


# Ta'an Kwäch'än Council Whistleblower Policy



**Approved: May 15, 2024**

This *Whistleblower Policy* approved by Chief on this 23 day MAY, 2024



Chief Amanda Leas

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**1.0 PREAMBLE**

1.1 Ta'an Kwäch'än Council (TKC) is committed to an open, ethical, accountable and transparent government. It is in the public interest to maintain and enhance confidence in TKC and its employees by providing for the disclosure of wrongdoing with respect to TKC operations.

**2.0 PURPOSE**

2.1 The purpose of this Policy is to demonstrate our commitment to integrity and to provide a safe means for employees and others to raise concerns about a potential or suspected Wrongdoing by TKC Government.

**3.0 APPLICATION**

3.1 This Policy applies to all employees, elected officials, councillors, contractors, and committee members.

3.2 A Complainant is not entitled to the protections of this Policy unless they reasonably believe that the information reported is, or is about to become, a Wrongdoing and reports the information in Good Faith.

3.3 This Policy does not apply if the matter falls under the jurisdiction of the Judicial Council.

**4.0 DEFINITIONS**

4.1 In this policy,

"Complainant" includes all employees, elected officials, councillors, contractors, and committee members who make a Disclosure of Wrongdoing or complaint of reprisal;

"Disclosure" means a Disclosure of Wrongdoing made in Good Faith by a Complainant in accordance with this Policy;

"Executive" includes Executive Director, Chief, and Deputy Chief;

"Good Faith" the Complainant has reasonable cause to believe an action or omission is true and the complaint is made without malice or consideration of personal benefit;

"Reprisal" includes any of the following measures taken against a Complainant because the Complainant, in good faith, sought advice about making a Disclosure, made a Disclosure, co-operated in an investigation under this Policy or declined to participate in a Wrongdoing:

- disciplinary measure;
- demotion;
- contract/appointment not renewed;
- termination of employment;
- intimidation or coercion; or

- any measure, or threat to take any measure, that adversely affects the individual's employment or working conditions at TKC.

"Respondent" means the individual(s) that has been alleged to have engaged in Wrongdoing;

"Third Party Investigator" means a company not affiliated with TKC in any way. Private contractors will not be considered to be a third part investigator.

"Whistleblowing" means submitting a Disclosure of Wrongdoing to one or more of the parties identified within this policy;

"Wrongdoing" means

- a contravention of any territorial, federal or TKC law or regulation;
- a serious breach of TKC policy or code of conduct;
- an act or omission that creates a substantial and specific danger to the life, health or safety of individuals, or to the environment;
- gross mismanagement of funds or assets; or
- knowingly directing or counselling a person to commit a Wrongdoing.

## 5.0 ROLES AND RESPONSIBILITIES

5.1 All employees, elected officials, councillors, contractors, and committee members are expected to:

- a. handle confidential and proprietary information responsibly and in Good Faith;
- b. disclose any Wrongdoing or suspected Wrongdoing to the Human Resources Manager or their manager; and
- c. act in Good Faith when reporting any suspected Wrongdoing and to refrain from making vexatious or unsubstantiated allegations with the intent to harm the reputation of any individual or the government of TKC.

5.2 Managers and Executive are expected to:

- a. provide education and advice about this Policy to employees;
- b. ensure that employees understand the requirement to use TKC information responsibility;
- c. ensure that employees are aware of the processes available to them if they wish to disclose information concerning a Wrongdoing;
- d. promote openness in their interactions with employees;
- e. be open and accessible to employees who express concerns about suspected Wrongdoing;
- f. act promptly and in Good Faith when employees raise concerns about suspected Wrongdoing;
- g. co-operate in the enforcement of this Policy and in conducting any related investigations; and
- h. protect employees who report suspected Wrongdoing from Reprisals.

