

SWELLENDAM MUNICIPALITY



ANTI-CORRUPTION AND FRAUD PREVENTION POLICY

2023-2024

APPROVED BY COUNCIL PER ITEM XXX ON XXX

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1. DEFINITIONS

“Accounting Officer” means the Municipal Manager referred to in Section 60 of the MFMA;

“Councillor” means a member of the municipal council of the Swellendam Municipality;

“Chief Financial Officer” means a Chief Financial Officer designated in terms of Section 80 (2) (a) of the MFMA;

“Designated official” means the individuals identified in a Municipality to receive reports of allegations of financial offences against councillors, currently the Municipal Manager, Speaker and Executive Mayor in terms of the terms of reference of the disciplinary board on financial misconduct;

“Disciplinary board” means a disciplinary board established in terms of paragraph 4 of Regulations on financial misconduct, 2014;

“Internal Audit” The Institute of Internal Auditors defines internal audit as an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes. The Internal Audit unit will evaluate and contribute to the improvement of risk management, control and governance systems through the annual internal audit programme and surprise audits;

“Investigator” means the disciplinary board, treasury, person or team conducting a full investigation in terms of paragraph 5 of Regulations on financial misconduct, 2014;

“Management” includes the Senior Management in terms of section 56 of the MSA and include Managers on the first three levels of the organisational structure;

“MFMA” means the Municipal Finance Management Act, 2003 (Act 56 of 2003);

“Staff” any employee not considered as Management, which is a full-time employee, an individual seconded or contracted to the Municipality in his / her personal capacity;

“Whistle-blower” any employee, ratepayer, member of the public or provider of goods and / or services or any other person reporting corruption in terms of this policy;

DESCRIPTION OF FRAUD AND CORRUPTION

The following definitions summarises the act of corruption and fraud to be dealt with in terms of this policy:

"Abuse of power / discretion" this involves for example a Municipal official using his or her vested authority to improperly benefit another Municipal official, person or entity (or using vested authority to improperly discriminate against another Municipal official, person or entity).

"Abuse of privileged information misconduct" this inter alia involves the use of privileged information and knowledge that a Municipal official or councillor possesses as a result of his or her office to provide unfair advantage to another person or entity to obtain a benefit, or to accrue a benefit to him or herself.

"Act of failure" omitting to report or refusing to report or act upon reports of any such irregular or dishonest conduct.

"Billing fraud" occurs when suppliers of goods and services to a Municipality overcharge or otherwise produce false invoices, and payment is secured on those with the help of an employee.

"Bribery" is the bestowing of a benefit in order to unduly influence a decision or action. It can be initiated by a person who seeks or solicits bribes or by a person who offers and then pays bribes. Bribery is the most common form of corruption. The 'benefit' of bribery can be virtually any inducement: money and valuables, company shares, inside information, sexual or other favours. Once bribery has occurred, it can lead to other forms of corruption. Public sector bribery can target any individual who has the power to make decisions or to take an action affecting others and is willing to resort to bribery to influence the outcome of that decision.

"Cheating" this type of corruption is usually perpetrated by an individual or a group of individuals who are out to influence or distort the truth for their selfish gains, e.g. taking leave without completing an application therefor.

"Fraud" is the unlawful and intentional making of a misrepresentation / deceit resulting in actual or potential prejudice to the Municipality and include; Financial Statement fraud, cheque fraud, conflict of interest, gifts and Electronic Fund Transfer fraud.

"Collusion" means conspiring with others by staff/councillors/bidders/suppliers especially in planning fraud or conniving and entering into secret agreement for wrongful and improper purposes.

"Conflict of interest" this involves a Municipal official failing to disclose within a reasonable time in writing to the Municipal manager:

- (a) full particulars of any benefit / purchase by an official that he / she might have received from a supplier of goods and services, and / or any interest that his / her spouse, partner or close family member stands to acquire from any contract / friendship concluded with a supplier of goods and services of the Municipality;
- (b) all relationships / friendships with any supplier of goods and services to Swellendam Municipality; - and
- (c) any private business / venture that any employee is involved in.

"Conspiracy" any person who unlawfully and intentionally conspires with any other person to aid or procure a commission from or to commit any offence, whether at common law or against statute or a statutory regulation, shall be guilty of an offence and liable on conviction to the punishment to which the person convicted of actually committing offence would be liable.

