

FRANCES BAARD DISTRICT MUNICIPALITY
FRAUD POLICY



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1. DEFINITIONS

“Municipality”

means the **FRANCES BAARD DISTRICT** Municipality, and when referred to as:

- a) A municipal entity, has the meaning assigned to it in section 1 of the Municipal Systems Act, and
- b) a geographic area means a municipal area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No 27 of 1998);

“Accounting Officer”

means the person who is appointed by the Council as the head of the administration and accounting officer for the municipality in accordance with section 82 of the Structures Act;

“CFO”

means the Chief Financial Officer of the municipality;

“Political office bearer”

in relation to the municipality, means the Executive Mayor and the Speaker elected by the Council to such a post or position in accordance with the provisions of the Structures Act;

“Council”

means the Municipal Council of the **FRANCES BAARD DISTRICT** Municipality, its legal successors in title and its delegates;

“Staff ”

means the Council, Political Office Bearers and the other employees of the Frances Baard District Municipality;

In this document, unless the context otherwise indicates, words and expressions denoting:

- The singular shall include the plural and vice versa;
- The male sex shall include the female sex and vice versa; and
- A reference to a natural person shall include a legal person and vice versa.

2. INTRODUCTION

This policy will provide Frances Baard District Municipality's employees (both management and staff) and other stakeholders (such as the public, service providers and nongovernmental organisations) with some essential information regarding the anti-corruption campaign and the responsibilities of the various role players in combating corruption.

FBDM recognises the fact that:-

- Criminal and other irregular conduct within FBDM is detrimental to good, effective, accountable and transparent governance and can endanger the economic stability of FBDM and have the potential to cause social damage;
- There is a need for procedures in terms of which staff may, without fear of reprisals, disclose information relating to suspected or alleged criminal or other irregular conduct affecting FBDM;
- Every staff member has a responsibility to disclose criminal and any other irregular conduct in the workplace; and
- The FBDM has a responsibility to take all reasonable steps to ensure that "Whistle Blowers" who disclose such information are protected from any reprisals as a result of such disclosure.

3. OBJECTIVES

The objective of this policy is to develop and foster a climate within the FBDM where all staff strive for the ultimate eradication of fraud, corruption, theft and maladministration by means of the application of the full spectrum of both pro-active and re-active measures at their disposal.

This policy also sets down the stance of the FBDM to fraud as well as re-enforcing existing regulations aimed at preventing, reacting to, and reducing the impact of fraud, corruption, theft and maladministration where these dishonest acts subsist.

The Protected Disclosures Act came into effect on 16 February 2001. In order to remain in compliance with the Act, FBDM will:-

- Strive to create a culture which will facilitate the disclosure of information by staff relating to criminal and other irregular conduct in the workplace in a responsible manner by providing clear guidelines for the disclosure of such information and protection against reprisals as a result of such disclosure; and
- Promote the eradication of criminal and other irregular conduct within FBDM.

The Policy is intended to encourage and enable staff to raise concerns within FBDM rather than overlooking a problem or blowing the whistle to inappropriate channels.

Furthermore the policy aims to:-

- Provide avenues for staff to raise concerns and receive feedback on any action taken;
- Inform staff on how to take the matter further if they are dissatisfied with the response; and
- Reassure staff that they will be protected from reprisals or victimisation for whistle blowing in good faith.

4. SCOPE OF THE POLICY

This policy should be read in conjunction with the Code of Conduct, the principles of which are fully supported herein. The Council wishes to make it clear that FBDM has zero tolerance for the commission or concealment of fraudulent or illegal acts. Allegations of such acts will be investigated and pursued to their logical conclusion, including legal action, criminal prosecution, and disciplinary action where warranted.

This policy applies to all fraud, corruption, theft, maladministration or suspected irregularities of this nature involving the following persons or entities:

- a) All employees of the FBDM;
- b) Consultants, suppliers, contractors and other providers of goods or service to the FBDM; and
- c) Non-Governmental Organisations and other parties receiving benefits from the FBDM
- d) Political Office Bearers
- e) Councilors

5. DEFINITION OF CORRUPTION

Corruption is any conduct or behavior where a person accepts, agrees or offers any gratification for him/her or for another person where the purpose is to act dishonestly or illegally. Such behavior also includes the misuse of material or information, abusing a position of authority or a breach of trust or violation of duty.

6. DEFINITION OF FRAUD

In South Africa fraud is defined as “the unlawful and intentional making of a misrepresentation which causes actual and or potential prejudice to another”. The use of the term is in its widest possible meaning and is intended to include all aspects of economic crime and acts of dishonesty.

In other words, fraud can be described as any conduct or behavior of which a dishonest representation and/or appropriation forms an element.

7. DIMENSIONS OF CORRUPTION

Corruption takes various forms in the public service and elsewhere in society. The following are examples of different types of corruption.

- ***Bribery***

Bribery involves the promise, offering or giving of a benefit that improperly affects the actions or decisions of a staff member. This benefit may accrue to the staff member, another person or an entity. A variation of this manifestation occurs where a political party or government is offered, promised or given a benefit that improperly affects the actions or decisions of the political party or government.

