suspended, demoted, harassed or intimidated;

4.2.3 Being transferred against his/her will;

4.2.4 Being refused transfer or promotion;

4.2.5 Being subjected to a term or condition of employment or retirement which is altered or kept altered to his/her disadvantage;

4.2.6 Being refused a reference or being provided with an adverse reference from his/her employer;

4.2.7 Being denied appointment to any employment, professional office;

4.2.8 Being threatened with any of the actions referred to above, or

4.2.9 Being otherwise adversely affected in respect of his/her employment, professional office, including employment opportunities and work security.

4.3 **“PROTECTED DISCLOSURE”** - means a disclosure made to:

4.3.1 A legal adviser who is a legal practitioner or to a person whose occupation involves the giving of legal advice and which was made with the object of and in the course of obtaining legal advice;

4.3.2 Ngwathe, in good faith, and substantially in accordance with any prescribed procedure for reporting the impropriety concerned.

4.4 **”PROTECTED DISCLOSURE TO CERTAIN PERSONS OR BODIES”** – means

4.4.1 Any disclosure made in good faith to –

(a) The Public Protector;

(b) The Auditor-General;

- (c) A person or body prescribed for purposes of this policy; and in respect of which the employee concerned reasonably believes that:
 - (i) The relevant impropriety falls within any description of matters which, in the ordinary course are dealt with by a person or body concerned; and
 - (ii) The information disclosed, and any allegation contained in it, are substantially true;Is a protected disclosure.

4.4.2 A person or body referred to in, or prescribed in terms of, paragraph 4.4.1 above who is of the opinion that the matter would be more appropriately dealt with by another person or body referred to in, or prescribed in terms of, that paragraph, must render such assistance to the employee as is necessary to enable that employee to comply with this policy.

4.5 **“GENERAL PROTECTED DISCLOSURE”** – means

4.5.1 Any disclosure made in good faith by an employee –

- (a) Who reasonably believes that the information disclosed, and any allegation contained in it, are substantially true; and
 - (b) Who does not make the disclosure for purposes of personal gain, excluding any reward payable in terms of any law;
- Is a protected disclosure if –
- (i) One or more of the conditions referred to in paragraph 4.5.2 apply; and
 - (ii) In all the circumstances of the case, it is reasonable to make the disclosure.

4.5.2 The conditions referred to in paragraph 4.5.1(b)(i) are:

- (a) That at the time the employee who makes the disclosure has reason to believe that he or she will be subjected to an occupational detriment if he or she makes a disclosure to his or her employer in accordance with paragraph 4.3.2;

- (b) That, in a case where no person or body is prescribed for the purposes of paragraph 4.4 in relation to the relevant impropriety, the employee making the disclosure has reason to believe that it is likely that evidence relating to the impropriety will be concealed or destroyed if he or she makes the disclosure to his or her employer;
- (c) That the employee making the disclosure has previously made a disclosure of substantially the same information to –
 - (i) Ngwathe; or
 - (ii) A person or body referred to in section 4.4, in respect of which no action was taken within a reasonable period after the disclosure; or
- (d) That the impropriety is of an exceptionally serious nature.

4.5.3 In determining for the purposes of subsection whether it is reasonable for the employee to make the disclosure, consideration must be given to –

- (a) The identity of the person to whom the disclosure is made;
- (b) The seriousness of the impropriety;

- (c) Whether the impropriety is continuing or is likely to occur in the future;
- (d) Whether the disclosure is made in breach of a duty of confidentiality of Ngwathe towards any other person;
- (e) in a case falling within subsection , any action which Ngwathe or the person or body to whom the disclosure was made, has taken, or might reasonably be expected to have taken, as a result of the previous disclosure;
- (f) in a case falling with in this policy , whether in making the disclosure to Ngwathe, the employee complied with any procedure which was authorised by Ngwathe; and
- (g) The public interest.

4.5.4 For the purposes of this paragraph a subsequent disclosure may be regarded as a disclosure of substantially the same information referred to in this policy where such subsequent disclosure extends to information concerning an action taken or not taken by any person as a result of the previous disclosure.

5. No employee may be subjected to any occupational detriment by Ngwathe on account, or partly on account, of having made a protected disclosure.

6. PROCEDURE

6.1 Any disclosure made in terms of this Policy may be brought to the attention of the Municipal manager or his/her duly authorised representative in writing.

6.2 Any disclosure made in good faith to a member of Cabinet or of the Executive Council of a Province is a protected disclosure if Ngwathe falls within such member's area of responsibility.

7. AUTHORITY

Formulation Policy	:	Municipal Manager
Authorisation Policy	:	Council
Ownership and Maintenance Manager	:	Director Corporate Services