



WHISTLE BLOWING POLICY

2023 – 2024F/Y

King Sabata Dalindyebo Municipality Whistle-Blowing Policy

TABLE OF CONTENTS:

1. BACKGROUND	3
2. LEGISLATIVE FRAMEWORK.....	3
3. PURPOSE OF THE POLICY	3
4. SCOPE OF THE POLICY	3
5. DEFINITION OF TERMS	4
6. THE POLICY STATEMENT.....	6
7. WHO CAN RAISE A CONCERN?	6
7.1 Staff Members	6
7.2 Third parties and community members	7
8. CULTURE OF OPENNESS & TRANSPARENCY	7
9. MUNICIPAL RESPONSIBILITY	7
9.1 Your safety.....	7
9.2 Your confidence	8
9.3 How should King Sabata Dalindyebo Municipality handle the concern.	8
10. HOW TO RAISE A CONCERN INTERNALLY.....	9
11. HOW TO RAISE A CONCERN EXTERNALLY	9
12. IF YOU ARE DISSATISFIED.....	9
13. CREATING AWARENESS.....	10
14. ADMINISTRATION.....	10
15. ANONYMITY AND CONFIDENTIALITY	10
16. APPROVAL OF WHISTLE BLOWING POLICY:.....	10

King Sabata Dalindyebo Municipality Whistle-Blowing Policy

1. BACKGROUND

This policy is intended to make clear that King Sabata Dalindyebo Municipality is committed to the fight against fraud and corruption whether the perpetrators are internal or external. The Whistle-blowing policy and its procedures is part of the Municipality's commitment to working towards a culture of openness and transparency. Confidentiality must be maintained, to the extent provided by the law, and nobody must be penalized for disclosing in good faith, information that might be in the King Sabata Dalindyebo Municipality's interest.

2. LEGISLATIVE FRAMEWORK

This policy is derived from and must be read in conjunction with the following relevant legislation and guidance, which is not repeated in detail here:

- The Constitution of the Republic of South Africa Act No. 108 of 1996:
- Municipal Systems Act No 32 of 2000:
- Municipal Finance Management Act No, 56 of 2003
- The Protected Disclosures Act, Act No. 26 of 2000, As amended.
- South African Criminal Procedure Act No. 51 of 1977
- and Prevention and Combating of Corrupt Activities Act, Act No. 12 of 2004

3. PURPOSE OF THE POLICY

The purpose of this policy is to provide means by which community members, council members, staff members and any stakeholder can raise concerns through appropriate channels where they have reasonable grounds for believing that there is fraud and corruption within the municipality.

The Protected Disclosure Act, Act 26 of 2000, provides protection to employees for disclosures made without malice and in good faith, in defined circumstances.

In terms of the Protected Disclosure Act employees can blow the whistle on fraud and corruption in the working environment without fear of suffering an occupational detriment as defined by the Act. King Sabata Dalindyebo Municipality's management encourages staff to raise matters of concern responsibly through the procedures laid down in this policy document.

The Prevention and Combating of Corrupt Activities Act, Act No. 12 of 2004 provides for measure to prevent, combat corruption and corrupt activities, investigative measures and penalties and related matters.

4. SCOPE OF THE POLICY

This policy is designed to deal with concerns raised in relation to issues relating to fraud, corruption, misconduct, and malpractice within King Sabata Dalindyebo Municipality. The policy does not apply to personal grievances, which are dealt with under existing procedures on grievance, discipline, and misconduct. Details on these procedures are obtainable from department of Corporate Services. The policy covers all genuine concerns raised including but not limited to:

King Sabata Dalindyebo Municipality Whistle-Blowing Policy

- a) Financial misconduct
- b) Health and safety risks
- c) Environmental damage
- d) Unfair discrimination
- e) Corruption and misconduct
- f) Attempts to suppress or conceal any information relating to any of the above.

