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CAPITAL REGIONAL DISTRICT

CORPORATE POLICY AND PROCEDURE

Section		
Subsection	Policies, Procedures, Manuals	
Title	REPORTING OF SERIOUS MISCONDUCT	

1. POLICY:

This policy establishes the mechanism and approach for the reporting of serious misconduct involving staff where there are no other policies and/or procedures for doing so.

2. PURPOSE:

The Capital Regional District (CRD) is committed to creating and maintaining a work environment where high standards of business and personal ethics are observed and practiced. This policy sets out guidelines for the reporting and investigation of serious misconduct contrary to these standards, where there are no procedures in place for doing so, and provides protection from retaliation to those who report serious misconduct in good faith using the established process.

3. PRINCIPLES:

- a. Individuals under the CRD's direction are to act in a way that enhances public confidence in the CRD and to fulfill their duty to act honestly and exercise reasonable care and diligence.
- b. Individuals under the CRD's direction have a responsibility to adhere to the Standards of Conduct of the CRD, and report instances of serious misconduct. Serious misconduct that may be reported pursuant to this policy include such concerns as:
 - Manipulation of CRD resources for any illegal, improper or unethical purpose including fraud, theft, embezzling funds, or accepting kickbacks or bribes;
 - Misappropriating funds, misdirecting or misuse of funds/assets;
 - Misuse and/or improper disclosure of confidential information;
 - Manipulating CRD accounting or audit records or destroying any accounting or audit-related records except as otherwise permitted by CRD corporate records and information management policies;
 - Deliberate actions likely to cause serious harm to persons, public safety, property or the environment;
 - Deliberate actions resulting in the CRD being exposed to liability or significant financial loss; and,
 - Deliberately concealing information relating to any of the above.

- c. This policy is intended to supplement existing procedures at the CRD whereby employees may already raise matters of serious concern.

This policy is *not* intended to override or replace existing reporting processes provided for under CRD policies, collective agreements or legislation and does *not* create an independent reporting process or requirement where other reporting processes exist.

- d. Reports made under this policy may be redirected where other more appropriate procedures are applicable such as:
- Grievance procedures (see applicable collective agreement);
 - Complaint procedures related to human rights or respectful workplace concerns (see human rights legislation and applicable CRD policies)
 - Procedures for reporting safety concerns (see Workers' Compensation Act and Occupational Health & Safety policies)

4. SCOPE:

This policy applies to all employees, elected officials, and volunteers of the CRD.

5. RESPONSIBILITIES

5.1 Chief Administrative Officer (CAO)

The CAO is responsible for the oversight of this policy, and may appoint a designate to be responsible for the day-to-day administration and stewardship of the policy.

5.2 Employees, dependent contractors, elected officials and volunteers

Individuals involved in a complaint, including employees to whom a complaint is made, are expected to and shall participate in the review and investigation of the matter expeditiously and in good faith. Employees shall not purposefully or deliberately impede a review or investigation of a complaint or concern.

6. DEFINITIONS:

- “Complaint” means the reporting of an allegation of serious misconduct in good faith, using the process set out in this policy.
- “Good Faith” means having reasonable and objective grounds for believing an allegation of serious misconduct is true.
- “Bad Faith” means making a complaint that is knowingly false, or which is unreasonably made, or which is malicious in nature or intent.
- “Serious Misconduct” includes such items and concerns as noted in Section 3b of this Policy.

- “Employee” means all paid individuals under the direction of the CRD, including officers, managers, contractors in a CRD-employer/employee relationship (i.e. dependent contractors), and non-management (ie. unionized) staff.
- “Chief Administrative Officer”, “Officer”, “Corporate Officer”, and “General Manager” means those staff designated as such in accordance with CRD Bylaw 3343 or subsequent. For the purposes of this policy, the “Chief Financial Officer” is included in the “General Manager” description.
- “Volunteer” means all unpaid individuals under the direction of the CRD, including those under the direction of CRD employees and the CRD Board.
- “Division Manager” means those management staff responsible for the oversight and leadership of a division within a CRD department.
- “Complainant(s)” means the individual(s) making a complaint alleging serious misconduct under this policy.
- “Respondent(s)” means the individual(s) alleged to have engaged in the serious misconduct under this policy
- “Witness(es)” means the individual(s) who witnessed the alleged serious misconduct under this policy.
- “Preliminary Review” is an assessment of a complaint to determine if (a) the facts as asserted if accurate would constitute serious misconduct under this policy and (b) there is sufficient verifiable information supporting the allegation(s) such that an investigation is warranted.

7. PROCEDURE:

7.1 REPORTING SERIOUS MISCONDUCT

- a. Individuals who are aware of serious misconduct have a responsibility to report it in accordance with this policy in good faith.
- b. Reports of alleged serious misconduct shall be reported in the manner outlined in Table 1 (top next page).
- c. A report of alleged serious misconduct must be: (i) in writing, (ii) dated, and (iii) signed.

