



Policy	Whistleblower Policy
Approved By:	Council
Approval Date:	February 10, 2020
Amendment Date:	

## **WHISTLEBLOWER POLICY - REPORTING, INVESTIGATION AND PROTECTION**

### **POLICY**

The purpose of this policy is to facilitate the disclosure of wrongdoing that is contrary to public interest. The policy sets out guidelines for the reporting and investigation of serious misconduct where there are no procedures in place for doing so, and provides protection from retaliation to those who report serious misconduct in good faith. Reporting serious misconduct in good faith is also referred to as whistleblowing.

### **SCOPE**

This policy applies to all employees of the District of Oak Bay.

### **POLICY STATEMENTS**

#### **1. General**

- 1.1. The District of Oak Bay (“the District”) is committed to the principles of integrity, accountability, responsibility, leadership, respect, and openness.
- 1.2. Staff are to act in a way that enhances public confidence in the District and to fulfill their duty to act honestly and exercise reasonable care and diligence.
- 1.3. Staff have a responsibility to report instances of serious misconduct. Examples of serious misconduct that should be reported pursuant to this policy include but are not limited to:
  - Serious violations of District policies;
  - Manipulation of District resources for any illegal, improper or unethical purpose including fraud, theft, embezzling funds, or accepting kickbacks or bribes;
  - Misappropriating funds, or misdirecting or misuse of funds, assets or corporate information;
  - Manipulating District accounting or audit records or destroying any accounting or audit-related records except as otherwise permitted by the District’s records and information management policies;
  - Actions likely to cause serious harm to persons, public safety, property or the environment;
  - Actions resulting in the District being exposed to liability or financial loss;
  - Failure to take reasonable steps to report and/or rectify actions that may impact negatively on the District’s reputation resulting in the public losing confidence in the organization’s ability to deliver services;
  - Deliberately concealing information relating to any of the above.

It should be noted that the above are examples only and are not an exhaustive list of what amounts to serious misconduct.

- 1.4. This policy is intended to supplement existing procedures at the District whereby employees may already raise matters of serious concern. This policy is not intended to override or replace existing reporting processes provided for under District policies, collective agreements or legislation and does not create an independent reporting requirement where other reporting processes exist.
- 1.5. Reports made under this policy may be redirected where other more appropriate procedures are applicable such as:
  - Grievance procedures (see applicable collective agreement);
  - Human rights complaint procedures related to harassment or human rights violations (see human rights legislation and applicable District policies);
  - Procedures for reporting safety concerns (see *Workers Compensation Act* and the District's Occupation Health and Safety Policy);
  - Procedures under the District's Respectful Workplace Policy.
- 1.6. Protection for reporting in good faith alleged serious misconduct (see 5.0 – Whistleblower Protection Against Retaliation) applies in all cases regardless of the District policy or process under which the report was made.

## **2. Roles and Responsibilities**

### **2.1. Chief Administrative Officer (CAO):**

The CAO is responsible for overseeing this policy. The CAO may appoint a department head as designate to be responsible for the day-to-day administration and stewardship of the policy. The CAO will execute the roles and responsibilities of the designate should alleged serious misconduct involve the designate. The CAO will report serious misconduct issues to Council as appropriate.

### **2.2. Designate:**

If appointed by the CAO, the designate receives in confidence all reports of alleged serious misconduct unless the CAO or designate is alleged to be involved. The designate is responsible for overseeing the investigation of allegations of serious misconduct and/or retaliation for the reporting of serious misconduct. The designate is responsible for assigning investigations to the most appropriate party, notifying the appropriate parties of investigations and outcomes, reporting to the CAO, and ensuring the confidential retention of investigation documentation in accordance with the District's records and information management policies and the requirements of the *Freedom of Information and Protection of Privacy Act*.

### **2.3. Council:**

In the event an allegation of serious misconduct involves the CAO, the matter will be dealt with In Camera by Council who will determine and assign responsibility for the investigation and disposition of the matter in conjunction with legal counsel.

### **2.4. Directors/Department Heads/ Managers/ Supervisors:**

Any level of manager or supervisor receiving a report of alleged serious misconduct from an employee is to promptly forward it in an impartial and strictly confidential manner to the CAO (or designate) with a copy to the department head whose area of responsibility is involved, unless the alleged misconduct may involve or has been condoned by the department head.

### 2.5. Staff:

A staff member who knows or suspects that another employee has engaged, or plans to engage, in fraudulent or dishonest conduct, must immediately report this information. Staff are to report alleged instances of serious misconduct in good faith to their supervisor, manager, department head or directly to the CAO (or designate). Should the alleged serious misconduct involve the designate, staff should report the misconduct to the CAO, or should the alleged serious misconduct involve the CAO, staff should report the misconduct to the Director of Corporate Services or the Manager of Human Resources for referral to Council as outlined in section 2.3 above.