If during investigation of any concern raised in relation to the above matters it appears to the investigator that concerns raised relate more appropriately to grievance or discipline, those procedures should be evoked.

5. DEFINITION OF TERMS

- a) Fraud is defined as the unlawful act or omission by which misrepresentation is made with the intention to defraud or making a misrepresentation which causes actual prejudice, or which is potentially prejudicial to another.
- b) Corruption in terms of section 3 of the Prevention and Combating of Corrupt Activities Act, Act No. 12 of 2004 is committed by;
 - ✓ any person who, directly or indirectly accepts or agrees or offers to accept any gratification from any other person,
 - ✓ whether for the benefit of himself or herself or for the benefit of another person gives or agrees or offers to give any other person any gratification,
 - ✓ whether for the benefit of that other person or for the benefit of another person,
 - ✓ in order to act,
 - ✓ personally, or by influencing another person to act in a manner that amounts to the illegal, dishonest, unauthorized, incomplete or biased: or
 - ✓ misuse or selling of information or material acquired during the exercise, carrying out or performance of any powers.Duties or functions arising out of a constitutional, statutory, contractual or any legal obligation that amounts to:
 - (i) Abuse of a position of authority
 - (ii) Breach of trust; or
 - (iii) Violation of a legal duty or a set of rules designed to achieve an unjustified result; or that amounts to any other unauthorized or improper inducement to do or not to do anything that is guilty of the offence of corruption.
 - (iv) Corruption is further defined as the abuse of a position of employment by; the offering or acceptance of a benefit that is not legally due for the commission of an act in connection with that position of employment.

The following are examples of different types of corruption:

a) Bribes

Is the offering, giving, receiving, or soliciting of any item of value to influence the actions of an official or other person in charge of a public or municipal duty.

Essentially, bribery is offering to do something for someone for the expressed purpose of receiving something in exchange.

Gifts of money or other items of value which are otherwise available to everyone on an equivalent basis, and not for dishonest purposes, is not bribery.

King Sabata Dalindyebo Municipality Whistle-Blowing Policy

Offering a discount or a refund to all purchasers is a legal rebate and is not bribery. For example, it is legal for an employee of the municipality involved in electric rate regulation to accept a rebate on electric service that reduces their cost for electricity, when the rebate is available to other residential electric customers.

Giving the rebate to influence them to look favourably on the electric utility's rate increase applications, however, would be considered bribery.

A bribe is the gift bestowed to influence the recipient's conduct. It may be money, goods, rights in action, property, preferment, privilege, emolument, objects of value, advantage, or merely a promise to induce or influence the action, vote, or influence of a person in an official or public capacity.

b) Illegal Gratuity

Is a lesser-included offense of bribery and It is an extra "thank you" or "reward" payment to an official for the performance of normal duties. An illegal gratuity does not require proof if intent is to influence.

c) Extortion

Forcing a person or entity to provide a benefit to a staff member, another person, or an entity in exchange for acting in a particular manner.

d) Kickbacks

In the commercial sense, are the giving or receiving anything of value to influence a business decision without the employer's knowledge and consent and it is a negotiable bribe.

e) Collusion

"An agreement between two or more persons to defraud a person of his rights. It is a conspiracy or concert of action between two or more persons for fraudulent or deceitful purposes." - Black's Law Dictionary

f) Conflict of Interest

Refers to situations in which financial or other personal considerations may compromise, have the appearance of compromising, an employee's professional judgment in administration, management, instruction, research, and or other professional activities.

g) Corruption

Anybody who (a) accepts any gratification from anybody else, or (b) offers or gives any gratification (benefit) to anybody else in order to influence the receiver to conduct herself or himself or itself in a way which amounts to the unlawful or irregular exercise of any duties, commits corruption.

h) Fraud

False representation of a matter of fact whether by words or by conduct, by misleading allegations, or by concealment of what should have been disclosed that deceives and is intended to deceive another so that the individual should act upon it to her or his legal injury'.