"Corporate corruption / theft" this occurs in relationships between officials and the suppliers or clients, when officials use the Municipal resources / contracts for private gain, at the expense of the Municipality.

"Corruption" could be summarised as giving or offering; receiving or agreeing to receive; obtaining or attempting to obtain any benefit 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 any act in relation to that power or duty.

"Cronyism" it is the practice of appointing friends to high-level, especially political posts regardless of their suitability.

"Embezzlement" this is a form of theft. It is the appropriation of someone else's property that is already in your possession or control. It is something referred to as theft by conversion in that someone else's property is converted into your own private use e.g. False accounting entries, Unauthorized withdrawals, Unauthorized disbursements, Paying personal expenses from bank funds, Unrecorded cash payments, Theft of physical property, and Moving money from dormant accounts.

"Equipment or resources misconduct" where the Municipality's equipment is used for personal benefit and include;

- (a) Personal use of Municipal or vehicles hired by the Municipality;
- (b) Theft of any equipment and or material or other items; and
- (c) Irregular / unauthorised destruction, removal or abuse of records (including intellectual property) and equipment.

"Ethical" being in accordance with the accepted principles of right and wrong that govern the conduct of a profession e.g. good, just, fitting, fair, responsible, principled, correct, decent, proper, upright, honourable, honest, righteous and virtuous. The Municipalities policy on Ethical behaviour must be read with the policy.

"Extortion" is committed when a person unlawfully and intentionally obtains some advantage which is not due to him from another by subjecting the latter to pressure which induces him to hand over the advantage. It could also be used to coerce individuals into 'cooperating' in a particular manner or towards a specific cause.

"Favouritism / discrimination" it is the practice of giving special treatment to a person or a group of people. This involves the provision of services or resources according to personal affiliation (for example; ethics, religious, gender, geographical factors, political or other affiliations).

"Forgery" is the unlawful and intentional making of a false document with intent to defraud which can include cheques and handwritten receipts.

"Financial misconduct" to be read with sections 170 to 173 of the MFMA and the description of financial misconduct and financial offences as defined in the MFMA and the regulations on financial misconduct, 2014, and where individuals or companies have fraudulently obtained money from the Municipality by:

- (a) Making profit from insider knowledge;
- (b) Irregular conspiracy in awarding contracts or orders for goods and / or services;
- (c) Suppliers submitting invalid invoices or invoicing for work not done;
- (d) Revenue fraud; and
- (e) Theft or improperly handling or reporting of monies or financial transactions.

"Forms of Corruption" as described in these definitions are by no means exhaustive as corruption appears in many forms and it is virtually impossible to list all of them.

"Friendship" is a form of interpersonal relationship generally considered to be closer than association / colleagues. For this purpose it would mean people connecting/communicating/spending time with one another after office hours as friends.

"Looting / robbing" this is when an individual is involved in the illegal and illegitimate transfer / handover of money or goods from the Municipality or the Municipal bank account to another company / individual. Looting may also take the form of diversion of goods and services from an intended destination to another (un-intended one). An example of this type of corruption is where suppliers or contractors collude with staff to be paid for goods and services that were never delivered.

"Maladministration" is a political term which describes the actions of a government body which can be seen as causing an injustice. Municipalities can only investigate "maladministration causing injustice". Complaints can be considered about the way a decision was taken by Council, but cannot ignore the decision, only because the person complaining does not agree with it. It also means that the person complaining must have suffered an "injustice" as a result of the faulty decision-making process. Maladministration can include; delays, incorrect action or failure to take any action, failure to follow procedures or the law, failure to provide information, inadequate record-keeping, failure to investigate, failure to reply, misleading or inaccurate statements, inadequate liaison, inadequate consultation, or broken promises.

"Malpractice" improper / refusal or unethical conduct or unreasonable lack of skill by a holder of a professional or official position; such as engineers, lawyers, and professional public / Municipal officers / staff to stand for negligent or un-skilful performance of duties when professional skills are obligatory / compulsory. Malpractice is a cause of action or no action, by an official or councillor for which damages/claims to the Municipality are occurred / allowed / claimed.