5.3 The role of the Human Resources Manager is to act as a neutral party to investigate, facilitate and process internal reports of suspected Wrongdoing, and/or contract a neutral third-party investigator to investigate the Wrongdoing. If the Human Resources Manager

is a TKC citizen, the Human Resources Manager will request that the Executive Director identify a non-citizen member of the TKC Executive to take their place in fulfilling all aspects and roles identified within this policy. In addition to the roles and responsibilities outlined elsewhere within this policy, the Human Resource Manager's role includes:

- a. providing education and advice on the terms of this Policy;
- b. ensuring that employees have ready access to this Policy;
- c. assisting individuals who wish to file an internal disclosure report;
- d. receiving and processing internal disclosure reports;
- e. accessing internal disclosure reports and determining if there are sufficient grounds to warrant further action;
- f. investigating complaints of Wrongdoing and Reprisal while upholding the principles of natural justice, due process and procedural fairness;
- g. determining what action must be taken to address the suspected Wrongdoing, which may include providing a report to Executive, Council or to the Royal Canadian Mounted Police, where necessary;
- h. implementing measures to protect individuals who report suspected Wrongdoing in Good Faith from Reprisals;
- i. making recommendations for sanctions if an internal disclosure report is filed maliciously or in bad faith; and
- j. keeping records of all internal disclosure reports and any investigations or remedial action taken.

## **6.0 POLICY**

- 6.1 Anyone filing a complaint under this Policy must be acting in Good Faith and have reasonable grounds for believing the information disclosed indicates a Wrongdoing.

### **PART ONE REQUEST FOR ADVICE**

## **7.0 REQUEST FOR ADVICE**

- 7.1 Persons considering making a Disclosure can obtain informal advice from the human resources manager, a supervisor or manager.
- 7.2 The human Resources Manager, supervisors, managers, and Executive must be trained in this Policy and subsequent Disclosure and Reprisal complaint procedures.
- 7.3 If contacted for advice, the Human Resources Manager must provide advice, in writing if requested, within 5 business days of the potential Complainant seeking advice on the potential Disclosure.
- 7.4 If there is a real or perceived conflict of interest, the person in conflict must immediately stop the process and advise both the Complainant and the Executive Director to that effect and exclude themselves from any further involvement.

## **8.0 CONFIDENTIALITY**

- 8.1 All persons are expected to exercise the highest degree of confidentiality relating to a request for advice about a Disclosure of Wrongdoing or a Disclosure of Wrongdoing they make or receive, or in relation to an investigation in which they may be involved.
- 8.2 Information that comes to a person's attention or knowledge through the performance of their duties under this Policy must not be disclosed except as required under this Policy, authorized by Judicial Council, or TKC legislation.
- 8.3 The Human Resources Manager, supervisors, managers and Executive are expected to ensure that all records containing information related to a request for advice, Disclosure of Wrongdoing, or complaint of reprisal are stored separately from all other records and that their access is restricted to only those individuals who have a legitimate need to access them. Human Resources Manager shall have custody and control over Disclosure files.
- 8.4 Once the complaint is received by the Human Resources Manager, they will sign the attached commitment to confidentiality form. This same form will be signed by the complainant, and this form will be sealed in an envelope with the date and complaint file number clearly written on it, and will be securely stored in the Human Resources Managers files. The form shall not be viewed or opened until such a time where this form may be deemed evidence within a Judicial Council proceeding or a proceeding within the Canadian or Yukon Court system.

## **PART TWO DISCLOSURE OF WRONGDOING**

### **9.0 DISCLOSURE BY EMPLOYEE**

- 9.1 If a person reasonably believes that they have information that could show that a Wrongdoing has been committed or is about to be committed, the person may make a Disclosure to a manager or the Human Resources Manager.
- 9.2 Disclosers have the right to be represented or accompanied by another person of their choice, including legal counsel at their own cost.
- 9.3 If a Disclosure is made, the Human Resources Manager must be informed.

### **10.0 CONTENT OF DISCLOSURE**

- 10.1 A Disclosure must be in writing and must include the following information, if known
  - a. a description of the Wrongdoing;
  - b. the name of the individual(s) alleged to have committed or is about to commit the Wrongdoing;
  - c. the date of the Wrongdoing; and
  - d. any other pertinent information.
- 10.2 The individual receiving the Disclosure may request the Complainant to provide any additional information that may reasonably be required to investigate the matters set out in the Disclosure.

- 10.3 The Complainant may choose to disclose anonymously however this may impact human resource's ability to investigate the matter.

#### **11.0 DISCLOSURE DESPITE CONFIDENTIALITY LIMITATIONS**

- 11.1 A person may make a Disclosure under this Policy even if a provision in another policy, act, or regulation prohibits or restricts Disclosure of the information.
- 11.2 If a Disclosure involves personal or confidential information, the Complainant must take reasonable precautions to ensure that no more information is disclosed than is necessary to make the Disclosure.