Fraud is a deliberate act of deception by whatever means aimed at personal gain, material or otherwise at the expense of the victim.

King Sabata Dalindyebo Municipality Whistle-Blowing Policy

i) Favouritism

This involves the provision of services or resources according to personal affiliation (for example ethnic or religious) of a public servant. Example: A regional manager in a particular province ensures that only persons from the same ethnic group are successful in tendering for a supply of food.

j) Abuse of power

This involves public servant using his or her vested authority to improperly benefit another public servant, person or entity (or using vested authority to improperly discriminate against another public servant, person or entity) Example: during a tendering process but before actual selection of a successful contractor, the head of department expresses his or her wish to see the contract awarded to a specific.

k) Gift

A gift or a present is an item given to someone without the expectation of payment.

l) Insider Trading

It is the use of privileged information and knowledge that a public servant possesses because of his or her office to provide unfair advantage to another person or entity to obtain a benefit.

m) Embezzlement

This involves the theft of / misappropriation resources by persons entrusted with authority and control of such resources.

6. THE POLICY STATEMENT

- a) The launching of the anti-corruption strategy and its eventual roll-out to all 39 Municipalities of the EC province preceded and required a municipality to develop its own Anti- corruption and anti- fraud policy and Whistleblowing Policy
- b) The Whistleblowing Policy of the KSD municipality supports and fosters a culture of Zero Tolerance towards fraud and other acts of dishonesty, by providing means for reporting any acts of fraud and corruption.
- c) These and Corruption controls include the existing financial and other non-financial controls and checking mechanisms as prescribed in the systems, policies, procedures, rules, and regulations of the KSD.
- d) The efficient application of the Municipal Management Finance Act ("MFMA"), the Protected Disclosures Act, Act No. 26 of 2000, As amended, Prevention and Combating of Corrupt Activities Act, Act No. 12 of 2004 and instructions contained in the KSD policies, procedures, circulars, and manuals are one of the most important duties to be applied by every employee in the execution of their daily tasks.

7. WHO CAN RAISE A CONCERN?

7.1 Councillor and or Staff Members

Any member of council and staff who has a reason to believe that there is corruption or misconduct relating to any of the matters specified above may raise a concern under the procedure detailed in this policy.

King Sabata Dalindyebo Municipality Whistle-Blowing Policy

Concerns must be raised without malice, in good faith and not for personal gain and the individuals must reasonably believe that the information disclosed, and any allegations contained in it, are substantially true.

The issue raised may relate to a councillor or manager, another member of staff, a group of staff, the individual own section or different section of the municipality. The perpetrator can be an outsider, an employee, a manager, a customer, or an ex-employee. You may even be aware of a system or procedure in use, which may cause King Sabata Dalindyebo Municipality to transgress legal obligations.

7.2 Third parties and community members

King Sabata Dalindyebo Municipality recognizes that it needs a channel through which suppliers, rate payers and other community members can report irregular activities, free from victimisation. The primary means of detecting fraud shall always remain a sound system of internal control and regular internal audits.

These measures are supplemented with a fraud-reporting channel where information regarding fraud, theft and corruption is collected, and decisive corrective and protective steps are taken to limit the municipality's exposure to further or future loss.

Vital to this function is the assurance of anonymity, commitment to investigate all irregularities, protection of the whistle-blower and consistent application of the Anti - Fraud Policy, regardless of the seniority of the alleged offender.

Any suspected or actual fraud must be reported to the numbers listed on municipal website or those in paragraphs ten (10) of this policy. All calls should be treated with the utmost confidentiality.

8. CULTURE OF OPENNESS & TRANSPARENCY

King Sabata Dalindyebo Municipality commits itself to encouraging a culture that promotes openness and transparency.