"Misappropriation" is:

- (a) A non-violent criminal taking of property which includes embezzlement, theft, and fraud. Often applied to a staff member's taking of an employer's property such as stationary, fuel, tools and equipment.
- (b) Taking / using what belongs to someone else like Municipal quotes and tenders and using it unfairly for one's own gain; for example, or using your position with suppliers for own gain.

- (c) To use wrongly or improperly. In terms of copyright, it is the act of theft or improper use of intellectual property for financial or personal gain.
- (d) Often called unfair competition. A common law form of unfair competition in which an individual or firm copies or appropriates some creation of another that is not protected by patent, copyright, or trademark law, or any other traditional theory of exclusive rights.

“Misconduct” includes all the definitions mentioned in this policy and also means to act badly or dishonestly or improperly and / or to manage the activities of the Municipality poorly.

“Nepotism” When a Municipal official or councillor uses his influence to ensure that family members or friends or partners are appointed into any Municipal vacancies or that family members or friends or partners receive contracts from the Municipality, is it regarded as nepotism.

“Other misconduct” activities undertaken by the staff or councillors of the Municipality which may be unlawful and against the Municipality's regulations or policies, or drop below established standard or practices and result in improper conduct can also be dealt with in terms of this policy and include receiving gifts and favours for rendering services;

“Patronage” systems consist of the granting favours, contracts, or appointments to positions by a local public office holder or candidate for a political office in return for political support. Many times, patronage is used to gain support and votes in elections or in passing legislation. Patronage systems disregard the formal rules of a local government and use personal instead of formalized channels to gain an advantage.

“Petty corruption” is common in very normal day-to-day interactions and relations in society. It usually involves small gifts, favours or bribes. However, small as petty corruption may sound, its destructive power is as bad as grand corruption due to its pervasiveness in society and due to its apparent appearance as 'harmless'. It is therefore possible for many people to dismiss it and think its consequences are not destructive to a society e.g. fast-track the delivery of essential services e.g. issuing of a certificate, payment, building plan approval, receipt, or driving license.

“Political corruption” involves councillors seeking bribes or other rewards for their own political or personal benefit in return for political favours to their supporters at the expense of the public interest.

“Systemic Corruption” is when corruption becomes accepted as the 'norm' and as part and parcel of the procedures of running public affairs of a Municipality or a society at large. A common manifestation of systemic corruption in our country is the frequent bribes by offenders

to traffic police officers either to ignore the lack of road worthiness, or over-loading, or over-speeding.

"Systems misconduct" where a process / system exists which is prone to abuse by either staff or the public, e.g.:

- (a) Misadministration or financial misconduct in handling or reporting of money, financial transactions or assets;
- (b) Conspiracy in allocation of housing;
- (c) Disclosing confidential or proprietary information to outside parties; and
- (d) Irregular approval in the writing off of bad debt;
- (e) Destruction, removal, or inappropriate use of records, furniture, vehicles, fixtures, and equipment.
- (f) Accepting or seeking anything of material value from contractors, vendors, or persons providing services / materials to the Municipality.

"Theft" is the unlawful and intentional misappropriation / misuse / stealing / fiddling / embezzlement of Municipal property with the intention to deprive the Municipality of its right permanently.

"Trans-active corruption" arises from dealings between an official and a supplier of goods and services. It may occur when particular officials want to enrich themselves at the expense of the Municipality. For instance, when an official colludes with a supplier of uniforms and the latter supplies goods of substandard quality to the Municipality at an inflated cost so that they not only share the profits but also so that colleagues get poor quality uniforms, then trans-active corruption is said to have taken place.

"Unethical" not conforming to approved standards of social or professional behaviour e.g. immoral, wrong, improper, illegal, dirty, unfair, shady (informal), dishonest, unscrupulous, under-the-table, unprofessional, disreputable, underhand, unprincipled, dishonourable.

2. INTRODUCTION

Swellendam Municipality subscribes to the principles of good corporate governance, which require the conducting of business in an honest and transparent fashion.

Consequently, Swellendam Municipality is committed to fighting fraudulent and corrupt behaviour at all levels within the Municipality.

3. SCOPE OF POLICY AND APPLICATION

This policy covers all matters relating to the prevention, detection, investigation and resolution of fraud and corruption in the Municipality involving the following persons and/or entities:

- (a) Swellendam Municipality staff members (permanent, temporary, contract)
- (b) Swellendam Municipality Councillors
- (c) Consultants, suppliers, contractors, and other providers of goods or services to Swellendam Municipality.
- (d) Other stakeholders of Swellendam Municipality.

4. LEGISLATIVE CONTEXT OF THE POLICY

This policy aims to give effect to the requirements and stipulations of the

- (a) Prevention and Combating of Corrupt Activities Act (No. 12 of 2004)
- (b) Promotion of Access to Information Act (No. 2 of 2000)
- (c) Promotion of Administrative Justice Act (No. 3 of 2000)
- (d) Protected Disclosures Act (PDA) (No. 26 of 2000)
- (e) Public Finance Management Act (PFMA) (No. 1 Of 1999)
- (f) Municipal Finance Management Act (MFMA) (No. 56 2003)
- (g) Financial Intelligence Centre Act (FICA) (No. 38 of 2001)
- (h) Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings (No. 430 of 2014)
- (i) Code of Conduct for Councillors in terms of Schedule 1 of the Municipal Structures Act (No. 32 of 2000)
- (j) Code of Conduct for Municipal Staff Members in terms of Schedule 2 of the Municipal Structures Act (No. 32 of 2000)
- (k) Labour Relations Act (No. 66 of 1995)
- (l) Swellendam Municipality Code of Ethics
- (m) Swellendam Municipality Risk Management Strategy
- (n) Swellendam Municipality Risk Management Policy

5. POLICY STATEMENT

It is the policy of Swellendam Municipality that fraud, corruption, maladministration or any other dishonest activities of a similar nature will not be tolerated. Such activities will be investigated and actions instituted against those found responsible. Such actions may include the laying of criminal charges, administrative / disciplinary actions and civil action for recoveries where applicable.

Prevention, detection, response and investigative strategies will be designed and implemented. These will include any existing controls (system controls and manual internal controls) and those currently prescribed in existing policies, procedures and other relevant prescripts to the activities of the Municipality.

All Managers are responsible for the prevention, detection and sanctioning of fraud and corruption within their areas of responsibility.

6. ETHICS

All corruption and fraud risks arise due to a lack of ethics. Many of the controls implemented to prevent corruption and fraud requires human involvement and can be circumvented by two or more persons colluding. People without a strong ethical character will not report corrupt and/or fraudulent acts they are aware of.

Anti-corruption and fraud prevention measures can thus only succeed in an environment of ethical behaviour, not only due to the need to prevent corrupt and fraudulent acts, but also to detect corruption and fraud when it does occur.

7. ROLE-PLAYERS IN ANTI-CORRUPTION AND FRAUD PREVENTION

7.1. Oversight

7.1.1. Council

Council takes an interest in anti-corruption and fraud prevention to the extent necessary to obtain comfort that properly established and functioning systems of anti-corruption and fraud prevention are in place to protect Swellendam Municipality against losses, comply with legislation and discipline offenders.

Council may institute investigations into alleged instances of corruption and/or fraud involving Councillors and is responsible for the disciplinary process of Councillors implicated in acts of corruption and/or fraud.

7.1.2. Audit and Performance Audit Committee (APAC)

The APAC is responsible for providing the Municipal Manager and Council with independent counsel, advice and direction in respect of anti-corruption and fraud prevention.

The APAC will include a specific focus on fraud risks when advising on internal financial control, the accuracy and reliability of the financial statements, governance and compliance with legislation.

7.1.3. Fraud and Risk Management Committee (FARMCO)

The FARMCO is appointed by the Accounting Officer to assist him in the discharge of fraud prevention and risk management responsibilities, including corruption and fraud risk management.

The FARMCO's role is to review the effectiveness of anti-corruption and fraud prevention activities, the key corruption and fraud risks facing the Municipality and the responses to address these key risks. The FARMCO must also monitor the implementation of the Municipality's anti-corruption and fraud prevention strategy and policy.

7.2. Implementers

7.2.1. Accounting Officer / Municipal Manager

The Accounting Officer is ultimately accountable for anti-corruption and fraud prevention within the Municipality. The Accounting Officer must set an example at the top and promote ethical behaviour within Municipality.

7.2.2. Directors

Directors support the Municipality's anti-corruption and fraud prevention philosophy, integrate it into the operational routines of the Municipality and monitor the anti-corruption and fraud prevention activities within their areas of responsibility.

The Directors are ultimately accountable to the Accounting Officer and Council for the anti-corruption and fraud prevention measures in their directorates.

7.2.3. Management

Management is responsible for designing, implementing and monitoring anti-corruption and fraud prevention controls and integrating it into the day-to-day activities of the Municipality.

Management are also risk action owners and must formulate appropriate action plans to combat corruption and fraud risks identified during risk identification and assessment.

7.2.4. Other municipal officials

Other municipal officials are responsible for adhering to and monitoring the process of anti-corruption and fraud prevention and integrating it into their day-to-day activities.

7.3. Support

7.3.1. Risk Management Unit

The Risk Management Unit's coordination function enables, through risk identification and assessments, the inclusion of corruption and fraud related risks in the Municipality's risk register. Throughout the unit's monitoring activities, special focus is given to ensure that appropriate action plans are formulated by management to mitigate corruption and fraud related risks and sufficient reporting is conducted to the relevant oversight structures.

7.3.2. Internal Audit

Internal Audit investigates allegations of corruption and fraud as requested by the Council, Executive Mayor, Accounting Officer and the Audit and Performance Audit Committee (APAC). As part of their investigations, they must provide recommendations for the improvement of anti-corruption and fraud prevention measures to prevent a similar corruption or fraud incident from occurring in the future.

7.4. Assurance Providers

7.4.1. Internal Audit

In addition to investigations and recommendations, Internal Audit can also provide assurance on the Municipality's anti-corruption and fraud prevention measures.

Due to the independence requirements of Standard 1130.A1 of the International Standards for the Professional Practice of Internal Auditing, Internal Audit may only provide assurance on anti-corruption and fraud prevention activities they were not involved with.

7.4.2. External Audit / Auditor General of South Africa (AGSA)

The AGSA provides an independent opinion on the effectiveness of the Municipality's anti-corruption and fraud prevention measures.

In providing an opinion the AGSA:

- (a) determines whether the anti-corruption and fraud prevention strategy, policy and plan are in place and appropriate;
- (b) assesses the implementation of the anti-corruption and fraud prevention strategy, policy and plan;
- (c) reviews the corruption and fraud risk assessment process to determine if it is sufficiently robust to facilitate timely and accurate risk rating and prioritisation;
- (d) determines whether management action plans to mitigate the key corruption and fraud risks are appropriate and being implemented effectively.

Findings and recommendations from an external audit can be used in the evaluation and improvement of anti-corruption and fraud prevention measures.

8. REPORTING

Councillors, staff members and the public are encouraged to report any alleged incident of fraud and corruption.

8.1. Regulations for Financial Misconduct

In terms of Regulation 17 (1) of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings (No. 430 of 2014), the Council has established reporting procedures for persons to report allegations of financial misconduct (including corruption and fraud) on a confidential basis.

A person must report allegations of financial misconduct in the following manner:

Allegations against	Report to
Accounting Officer (Municipal Manager) Senior Manager (Director) Chief Financial Officer	Council and Provincial Treasury and National Treasury
Other municipal officials	Accounting Officer (Municipal Manager)

8.2. Reporting lines

8.2.1. Staff

It is the responsibility of all staff to report all incidents of fraud or corruption that may come to his/her attention to his/her manager. If the staff member is not comfortable reporting such matters to his/her manager, the matter should be reported to the manager's superior, with final

recourse to the Accounting Officer. Where the Accounting Officer is implicated in the incident, the staff member must report the matter to the Speaker.

Alternatively, such reports can be made by way of submitting a report through the prescribed whistle blowing mechanisms.

It is the responsibility of the Managers to report and/or escalate all incidents of fraud, corruption, theft, maladministration and other suspected irregularities of this nature to the Accounting Officer. Such reporting by managers must be made as follows:

- (a) Verbally, immediately after discovery of the incident in question;
- (b) Such verbal report must be followed by a detailed written report (with supporting evidence – of applicable) to be submitted within five working days after the discovery of such an incident.

It is the responsibility of the Accounting Officer to immediately report all incidents of fraud, corruption, theft, maladministration and other suspected irregularities of this nature to Provincial Treasury. This reporting must take place as follows:

- (a) a detailed written report to be submitted within five working days after discovery of such an incident.

In the event where the Accounting Officer is implicated, the Speaker must report the incident to Provincial Treasury.

The Accounting Officer must assess all reported incidents against the Prevention and Combating of Corrupt Activities Act (No. 12 of 2004) to determine whether the incident must be reported to the South African Police Service (SAPS).

Regardless of whether or not incidents of fraud, corruption, theft, maladministration and other suspected irregularities must be reported to the SAPS in terms of the abovementioned Act, it is the Municipality's policy to refer all alleged fraud and corruption of a criminal nature for prosecution by the appropriate authorities. The Accounting Officer must consult with Internal Audit to determine whether the matter warrants the laying of criminal charges.

8.2.2. Councillors

A councillor must report all incidents of fraud or corruption involving staff to the Accounting Officer and incidents of fraud or corruption involving councillors to the Speaker.

8.2.3. Public

Members of the public may report incidents of corruption and fraud involving the Municipality to any member of management, a Director, the Municipal Manager, Internal Audit or a Councillor.

The person receiving the report has the responsibility to escalate the matter to the appropriate person / authority.

8.3. Confidentiality

All reports received will be treated with the requisite confidentiality and will not be disclosed or discussed with parties other than those charged with investigation into such reports.

8.4. Anonymous Reporting

Should a councillor, staff member or member of the public wish to report allegations of fraud or corruption anonymously, they can contact or write to any member of management, the Municipal Manager, Executive Mayor, the Speaker or Internal Audit or make use of the national fraud hotline – 0800 701 701.

9. PROTECTION OF WHISTLE BLOWERS

A whistle blower who reports suspected fraud and / or corruption may remain anonymous should he/she so desire.

The Protected Disclosures Act (No. 26 of 2000) protects whistle blowers who are employed by the Municipality. No employee will be subjected to any occupational detriment by the Municipality on account, or partly on account of having made a protected disclosure.

No person will suffer any penalty or retribution for good faith reporting of any suspected or actual incident of fraud and corruption which occurred within the Municipality. The Municipality will not tolerate harassment or victimisation and will take action to protect staff and councillors when they raise a concern in good faith. This does not mean that if a staff member or councillor is already the subject of disciplinary or other action, that action will be halted as a result of their whistle blowing.

The malicious reporting of any false allegations by any staff member or councillor constitutes a serious disciplinary infraction and is not protected by the provisions in this section.

10. INVESTIGATIONS

10.1. Responsibility for conducting investigations

The responsibility for conducting investigations relating to fraud and corruption lies with the Accounting Officer, who may delegate such responsibility, whether generally or in specific cases, to managers of the Municipality as he may consider appropriate.

10.2. Anonymous Allegations

The Municipality encourages staff and councillors to put their names to allegations. Concerns expressed anonymously are difficult to investigate; nevertheless, they will be followed up at the discretion of the Municipality. This discretion will be applied by taking into account the following:

- (a) seriousness of the issue raised;
- (b) credibility of the concern; and
- (c) likelihood of confirming the allegation.

10.3. Investigators

The assistance of the following people / entities may be sought for purposes of carrying out investigations into corruption and fraud:

- (a) External and internal audit services;
- (b) Disciplinary Committee;
- (c) External state investigating agencies, e.g. SAPS, where matters fall within their mandate;
- (d) External consultants, e.g. forensic accounting consultants;
- (e) Office of the National Director of Public Prosecutions;
- (f) Special Investigating Units established under any law;
- (g) The Public Protector;
- (h) Any other authority as determined by Council.

Council and management of the Municipality must, within the bounds of their authority, render appropriate support and assistance to any investigation undertaken by an authorised investigator and must arrange/take the necessary steps to facilitate free access to the Municipality's buildings, equipment, staff, councillors and information sources required by the investigator.

10.4. Confidentiality

All information relating to fraud and corruption that is received and investigated will be treated confidentially. The progression of investigations will be handled in a confidential manner and will not be disclosed or discussed with any persons other than those who have a legitimate right to such information.