#### **12.0 OTHER OBLIGATIONS TO REPORT NOT AFFECTED**

- 12.1 Nothing in this Policy relating to the making of a Disclosure is to be construed as affecting a Complainant's obligations under any other policy, act, or regulation to disclose, report, or otherwise give notice of any matter.

#### **13.0 PURPOSE OF INVESTIGATION**

- 13.1 The purpose of an investigation by the Human Resources manager into a Disclosure is to
- a. bring the Wrongdoing to the attention of the TKC Government;
  - b. recommend corrective measures that should be taken; and
  - c. promote public confidence in the administration of TKC.
- 13.2 Human Resources Manager are not required to investigate a Disclosure, and may cease an investigation, if they are of the opinion that
- a. the subject matter of the Disclosure could more appropriately be dealt with, initially or completely, according to a procedure provided for under a TKC, territorial or federal act; employment agreement; Judicial Council; or policy;
  - b. the Disclosure is frivolous or vexatious or has not been made in Good Faith or does not deal with a sufficiently serious subject matter;
  - c. Three years have elapsed between the date when the subject matter of the Disclosure arose and the date when the Disclosure was made, or the respondent is no longer affiliated with TKC in an employment, staff, or contracting capacity and where investigating it would not serve a useful purpose;
  - d. the Disclosure relates to a matter that results from a balanced and informed decision-making process on a public policy or operational issue; or
  - e. the Disclosure does not provide adequate particulars about a Wrongdoing that is required by paragraph 10.1(a).
- 13.3 The Human Resources Manager shall inform the complainant in writing, within 10 days of the complaint being submitted, beginning the day after the complaint is submitted, of whether or not the matter will proceed.
- 13.4 If the matter will not proceed further, then a decision needs to be made jointly between the HR Manager and the complainant about the most appropriate next steps to resolve the matter including processes not limited to



- a. The complainant and the HR Manager meeting to discuss the incident and a good path forward that may include employing other TKC policies, procedures, legislation, or dispute processes. This meeting will take place within 10-20 business days after the complainant is notified of the decision not to investigate the complaint.
  - b. Pursue the complaint through the adjudication process outlined in the Ta'an Kwäch'än Council Constitution.
  - c. Work with the HR Manager to explore mediation options.
- 13.5 Once a written copy of the alternative path forward that is decided upon jointly between the HR Manager and the complainant, the written copy of the alternative path forward will then be signed by both the HR Manager and the Complainant and will be filed securely in the Human Resources eManagers files, in a sealed envelope, for secure records management.
- 13.6 A Complainant may appeal the decision not to investigate to the Executive Director.

#### 14.0 INVESTIGATION PROCESS

- 14.1 If a complaint is deemed by the Human Resources Manager to be legitimate and requiring an investigation, the complainant shall be notified in writing within 5 business days that the investigation will begin. A further notification shall be delivered to the respondent within 5 business days of the Human Resources Manager deciding an investigation is appropriate.
- 14.2 Once the Human Resources Manager has deemed it appropriate for an investigation to take place, an investigation that includes but is not limited to the following steps will begin:
- a. The Human Resources Manager will, within 5 business days of the Human Resources Manager's decision to investigate, contract a third party to conduct the investigation.
  - b. The Third Party will separately contact the complainant and the respondent, in writing, within 15 business days of beginning the investigation to offer both the complainant and respondent an opportunity to meet with them to participate, separately, in the investigation.
    - 14.2.b.1 Once notified, in writing, the complainant and respondent have 10 business days from the date of the notification, to contact the Third-Party investigator to arrange an appointment with the Third-Party investigator to participate in the investigation.
    - 14.2.b.2 If the complainant or the respondent does not contact the investigator within 10 business days of the written notification, the complainant and/or the respondent will be deemed to have forfeited their right to participate in the investigation in totality.
  - c. The investigator shall provide a written report of the findings of the investigation that is inclusive the established facts, conclusions, and any recommendations regarding penalty or reconciliatory action to the Human Resources Manager and Executive.
  - d. The third-party investigator will conduct the investigation as quickly and comprehensively as practicable, and in no circumstances will an investigation process exceed 12 calendar months to complete, from the date that the contract with the Third-Party Investigator is signed to the day that the Third-Party Investigator submits their report to the TKC Human Resources Manager and Executive.
  - e. Once the Third-Party Investigator submits their final investigative report to the Human Resources Manager and Executive, the Human Resources manager must provide, in writing, notification of the closure of the investigation, possibly including any direct and relevant information to the complainant, within 10 business days of

receiving the final report. The Human Resources Manager shall ensure that the final report is shared with Council.