A complainant *may* be permitted to report alleged serious misconduct verbally if: (i) the Preliminary Reviewer to whom they are reporting makes a written record of the complaint, (ii) dates the concern, and (ii) the complainant confirms its accuracy by signature.

- d. Knowingly making false allegations, or making bad faith allegations, will be viewed as serious misconduct.

Table 1: Reporting and Informing Matrix

	(i) If the subject of the alleged serious misconduct <u>directly</u> involves the following Respondent:	(ii) Then the Complainant shall report the matter to and will be preliminarily reviewed by the following (hereby referred to as the “Preliminary Reviewer”) (see Section 7.3):	(iii) And those who it is reported to shall immediately inform the following (referred hereafter as the “Advisee”):
(a)	a colleague	the direct manager	the Division Manager, General Manager, Chief Administrative Officer, and Senior Manager of Human Resources
(b)	a supervisor or section manager	the Division Manager	the General Manager, Chief Administrative Officer, and Senior Manager of Human Resources
(c)	a division manager	the General Manager	the Chief Administrative Officer and Senior Manager of Human Resources
(d)	a General Manager or Officer	the Chief Administrative Officer	the Senior Manager of Human Resources
(e)	the Senior Manager of Human Resources	the Chief Administrative Officer	the Corporate Officer
(f)	the Chief Administrative Officer	the CRD Board Chair	the Senior Manager of Human Resources and Corporate Officer

7.2 CONFIDENTIALITY:

- a. Every effort will be made to ensure confidentiality to those reporting serious misconduct. Individuals making a report under this policy are required to provide their name in confidence, which allows for follow-up questions, clarification and investigation where necessary.

Reports made anonymously will not be investigated if the report does not disclose sufficient information to be investigated or if the respondent(s) will not have a meaningful opportunity to respond.

- b. Confidentiality extends to all records relating to reports, including but not limited to meetings, interviews and investigation results.

Complainants, respondents, witnesses, internal and external investigators, and any other party(ies) are expected to maintain confidentiality. The CRD reserves the right to require confidentiality agreements in place before any third party is involved and/or privy to allegations, investigations, reports, or related. The absence of a confidentiality agreement does not limit or absolve the requirement to maintain confidentiality.

The complainant who reported the serious misconduct must treat all aspects of the report and the incident generally as strictly confidential and must not discuss it with anyone except the person to whom the report has been made, legal and union advisors, and any investigator.

Breaches of confidentiality may be regarded as serious misconduct and will be treated accordingly, up to and including termination of employment.

- c. Personal information, including the identity of the person reporting the alleged serious misconduct, will be protected in accordance with the *Freedom of Information and Protection of Privacy Act* of BC.
- d. The CRD's records management policies will apply to records in relation to this policy. In addition, disclosure of records relating to reports made under this policy to any other person, and in particular any third party, will require the prior approval of the CRD's Corporate Officer and/or solicitor to ensure that privilege of such documentation is properly maintained.
- e. Confidentiality may be subject to legal disclosure requirements during a court proceeding, arbitration or other legal proceedings, and to circumstances where affected persons have consented to be identified.
- f. The employee who reported the alleged serious misconduct should not contact the subject of the report (outside of regular work contact for normal work reasons) or attempt to investigate the allegations further for any reason.
- g. In the event that an allegation is unsubstantiated, at the request of the respondent, the record of such may be put on the respondent's personnel file. See Section 7.3(c) below for more detail.

7.3 INVESTIGATION

- a. Preliminary Reviewers identified in Section 7.1(b), who receive a report of alleged serious misconduct must:
 - a.1 Step 1: immediately contact the appropriate Advisee listed in section (iii) of the table;
 - a.2 Step 2: within five (5) working days of receipt, confirm confidentially in writing to the complainant that their complaint has been received and will be investigated in accordance with this policy; and
 - a.3 Step 3: within five (5) working days of receipt, advise the respondent(s) to whom the complaint has been made, advise and ensure that the respondent(s) has/have a meaningful opportunity to respond, and commence a preliminary review and report the findings as follows:
 - a.3.1 (*where the respondent is a colleague, supervisor, and/or manager*)
 - report the findings of the preliminary review to their General Manager and the CRD Senior Manager of Human Resources within ten (10) working days; and
 - upon receipt of the preliminary review results, the General Manager will report the concern with the preliminary findings to the Chief Administrative Officer; and
 - the Chief Administrative Officer will then take further action as deemed required under Section 7.3(b.1).

a.3.2 *(where the respondent is a division manager)*

- report the findings of the preliminary review to the CRD Senior Manager of Human Resources within ten (10) working days.
- upon conclusion of the preliminary review, the General Manager will report the preliminary findings to the Chief Administrative Officer.
- the Chief Administrative Officer will then take further action as deemed required under Section 7.3(b.1).

a.3.3 *(where the respondent is a General Manager, Officer and/or Senior Manager of Human Resources)*