2.6. Should an employee who brings forward a complaint under the policy be dissatisfied with the process by which the complaint is handled, the employee may seek independent review of the matter by contacting the BC Office of the Ombudsperson.

## 3. Reporting of Serious Misconduct

### 3.1. Acting in Good Faith:

Reports of serious misconduct are a significant matter. Staff reporting alleged serious misconduct are to act in good faith and have reasonable grounds for believing the report to be true. Where staff come forward to report their own serious misconduct under this policy, they will not be exempt from discipline appropriate to the serious misconduct; however, such reporting will be given appropriate consideration as a mitigating factor and these instances will be dealt with on an individual basis in accordance with this policy.

### 3.2. False or Frivolous Reports:

Knowingly making false allegations or making allegations in a malicious manner will be viewed as serious misconduct. Reports that are found to be frivolous, false, malicious or in bad faith will be dealt with in accordance with this policy.

### 3.3. Process for Reporting Serious Misconduct:

Staff aware of serious misconduct have a responsibility to report it either to their manager, department head or directly to the CAO (or designate) or Manager of Human Resources.

- Should the alleged serious misconduct involve the designate, staff should report the misconduct to the CAO, or should the alleged serious misconduct involve the CAO, staff should report the misconduct to the Director of Corporate Services.
- Staff are to report serious misconduct in writing (see "*Form for Reporting Serious Misconduct*"). Where an employee reports serious misconduct to his or her manager or department head verbally, the manager/department head receiving the report must document the discussion, confirm its accuracy with the employee and promptly forward the report in an impartial and strictly confidential manner to the CAO (or designate) with a copy to the department head whose area of responsibility is involved, unless the alleged misconduct involves the department head.

## 4. Confidentiality

4.1. The CAO (or designate) will make every reasonable effort to provide confidentiality to those reporting serious misconduct. Staff may remain anonymous when reporting; however, investigation may not be possible unless the source of the information is identifiable. The CAO (or designate) may investigate a report made on an anonymous basis and will determine whether to do so in light of all the circumstances, including the seriousness of the issues raised, the credibility of the concern and the likelihood of confirming the allegation from other sources. The investigation may result in discipline up to and including dismissal.

- 4.2. Investigations will be carried out in a manner that limits disclosure of the report and allegations on a “need to know” basis. Information about a report of serious misconduct will only be disclosed to those responsible for investigating and/or addressing the report. Reports will be made to the CAO (or designate) as identified under 7.0 – Retention and Documentation of Investigations.
- 4.3. Confidentiality extends to all records relating to reports, including but not limited to meetings, interviews and investigation results. Personal information, including the identity of the person reporting the alleged serious misconduct, will be protected in accordance with *the Freedom of Information and Protection of Privacy Act*. Individuals making a report, investigators, witnesses and individuals against whom a report has been made are expected to maintain confidentiality. Breaches of confidentiality may be regarded as serious misconduct and will be treated accordingly.
- 4.4. Although the CAO (or designate) will take all reasonable steps to protect the identity of the individual reporting the serious misconduct, information collected and retained may be required to be released by law including release required in court proceedings, arbitration or other legal proceedings.

## **5. Whistleblower Protection Against Retaliation**

### **5.1. Forms of Retaliation:**

Any form of retaliation, discrimination or reprisal against an employee because that person reported serious misconduct in good faith or because that person acted as a witness or otherwise participated in an investigation in good faith will be considered a serious violation of this policy. Such retaliatory actions are themselves serious misconduct and may result in discipline up to and including dismissal.

### **5.2. Reporting Retaliation:**

If an employee believes that they have been subjected to retaliation as set out above, that person may submit a written report to the CAO (or designate), who will ensure the allegation is appropriately investigated

## **6. Investigations**

### **6.1. Investigation Process:**

The CAO (or designate) has the primary responsibility for investigating allegations of serious misconduct. All allegations will be investigated in an impartial and timely manner. The CAO (or designate) will review and assess the seriousness of all reports promptly and determine the manner in which the report will be investigated. This determination will not be influenced by the position or length of service of the employee(s) accused of serious misconduct. At the CAO’s or designate’s discretion, an investigation may be carried out by the CAO or designate directly assigned to management in the area affected, assigned to an investigative team, assigned to an independent third party or re-directed to a more appropriate existing process.

### **6.2. Material Financial Concerns:**

If upon initial assessment it appears that the concern raised could materially affect the financial position of the District or the integrity of the District’s system of internal controls, the CAO (or designate) will advise the Director of Financial Services. Should the alleged misconduct involve the Director of Financial Services, the CAO will advise an alternate as appropriate. The CAO (or designate) will notify the Director of Corporate Services of the amount of any potential loss for insurance purposes. The District will make every reasonable effort to pursue the recovery of District losses from the offender or other appropriate sources.