- f. The report will then be sealed in an envelope and stored physically in the Human Resources 'iManager's private files, and a digital copy will be stored on the Drive that only the Executive Director has access to.

## **15.0 INVESTIGATING OTHER WRONGDOINGS**

- 15.1 If, during an investigation of a Disclosure, the Human Resources Manager learns of or has reason to believe that another Wrongdoing has been committed, they may investigate that Wrongdoing.

## **16.0 NOTIFICATION OF PROPOSED STEPS**

- 16.1 When making recommendations under paragraph 13.1(b), the Human Resources Manager will request Executive to notify them within a specified time of the steps it has taken, or proposes to take, to give effect to the recommendations.
- 16.2 If the Human Resources Manager believes that Executive has not appropriately followed up on the recommendations or did not co-operate in the investigation in respect of the Disclosure, they must make a report on the matter to Council.

## **PART THREE REPRISAL**

### **17.0 PROTECTION OF COMPLAINANT FROM REPRISAL**

- 17.1 A person must not take Reprisal against another person or direct that one be taken against a person because the person has, in Good Faith
  - a. sought advice about making a Disclosure;
  - b. made a Disclosure;
  - c. co-operated in an investigation under this Policy; or
  - d. declined to participate in a Wrongdoing.

### **18.0 COMPLAINT OF REPRISAL**

- 18.1 A person who alleges a Reprisal has been taken against them may file a written complaint of reprisal with a manager or the human resources Manager.
- 18.2 A complaint of reprisal must be filed no later than 90 days after the day on which the Complainant knew, or in the Human Resources manager's opinion ought to have known, that the Reprisal was taken.
- 18.3 A complaint of reprisal may be filed after the period referred to in section 18.2 if the manager or the Human Resources Manager is of the opinion that it is appropriate considering the circumstances of the Complainant.

- 18.4 If a complaint of reprisal is made, a manager or the Human Resources Manager must notify Executive and Council.
- 18.5 If a complaint of reprisal is made under this Part, it does not disentitle a Complainant from commencing a procedure under another policy, act or regulation, or employment agreement.
  - a. If a Complainant does commence such a process, they must notify the Human Resources Manager immediately and the investigation will cease.

**19.0 CONTENT OF COMPLAINT OF REPRISAL**

- 19.1 A complaint of reprisal must include the following information, if known
  - a. a description and date of the relevant Wrongdoing;
  - b. a description of the Complainant's activity to which the alleged Reprisal relates;
  - c. a description and date of the alleged Reprisal; and
  - d. the name of the individual who has taken the alleged Reprisal.
- 19.2 The individual receiving the complaint of reprisal may request the Complainant provide any additional information that may be reasonably required to investigate the matters set out in the complaint.

**20.0 INVESTIGATION OF COMPLAINT OF REPRISAL**

- 20.1 Once a complaint is submitted and ready for investigation; a staff member of TKC who holds a position of managerial status or higher, who is a non-citizen and who does not have a direct or perceived conflict of interest will contract a third party investigator who is at arms length of TKC to conduct an investigation in full.

**21.0 NO DUPLICATION OF PROCEEDINGS**

- 21.1 The Human Resources Manager is not authorized to investigate a complaint of reprisal and must cease an investigation if the Complainant is actively pursuing a complaint or corrective action under another policy, act, or employment agreement.

**22.0 WHEN INVESTIGATION IS NOT REQUIRED**

- 22.1 The Human Resources Manager is not required to investigate a complaint of reprisal, and may cease an investigation, if they are of the opinion that
  - a. the subject matter of the complaint has been dealt with or could more appropriately be dealt with, initially or completely, according to a procedure provided for under another policy, act, or employment agreement; or
  - b. the complaint has not been made in Good Faith.
- 22.2 If the Human Resources Manager decides not to investigate or to cease an investigation of a complaint of reprisal, they must notify the Complainant, Executive, and Council and provide reasons in writing.

### **23.0 SETTLEMENT**

- 23.1 The Human Resources Manager may at any time during or after an investigation into a complaint of reprisal take any steps, they consider appropriate to help settle the complaint.
- 23.2 The terms of any proposed settlement relating to the Human Resources Manager recommendations, must be agreed upon by the Complainant and Executive.
- 23.3 If an agreement cannot be reached, the Human Resources Manager may act as an arbitrator and issue a settlement.