- the Chief Administrative Officer will take further action as deemed required under Section 7.3(b.1). The Chief Administrative Officer may request that the preliminary review be undertaken by the Corporate Officer and/or Senior Manager of Human Resources unless those parties are directly involved.

a.3.4 *(where the respondent is the Chief Administrative Officer)*

- the CRD Board Chair will receive the complaint and review it to determine whether it involves allegations of serious misconduct as defined in this policy and determine whether a review is warranted. The Board Chair may consult with legal counsel to assist in this determination.
- If the Board Chair determines that the complaint does not concern or constitute serious misconduct, or if the Board Chair deems that the complaint can be addressed directly between the Board Chair and the Chief Administrative Officer, the Board Chair will refer the complaint to the Chief Administrative Officer to address as appropriate.
- If the Board Chair determines that a detailed review is warranted, a review will be undertaken by a third-party (see step 4, section 7.3(b.2)).

b. Step 4: Following the conclusion of the preliminary investigation, the following shall apply:

b.1 *(except where the allegation of serious misconduct directly involves the Chief Administrative Officer):* the Chief Administrative Officer will then determine the appropriate level of a further detailed investigation if required, and if necessary the response to the alleged serious misconduct. If warranted, a detailed investigation will be conducted in an impartial and timely manner. Such an investigation may be conducted by an internal or external investigator.

b.2 *(where the allegation of serious misconduct directly involves the Chief Administrative Officer):* the CRD Board Chair will then determine the appropriate level of further investigation required. The Board Chair may retain legal counsel is assisting with this determination and in providing advice. A third-party will be retained to conduct the investigation.

In all cases of an investigation, a report of findings shall be made. This report will generally be in writing, but may be provided verbally if deemed warranted. All reports are deemed confidential.

- c. Step 5: Where the alleged serious misconduct is proven, a response may include disciplinary measures appropriate to the degree of misconduct and terms of employment, and would be consistent with any terms of a collective agreement, if applicable. The CRD may pursue all applicable and appropriate legal remedies, including but not limited to civil or criminal remedies.

Where the alleged serious misconduct is not proven, the respondent(s) shall be informed in writing, and if the respondent so requests will have this placed on their personnel file. Further, if the respondent so requests, the appropriate reporting relationships of the respondent(s) shall also be advised. The complainant shall be advised verbally and/or in writing as deemed appropriate.

Records of the review and its result shall be retained in Human Resources in accordance with CRD Records Retention guidelines.

- d. Step 6: The Chief Administrative Officer shall periodically advise the CRD Board of Directors of the general nature of concerns identified and the results of the review/investigation, and in a manner consistent with the appropriate protection of individuals and procedural fairness.
- e. General principles of investigation: those conducting a preliminary review and more detailed investigation shall:
- Comply with any relevant legislation, policies, and agreements;
 - Maintain adequate documentation to support any findings or recommendations made;
 - Treat employees with courtesy and sensitivity to their rights;
 - Respect the fairness and due process rights of all involved.
 - Take all relevant facts into consideration having regard to the particular merits of each case;
 - Endeavour to ensure the investigation is done in a prompt and professional manner; and
 - Remove themselves from the investigation process if a conflict of interest arises.

7.4 PROTECTION AGAINST RETALIATION

- a. Any form of retaliation, discrimination, or reprisal against a staff member because that person reported serious misconduct in good faith, person acted as a witness, or otherwise participated in an investigation in good faith will be considered a serious violation of this policy. Such retaliatory actions are themselves serious misconduct and may result in discipline, including dismissal.
- b. Individuals who believe they have been retaliated against may report this in writing to the Chief Administrative Officer. If the individual believes the retaliation involves the Chief Administrative Officer, they may report to the Board Chair.

7.5 MALICIOUS OR VEXATIOUS ALLEGATIONS

If an allegation is found to be filed for malicious or vexatious purposes, formal disciplinary action may be taken against the employee involved. Serious allegations based on genuine “good faith” misunderstandings or misinterpretations may not be considered malicious or vexatious unless such form of allegations continue to be filed by an individual after he/she receives education and clarification on the Policy.

7.6 EXCEPTIONS

Where employees come forward to report their own serious misconduct under this policy, they will not be exempt from discipline appropriate to the serious misconduct; however, such reporting will be given appropriate consideration as a mitigating factor and these instances will be dealt with on an individual basis in accordance with this policy.

7.7 SEVERABILITY

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

7.8 RIGHTS

This policy is the administrative process for the reporting and review of allegations of serious misconduct within the workplace. This policy is not intended preclude individuals from pursuing other legally permitted avenues of action available to them, including those as may be allowed of an employee by law.

Approval Date:		Approved By:	
1. Amendment Date:		Approved By:	
2. Amendment Date:		Approved By:	
3. Amendment Date:		Approved By:	
Next Review Date:	As Required	Reviewed By:	
Supersedes:			