
MEMORANDUM

CL-C 12-2020

Subject: Supplemental Information respecting Whistleblower Policy (Appendix 1 to Report CLK 4-2020)

Date: March 26, 2020

To: Regional Council

From: Franco Meffe, Director, Human Resources and Ann-Marie Norio, Regional Clerk

The Corporate Services Committee, at its meeting held on March 11, 2020, considered Report CLK 4-2020 – Policy Update – Whistleblower Policy, Code of Ethics-Conflict of Interest Policy and Recruitment and Selection Policy.

The following Councillor Information Request was made at the meeting:

Consider provisions in the policy that would allow vendors and contractors to make a complaint under the Whistleblower Policy. Councillor Gale.

Upon additional research, staff were able to find some examples of whistleblower policies that were applicable to vendors, suppliers or other third parties; however there were many others that did not include these provisions. Including provisions regarding vendors, suppliers or other third parties would pose a number of issues.

One potential issue is that reports of wrongdoing are more easily investigated when they are made by employees as the Region has greater access and control over its employees than it would any vendors, suppliers or third parties. The Whistleblower Policy is clear with respect to the duty of an employee to facilitate an investigation whereas any vendors, suppliers or third parties would not be obligated to facilitate the investigation process which would be problematic.

A further issue to consider is that the Region's options for taking action against vendors or suppliers who make false or vexatious reports of wrongdoing under the policy are comparatively limited. The Region cannot discipline such persons, as they are not parties to an employment relationship with the Region. The Region could terminate its contractual relationship with vendors or suppliers who make false reports in bad faith (if such a contractual relationship exists), this action may not be practicable depending on the impact that it would have on the Region's other needs and interests and may not be feasible without incurring a financial penalty or inviting a lawsuit.

In addition, although the Region could, in theory, take legal action against vendors or suppliers (or their employees or representatives) who make false or vexatious reports of

wrongdoing under the policy, there are a number of factors that would need to be considered including the viability of taking such action.

An additional concern is that vendors or suppliers who report wrongdoing could make a complaint that their right to protection from reprisal under the policy has been violated if the Region were to take action against them that is or is perceived to be negative.

Given the reasons above, staff are not recommending the Whistleblower Policy be amended to include provisions related to vendors, suppliers or other third parties. The exclusion of vendors and suppliers from the policy does not preclude them from reporting incidents of wrongdoing. Reporting of these types of incidents are taken seriously by staff and would be addressed appropriately.

Staff have confirmed that the intent of the Councillor Information Request to include vendors and contractors in the Policy was to ensure that there is an avenue for them to report wrongdoing. Should a vendor or supplier wish to report incidents of wrongdoing, they should be reported to the Chief Administrative Officer (or if the reporting of incidents is alleging wrongdoing by the Chief Administrative Officer, those incidents should be made to Regional Council through the Regional Clerk). Although not covered in the Corporate Policy, reporting incidents of wrongdoing by a vendor or supplier, if done in good faith, should come without fear of reprisal.

Respectfully submitted and signed by

Ann-Marie Norio
Regional Clerk

Franco Meffe
Director, Human Resources