6.3. *Criminal Activity and Other Illegal Conduct:*

In circumstances where it appears that a criminal act may have occurred, the CAO (or designate) may report the matter to the District of Oak Bay Police. In circumstances where it appears that there may have been violations of other laws, the CAO (or designate) may advise the appropriate enforcement agency.

6.4. *Acknowledging Reports:*

Within ten working days of a report being received, the CAO (or designate) will respond in writing to the employee making the report acknowledging that the allegation of serious misconduct has been received. Subject to legal constraints, the CAO (or designate) will also inform the employee making the report at the conclusion of any investigation. The CAO (or designate) may not be able to disclose the precise action being taken where doing so would be contrary to the *Freedom of Information and Protection of Privacy Act* or other requirements for confidentiality.

6.5. *Opportunity to Respond to Allegations:*

In all but exceptional circumstances, individuals accused of serious misconduct will be given an opportunity to know and respond to the allegations made.

6.6. *Consequences of Serious Misconduct:*

Where the investigation reveals that serious misconduct has occurred, the District's response may include but is not necessarily limited to:

- education and training for the person who committed the serious misconduct;
- review and modification of District policies, procedures and practices, if necessary, to ensure that the District better address or prevent future serious misconduct;
- notification of Council, the District's auditors and appropriate law enforcement authorities or other oversight bodies;
- disciplinary action, up to and including dismissal.

It is understood that Unionized staff may grieve any disciplinary action under the applicable collective agreement.

## **7. Retention and Documentation of Investigations**

The CAO (or designate) will document the results of each investigation in a confidential report. A summary of reports made under this policy and outcomes of subsequent investigations will be submitted annually to Council. The summary of reports will also be available for review by external auditors, external legal counsel or other advisors hired in connection with the complaints, or as otherwise required by law. Disclosure of such documentation to any other third party will require approval of the CAO to ensure that privilege of such documentation is properly maintained.

## **8. Exceptions (Elected Officials)**

This policy does not provide reporting procedures for the serious misconduct of elected officials of the District. In that situation, a person may report the serious misconduct to the CAO (or designate) for referral as appropriate. Persons reporting in good faith will be afforded the protections against retaliation provided by this policy.

## **9. Mitigation of Further Risk**

The CAO (or designate) will conduct a review of each investigation report where serious misconduct was found to have occurred and will assign responsibility to ensure steps are taken to address underlying causes and to then take appropriate actions to mitigate the risk of further occurrences.

## **10. Media**

Concerns regarding serious misconduct may have a significant impact on the District's legitimate interests. Staff have a responsibility to use the internal whistleblower reporting process when they have such concerns. Matters covered by this policy are considered confidential and breaches of that confidentiality, including making public statements or disclosing information to the media, will be dealt with in accordance with this policy.

## **11. Collective Agreements/Federal or Provincial Legislation**

In the event that any portion of this policy is inconsistent with a binding collective agreement of the District or federal or provincial legislation, that portion and only that portion of the policy will have no application to the extent of that inconsistency. All other portions of the policy will continue in full force and effect.

**DISTRICT OF OAK BAY  
FORM FOR REPORTING SERIOUS MISCONDUCT**

This form should be completed by anyone aware of serious misconduct and forwarded to the appropriate individual as outlined in the Whistleblower – Reporting, Investigation and Protection Policy.

**TO BE COMPLETED BY INDIVIDUAL RAISING CONCERN**

SUMMARY OF INCIDENT (Include dates, times, individuals involved – use reverse side if required):

*I hereby declare that I am raising this concern in good faith and have reasonable grounds to believe the information above is accurate and true.*

Name (optional)	Signature (optional)
Date	

Staff making a report under this policy are encouraged to provide their name in confidence, which permits for follow up questions and clarification if necessary. Investigation may not be possible unless the source of the information is identifiable. The CAO or designate may investigate a report made on an anonymous basis and will determine whether to do so in light of all the circumstances, including the seriousness of the issue raised, the credibility of the concern and the likelihood of confirming the allegation from other sources.

**TO BE COMPLETED BY CAO (OR DESIGNATE)**

ACTION TAKEN:

Signature of CAO (or designate)	Date

*The collection of personal information is authorized under section 26(c) of the Freedom of Information and Protection of Privacy Act. It is collected for purposes of supporting activities provided for in the District's Whistleblower – Reporting, Investigation and Protection Policy. Questions about the collection of personal information can be directed to the District's Privacy Officer at 2167 Oak Bay Avenue, Victoria, BC, V8R 1G2, T: 250-598-3311, E: foi@oakbay.ca.*