### **24.0 INVESTIGATION REPORT**

- 24.1 Upon completing an investigation in respect of a Reprisal, the Human Resources Manager must prepare a report containing their findings, the reasons for the findings, the agreed upon settlement, and any recommendations about the Reprisal.
- 24.2 The Human Resources Manager must give a copy of the report to the Complainant, Executive and Council.

### **25.0 DECISION OF TA'AN KWACH'AN COUNCIL**

- 25.1 Within 30 days of receiving the report from the HR Manager, Executive must
  - a. implement the agreed upon remedy as identified in the settlement;
  - b. decide whether to follow any recommendations in the report; and
  - c. give written notice of its decision to the Human Resources Manager and to the Complainant.
- 25.2 If Executive agrees to follow the recommendations, Executive must take any action required to implement the recommendations as soon as is reasonably practicable.
- 25.3 If Executive does not give notice within 30 days, Executive is deemed to have decided not to follow the recommendation(s).
- 25.4 If the Human Resources Manager believes that the Executive has not appropriately followed up on the settlement and/or recommendations or did not co-operate in the investigation in respect of the Reprisal, they must make a report on the matter to Council.

## **PART FOUR OFFENCES AND PENALTIES**

### **26.0 OFFENCES**

- 26.1 Any allegations that prove not to be substantiated by the Human Resources Manager and which prove to have been made maliciously or knowingly to be false will be viewed as an offence.

- 26.2 A person must not knowingly make a false or misleading statement.
- 26.3 A person must not wilfully obstruct someone in the performance of a function or duty under this Policy.
- 26.4 Knowing that a document or object is likely to be relevant to an investigation under this Policy, a person must not
  - a. destroy or alter the document or object;
  - b. falsify the document or make a false document;
  - c. conceal the document or thing; or
  - d. direct, counsel or cause, in any manner, a person to commit a Wrongdoing or Reprisal.

## 27.0 PENALTY

- 27.1 Dependent on the Human Resources Manager's findings of an offence having been committed, Executive and Council may
  - a. request the removal of a councillor, Chief, or Deputy Chief by the Judicial Council;
  - b. terminate the employee with cause;
  - c. suspend the employee without pay;
  - d. prohibit the individual to act in a volunteer, committee, or contractor capacity for TKC for five years; or
  - e. subject the individual to other appropriate penalties directed and approved by Council after thorough consideration during an in-camera session at a formal Council meeting.

## PART FIVE MISCELLANEOUS

### 28.0 AMENDMENTS

- 28.1 Developed policy may be amended at any time through approval of the Chief and Council.
- 28.2 This Policy is to be reviewed in five years to confirm the relevance, validity, and applicability.
- 28.3 The Executive Director is responsible for the maintenance and review of this Policy in conjunction with the Human Resources Manager.

### 29.0 ANNEXES

- 29.1 The following annexes are attached in the following order:

Complaint of Reprisal Form

Disclosure of Wrongdoing Form



## Complaint of Reprisal Form

Name:

Address:

Telephone:

Email:

Description and date of the wrongdoing related to the reprisal:

Description of the employee's activity to which the reprisal relates:

Date on which the reprisal occurred, if known.

Date on which you knew of the reprisal.

Description of the reprisal that has occurred/occurring (attach separate paper if more space is needed).

Name and title of each person involved in the reprisal.

Any other information you think is relevant:

I certify that this complaint of reprisal is made in good faith.

Signature:

Date:



## Disclosure of Wrongdoing Form

Name:

Address:

Telephone:

Email:

This Whistleblower Policy applies only to certain types of wrongdoings. From the list below, select the type of wrongdoing you are disclosing:

- a contravention of any territorial, federal or TKC law or regulation;
- a serious breach of TKC policy or code of conduct;
- an act or omission that creates a substantial and specific danger to the life, health or safety of individuals, or to the environment;
- gross mismanagement of funds or assets; or
- knowingly directing or counselling a person to commit a Wrongdoing.

If none of the above apply, the Whistleblower Policy does not apply to your wrongdoing. Consider other internal resolution mechanisms. If any of the above applies to your situation, proceed to the next question.

Name of the individual(s) alleged to have committed or is about to commit the wrongdoing?:

Date on which the wrongdoing occurred or may occur (if known):

Detailed description of the wrongdoing (attach separate paper if more space is needed):



Any other information you think is relevant:

I certify that this Disclosure is made in Good Faith.

Signature:

Date: