

Date: 2021-04-09

Subject: Whistleblower Information Report

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Report Number: CAO's Office-2021-506

Recommendations:

1. That the report titled: **Whistleblower Information Report**, to the Audit Committee Meeting of May 4, 2021, be received.

Overview:

- At the February 23, 2021 Audit Committee Meeting, Audit Committee members requested that staff provide an information report on Whistleblower protection at the City of Brampton ("City");
- Whistleblower protection is specified in three corporate policies, however, there is no stand-alone Whistleblower Protection policy at the City; and
- Internal Audit's review of Whistleblower protection at the City indicated that a streamlined complaints process is necessary, and the Corporate Policy team is leading this initiative.

Background:

At the February 23, 2021 Audit Committee Meeting, Internal Audit was asked to provide research and information regarding Whistleblower protection at the City of Brampton.

For the purpose of this report, Internal Audit has defined a Whistleblower to be: someone who, in good faith, reports incidents of suspected fraud, waste, or non-compliance to corporate policies. A Whistleblower policy or by-law, therefore, would be a set of provisions protecting the Whistleblower from any form of reprisal or retaliation as a result of reporting such incidents.

Internal Audit reviewed and conducted analysis of current City policies which make reference to Whistleblower protection as well municipal benchmarking to determine what Whistleblower protections are in place in other municipalities, and looked into any legal or statutory requirements. While there are no legal requirements for municipalities to have Whistleblower protection, in practice, based on Internal Audit's review of other municipalities, Whistleblower protection is prevalent.

Current Situation:

The City does not currently have a stand-alone Whistleblower policy or by-law. The City's Corporate Fraud Prevention Policy, Employee Code of Conduct, and Respectful Workplace Policy make reference to Whistleblower protection, specifically protection from retaliation and reprisal for allegations made in good faith. Please refer to the appendices of this report to review the Corporate Fraud Prevention Policy, Employee Code of Conduct, and Respectful Workplace Policy.

Corporate Fraud Prevention Policy

The Corporate Fraud Prevention Policy applies to employees and to contractors, vendors, and outside agencies doing business with the City who have agreed to be bound by this policy. It does not apply to Members of Council, who are governed by the Council Code of Conduct. The Corporate Fraud Prevention Policy applies to acts of unethical or dishonest conduct defined as Fraud.

Sections 5, 8, and 9 of the Corporate Fraud Prevention Policy specifically address whistleblower protection:

- "The City will not tolerate any form of retaliation against Whistleblowers, who, in good faith, provide information concerning Fraud." (section 5.2)
- "No disciplinary action will be recommended or taken against a person who makes an allegation of fraud in good faith, regardless of the outcome of the investigation." (section 8.2)
- "All Whistleblowers' identities will remain confidential and anonymous. No one governed by this Policy shall retaliate against a Whistleblower for reporting in good faith an act that the Whistleblower believes to be fraudulent or dishonest with the intent of adversely affecting the terms or conditions of employment or otherwise." (section 9.1-9.3)

Employee Code of Conduct

The Employee Code of Conduct applies to City employees only, and guides the conduct, behavior, and responsibilities of staff.

Sections 2 and 6 of the Employee Code of Conduct address whistleblower protection:

- “There will be no retaliation for speaking up and making a truthful report of actual or potential misconduct, for participating in an investigation, or for exercising legal rights.” (section 2.4)
- “The City takes fraud-and the threat of fraud- very seriously and commits to deter, detect, report, and correct fraud.” (section 6.1)
- “There is no risk of reprimand, penalty, or discipline for reporting suspect behavior or fraud in good faith or for participating in a fraud investigation.” (section 6.1)

Respectful Workplace Policy

The Respectful Workplace Policy applies to employees (including but not limited to service contractors, students, and volunteers), Members of Council, vendors and suppliers, and members of the public (including citizen members of Committees).

Section 6 of the Respectful Workplace Policy addresses whistleblower protection:

- “All individuals have the right to report or act as a witness, in good faith, incidents or complaints of Harassment or Discrimination without fear of Reprisal. Where it is confirmed that an incident of substantiated Harassment or Discrimination behaviour has occurred, corrective action taken will not be considered a Reprisal.” (section 6.6)

Furthermore, section 8 describes the consequences of launching a complaint that is false, frivolous, or made in bad faith:

- “Any employee who violates this Policy or is found to have launched a complaint that is false, frivolous, or made in bad faith maybe be subject to corrective action which may include:
 - Termination of employment;
 - Prohibition from the City property;
 - Having the incident reported to the Police; and/or,
 - Other action as appropriate.”

Benchmarking

Internal Audit benchmarked the City’s current Whistleblower provisions against those of the Cities of Toronto, Ottawa, Hamilton, Mississauga, Vaughan, and the Region of Peel to determine what comparable municipalities have in place for Whistleblower protection.

The following table provides a summary of our findings. Note that the City of Toronto By-law consolidated the former Fraud Policy and Whistleblower Policy.

Table 1: Municipalities' Whistleblower Protection

Municipality	Policy	By-law
City of Toronto	N/A	Disclosure of Wrongdoing and Reprisal Protection Provisions By-Law
City of Ottawa	Fraud & Waste Policy Employee Code of Conduct	N/A
City of Hamilton	Fraud Policy & Protocol	Whistleblower By-Law
City of Mississauga	Whistleblower Program Policy Fraud & Theft Policy	N/A
City of Vaughan	Employee Code of Conduct	N/A
Region of Peel	Whistleblower Protection Policy	N/A
City of Brampton	Fraud Prevention Policy Employee Code of Conduct Respectful Workplace Policy	N/A

Complaints that are vexatious and malicious in nature can damage reputations and waste City resources. The City of Mississauga and the Region of Peel address reports made in bad faith with the following clauses:

City of Mississauga- Whistleblower Program Policy:

- “Employees who knowingly make a false or misleading statement; seek reprisal against an individual as the result of a complaint; do not cooperate during the course of an investigation or complaint of retaliation; or against whom acts of Waste and/or Wrongdoing are substantiated will be subject to disciplinary action, up to and including dismissal.”

Region of Peel- Whistleblower Protection Program Policy

- “Employees who knowingly make a false or misleading statement or do not cooperate during the course of an investigation or reprisal will be subject to discipline up to and including dismissal.”

Other Considerations

Internal Audit's review and discussions with other municipalities highlighted the importance of having effective processes in place for filing and handling complaints and an effective communications and awareness plan to ensure staff and members of the public are informed of the processes.

The City's Corporate Policy team is leading an initiative, in collaboration with relevant stakeholders, including Internal Audit, to address public and internal complaints. A Public Complaints Policy is being developed and work is underway to streamline and align internal processes. A communications plan is also being created to help guide staff and the public on the methods for filing complaints.

Effective complaints processes should be consistent and include measures such as:

- The ability to record, assign, and track reports through to closure;
- Management reporting, including performance indicators and analysis; and
- Service standards such as timelines and communication with the complainant.

City Council is considering designating a Municipal Ombudsman and/or adopting an Auditor General model. Should Council choose one or both of these options, there may be an associated change in how complaints are handled.

Corporate Implications:

Financial Implications:

N/A

Other Implications:

A Whistleblower policy or by-law may remove perceived barriers to employees reporting suspected fraud, waste, or non-compliance to corporate policies, and may increase the number of reports the City receives. Additional resources may be needed to process the increased volume of complaints.

Term of Council Priorities:

This report fulfills the Council Priority of 'Brampton is a well-run city' through the consideration of the creation of a Whistleblower Policy, which promotes corporate accountability, our corporate values, and governance best practices.

Conclusion:

The City of Brampton provides Whistleblower protection in three key Corporate policies. A decision to implement a separate Whistleblower Policy or By-law, or to embed Whistleblower protection in existing policies, depends on the policy framework being developed by the City. There is a view that embedding Whistleblower clauses within policies where they are needed is more meaningful and easier to find when referencing policies. On the other hand, a stand-alone policy or by-law could set out minimum protection standards and may provide staff with additional reassurance.

There are currently over 100 corporate policies, excluding Brampton Fire & Emergency Services and Brampton Transit, so the challenge is effective communication regarding Whistleblower provisions. The way complaints are handled may change should the City decide to assign a Municipal Ombudsman and/or adopt an Auditor General model.

Provisions for Whistleblower protection are common to the municipalities we benchmarked, though the details and implementation tools vary. Whistleblower protection at the City of Brampton is provided through the Corporate Fraud Prevention Policy, Employee Code of Conduct, and Respectful Workplace Policy, specifically protection from retaliation and reprisal for allegations made in good faith. We also noted clauses intended to protect the City and its employees from vexatious and malicious allegations.

Whistleblower policies are intended to protect individuals whose complaints may include incidents of suspected fraud, waste, non-compliance to corporate policies or other serious allegations, which the City wants to be informed of and be able to correct. A key element to collecting information on such incidents is the ability to report them. Clear and simple procedures should be in place and communicated to City employees and the public.

In summary, there is Whistleblower protection in place, and it is one of a number of interrelated policies and procedures that facilitate transparent and responsive governance. A decision on how to document and communicate those provisions should be consistent with the policy framework being developed by the City.

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Attachments:

Appendix 1: Corporate Fraud Prevention Policy
Appendix 2: Employee Code of Conduct
Appendix 3: Respectful Workplace Policy