10.5. Feedback to complainants

The Municipal Manager or his/her delegate will upon receiving a report of alleged / suspected fraud or corruption, write to the complainant acknowledging receipt.

The Municipality accepts that those people who reported alleged fraud or corruption need to be assured that the matter is progressing or has been properly addressed, but confidentiality during and after investigations must also be maintained. Thus, subject to legal constraints, information about any investigation will be disseminated on a 'need to know basis' only.

11. DISCIPLINARY / LEGAL ACTION

Where a staff member is alleged to have committed an act of fraud, corruption, theft, or maladministration, the Manager or immediate senior (if the manager is the alleged offender) must institute disciplinary proceedings within a reasonable period in terms of the disciplinary code and procedures of the Municipality. Where the Accounting Officer or a councillor is the alleged offender, the Speaker or Council (if the Speaker is the alleged offender) must institute disciplinary proceedings.

Any fraud or corruption allegations against staff or councillors will be pursued by thorough investigations and to the full extent of the law by the Disciplinary Committee established by Council in terms of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings (No. 430 of 2014, whose actions will include:

- (a) Taking disciplinary action;
- (b) Instituting civil action (particularly to recover losses suffered by the Municipality);
- (c) Initiating criminal prosecution by reporting the matter to the SAPS or any other relevant law enforcement agency; and
- (d) Any other appropriate legal remedies available.

As soon as a disciplinary hearing is completed, the outcome must be reported to the Accounting Officer, for hearings of staff, or the Speaker, for hearings of councillors. Such report must contain the following:

- (a) The name and position of the staff member or councillor against whom proceedings are instituted;
- (b) The disciplinary charges, indicating the misconduct the staff member or councillor is alleged to have committed;
- (c) The findings of the disciplinary hearing;
- (d) Any sanction imposed on the staff member or councillor; and
- (e) Any further action to be taken against the staff member or councillor, including criminal charges or civil proceedings.

The Accounting Officer must ensure that losses or damages suffered by the Municipality as a result of an act committed or omitted by a staff member, councillor or external person are recovered from such person if he/she is liable by law. The Accounting Officer must determine the amount of the loss or damage and, in writing, request that person to pay the amount within 30 days or in reasonable instalments. If the person fails to comply with the request, the legal process for recovery will be initiated by the Accounting Officer. In the event where recovery actions must be instituted against the Accounting Officer, the Mayor must execute the aforementioned processes.

12. RESPONSE TO INCIDENTS

In all instances where incidents of fraud, corruption, theft, maladministration and other similar irregularities of this nature take place, all Managers must immediately review the controls which have been breached in order to prevent similar irregularities from taking place in future.

Internal audit obtains, assembles and researches information on acts of fraud, corruption, other unlawful and/or irregular conduct and practices in order to identify causes and advice and consult on interventions / action plans to improve controls and prevent similar incidents in future.

13. TRAINING, EDUCATION, COMMUNICATION AND AWARENESS

In order for this policy to be sustainable, it must be supported by a structured training, education, communication and awareness programme.

It is the responsibility of all heads of department and managers to ensure that all staff are made aware of and receive appropriate training and education with regards to this Policy.

Council, in consultation with the Accounting Officer, must arrange training for councillors.

14. CONFLICTS OF INTEREST

All staff and Councillors of Swellendam Municipality must declare any possible conflicts of interests. Once possible conflicts are disclosed, there are several decision paths:

- (a) If the Municipal Manager/Council declares that there is in fact a conflict that cannot be avoided, the Municipal Manager/Council must require the individual to end the conflict of interest or to resign from the Municipality, otherwise the individual must be charged with misconduct;
- (b) The Municipal Manager/Council may determine that there is a potential for conflict of interest and impose certain constraints on the individual to manage the conflict and avoid opportunities for a conflict to arise. If the individual fails to adhere to the constraints, he/she must be charged with misconduct.
- (c) The Municipal Manager/Council may accept the disclosure and determine that there is no conflict of interest in the situation described.

15. REVIEW

This Anti-Corruption and Fraud Prevention Policy must be reviewed and approved by Council on a regular basis.