This must be done by:

- a) Involving employees, listening to their concerns, and encouraging the appropriate use of this policy/process on whistle blowing promoted by Senior Management.
- b) This policy must be issued to all existing employees and to each new employee.
- c) Educating/training/informing/explaining to employees what constitute fraud, corruption and malpractice and its effect on King Sabata Dalindyebo Municipality.
- d) Promoting awareness of standards of appropriate and accepted employee conduct and establishing common understanding of what is acceptable and what is unacceptable behaviour.
- e) Encouraging unions to endorse and support this approach.
- f) Having policy to combat fraud.
- g) Annual reporting to Council on the number of fraud/corruption matters reported and the outcomes.

9. MUNICIPAL RESPONSIBILITY

9.1 Your safety

Management is committed to this policy. King Sabata Dalindyebo Municipality should ensure that any member of staff who makes a disclosure in the above-mentioned circumstances is not penalized or suffer any occupational detriment for doing so.

King Sabata Dalindyebo Municipality Whistle-Blowing Policy

Occupational detriment as defined by Protected Disclosure Act includes being dismissed, suspended, demoted, transferred against your will, harassed, or intimidated, refused a reference, or being provided with an adverse reference, because of your disclosure.

If someone raises a concern in good faith in terms of this policy, must not be at risk of losing his/her job or suffering any form of retribution as a result.

This assurance is not extended to employees who maliciously raise matters they know to be untrue. A member of staff who does not act in good faith or who makes an allegation without having reasonable grounds for believing it to be substantially true, or who makes it maliciously, may be subjected to disciplinary proceedings.

The identity of third parties that raise concerns regarding transgressions of law by municipal officials must not be revealed, except when required by law.

9.2 Your confidence

In the view of the protection offered to a member of staff raising a bona fide concern, it is preferable that the individual puts his/her name to the disclosure. King Sabata Dalindyebo Municipality does not tolerate the harassment or victimization of anyone raising a genuine concern.

However, the municipality recognises that one may nevertheless wish to raise a concern in confidence under this policy. King Sabata Dalindyebo Municipality should not disclose the identity of anyone without consent and will only do so when required by law. However, expects the same confidentiality regarding the matter from anyone concerned.

If a situation arises where a matter is not resolved, the municipality without revealing the identity (for example where evidence is needed in court) should discuss with the affected person on whether to or how to proceed with the matter reported.

9.3 How should King Sabata Dalindyebo Municipality handle the concern.

Once a whistle-blower has told the municipality a concern, municipality should examine it, to assess what prompt initial action should be taken. However, the actions to be taken depends on the merits of each case, as some cases may require special skills to resolve while some can be resolved internally. This may involve an internal inquiry or a more formal investigation e.g., SAPS or other relevant law enforcing agency.

The issue raised by whistle-blower must be acknowledged as soon as possible. If it is requested, an indication of how the King Sabata Dalindyebo Municipality proposes to deal with the matter and a likely time scale could be provided. If the decision is made not to investigate the matter reasons must be given. KSDLM must tell the whistle-blower who will be handling the matter, how the whistle-blower can contact employee handling the matter and whether whistle-blowers further assistance may or will be needed.

When whistle-blower raises a concern, the whistle-blower must allow the investigation process to unfold to its full length regarding the matter reported. If as the whistle-blower you have any personal interest in the matter, do tell KSDLM at the outset. If the whistle-blowers concern falls more properly within grievance procedures, KSDLM must inform the whistle-blower.

While the purpose of this policy is to enable KSDLM to investigate possible malpractice and take appropriate steps to deal with, the King Sabata Dalindyebo Municipality must give the whistle-blower as much feedback as possible and properly can.

King Sabata Dalindyebo Municipality Whistle-Blowing Policy

If requested, KSDLM should confirm our response to whistle-blower in writing. Please note, however, that KSDLM may not be able to tell you the precise action that will be taken where this could infringe a duty of confidence owed by KSDLM to someone else.

10. HOW TO RAISE A CONCERN INTERNALLY

- a) If a whistle-blower has a concern about malpractice, KSDLM hopes you will feel free to raise it first with your manager/supervisor. This may be done verbally or in writing. However, reporting in writing is encouraged.
- b) If a whistle-blower feels unable to raise the matter with manager/supervisor, for whatever reason, please raise the matter with the King Sabata Dalindyebo Internal Audit or Risk Management Units at 047 501 4204 / 4062. Please state if the whistle-blower wishes to raise the matter in confidence so that appropriate arrangements can be made.
- c) If these channels have been followed and whistle-blower still has a concern, or if feels that the matter is so serious that it cannot be discussed with any of the above, please contact the Municipal Manager at 047 501 4238 and or to call KSD Municipal Fraud and Corruption Hotline number is: **0800 360 634**
- d) Should whistle-blower have exhausted these internal mechanisms or where there is substantial reason to believe that there would be a cover-up, that evidence could be destroyed or that the matter might not be handled properly, you may raise the matter in good faith with the Chairperson of the Audit and Performance Audit Committee whose details are published in municipal website.
- e) If these administrative channels have been exhausted, the matter might be escalated to the following political officer bearer's office; **Executive Mayor**; Tel No: 047 501 4409; to **Speakers Office** Tel No: 047 501 4405 or to **Chief Whips Office**; Tel No: 047 501 4306

11. HOW TO RAISE A CONCERN EXTERNALLY

While KSDLM hopes this policy gives whistle-blowers the reassurance needed to raise matters internally, KSDLM also recognizes that there may be circumstances where whistle-blowers can properly report matters to outside bodies, such as regulators or the police etc.;

- a) Office of the Auditor-General of South Africa: Tel no. 012 426 800 of Fax to 012 426 8257
- b) National Anti-Corruption Forum: Tel no. 0800 701 701
- c) Corruption Watch: Tel 011 447 1472 or you can also send us a short-code SMS, which costs R1 per message. Contact us on 45142 (SMS line)
- d) Whistle-blower may contact the Public Protector on 0800 11 2040.
- e) The presidential hotline 17737 (free from all phones) may also be contacted.
- f) Special Investigations Unit: 0800 037 774, SMS 33490,
siu@whistleblowing.co.za

12. IF YOU ARE DISSATISFIED

If the whistle-blower is unhappy with our response, remember to go to the other levels and bodies detailed in this policy. While KSDLM cannot guarantee responses to all

King Sabata Dalindyebo Municipality Whistle-Blowing Policy

matters in the way that might please everyone, KSDLM commits to handling the matter fairly and properly.

13. CREATING AWARENESS

It is the responsibility of all councillors and managers to ensure that all employees are made aware of and receive appropriate training and education with regards to this policy. This policy should also be publicized following the process that is being followed by the municipality to ensure that community members are aware of it, so that they can use it accordingly.

14. ADMINISTRATION

The custodian of this policy is the Municipal Manager, who is supported in its implementation by the Council and all managers, and staff of King Sabata Dalindyebo Municipality. The Municipal Manager is responsible for the administration, revision, and interpretation of this policy.

15. ANONYMITY AND CONFIDENTIALITY

The King Sabata Dalindyebo Municipality is committed in protecting whistleblowers by ensuring that reported incident will be investigated and reported anonymously and with outmost confidentiality. This will be done though we would encourage or be willing to know the whistleblower for purposes of gathering further information and evidence.

16. APPROVAL OF WHISTLE BLOWING POLICY:

Council from time to time will be advised by Audit and Performance Committee on appropriate improvements required and made on the policy. The policy should be reviewed and approved annually by KSD Municipal Council. However, when there are compelling reasons for update like change of law and regulations, the policy should be reviewed, approved accordingly with that change.

PREPARED BY


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Chief Risk Officer

DATE

REVIEWED BY


N. Pakade
Municipal Manager

09 November 2023
DATE

ADOPTED BY COUNCIL

CONFIRMED BY


Cllr. N Siyo-Sokuthu.
Hon. Council Speaker

Date