- ***Embezzlement***

This involves theft of resources by persons entrusted with the authority and control of such resources.

- ***Fraud***

This involves actions or behavior by a staff member or other person or entity that fools others into providing a benefit that would not normally accrue to the staff member, or other persons or entity.

- ***Extortion***

This involves coercing a person or entity to provide a benefit to a staff member, another person or an entity in exchange for acting (or failing to act) in a particular manner.

- ***Abuse of power***

This involves a staff member using his or her vested authority to improperly benefit another staff member, person or entity (or using vested authority to improperly discriminate against another staff member, person or entity).

- ***Conflict of interest***

This involves a staff member acting or failing to act on a matter where the staff member has an interest or another person or entity that is in a relationship with the staff member has an interest.

- ***Abuse of privileged information***

This involves the use of privileged information and knowledge that a staff member 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 him or herself.

8. ACTIONS CONSTITUTING FRAUD, CORRUPTION, THEFT AND MALADMINISTRATION

The term fraud, corruption, theft and maladministration refer to, but are not limited to:

- a) Any dishonest, fraudulent or corrupt act;
- b) Theft of funds, supplies, or other assets;
- c) Maladministration or financial misconduct in handling or reporting of money or financial transactions;
- d) Making a profit from insider knowledge;
- e) Disclosing confidential or proprietary information to outside parties;
- f) Failing to disclose an interest in a contract or tender awarded by the FBDM
- g) Failing to disclose an income that you receive from a source other than the FBDM
- h) Irregularly accepting or requesting anything of a material value from contractors, suppliers, or other persons providing services/goods to the FBDM;
- i) Irregularly offering or giving anything of a material value to contractors, suppliers, or other persons providing services/goods to the FBDM;

- j) Destruction, removal, or abuse of records, furniture, and equipment;
- k) Deliberately omitting to report or act upon reports of any such irregular or dishonest conduct;
- l) Acts of financial misconduct contemplated in terms of chapter 15 of the Municipal Finance Management Act;
- m) Incidents of unauthorized, irregular or fruitless and wasteful expenditure as defined in the Municipal Finance Management Act; and
- n) Any similar or related irregularity

9. LEGAL FRAMEWORK

The following legislation and policies, amongst others, have been considered:

- a) Prevention & Combating of Corrupt Activities Act , no 12 of 2004
- b) Municipal Finance Management Act, no 56 of 2003 (MFMA)
- c) Protected Disclosure Act, no 26 of 2000
- d) Code of conduct for the Public Service
- e) Constitution Chapter 2
- f) Administration of Justice Act, no 3 of 2000
- g) Structures Act, no 117 of 1998
- h) Systems Act, no 32 of 2000
- i) Access to information Act, no 2 of 2000
- j) Prevention of Organised Crime Act, no 121 of 1998
- k) Criminal Procedure Act, no 51 of 1977

10. POLICY

It is the policy of the FBDM that fraud, corruption, theft, maladministration or any other dishonest activities of a similar nature will not be tolerated. In addition, these will be investigated and followed up by the application of all remedies available within the full extent of the law.

Appropriate prevention and detection controls will be applied. These include the existing controls and checking mechanisms as prescribed in existing policies, procedures and other relevant prescripts to the activities of the FBDM, and systems of internal control.

It is the responsibility of staff of the FBDM to report all incidents of fraud, corruption, theft, maladministration or any other dishonest activities of a similar nature to his Manager. If staff is not comfortable reporting such matters to his Manager, he should report the matter to his Manager's superior, with final recourse to the Accounting Officer. Staff should report incidents by using the appropriate lines of authority.

All Managers are responsible for the detection, prevention and investigation of fraud, corruption, theft, maladministration or any dishonest activities of a similar nature, within their areas of responsibility.

The FBDM will report all instances of prima facie criminal conduct to the appropriate authorities. In this regard the FBDM recognises that there is an obligation in terms of section 34 of the Prevention and Combating of Corrupt Activities Act no 12 of 2004, to report all acts of corruption, fraud, theft, extortion, forgery and uttering where the value exceeds R100 000.00 to the SA Police Service, failing which management who are aware of the matter, will be committing a criminal offence.

The FBDM will however not only report matters in terms of the above obligation, but will report all criminal conduct irrespective of the value involved.

11. RESPONSIBILITY TO CONDUCT INVESTIGATIONS

The responsibility to conduct investigations relating to the actions listed in this policy resides with the Managers within the FBDM who can have the advisory and supporting assistance from units / departments which include the following:

- a) External and internal Audit Services;
- b) State Attorney;
- c) External investigating agencies, for example the South African Police Services, where matters fall within their mandate;
- d) External consultants, for example 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

The FBDM will make all evidence collected during the course of an investigation available to legal and law enforcement agencies and will pursue the prosecution of all parties involved in criminal activities.

12. REPORTING PROCEDURES AND RESOLUTION OF REPORTED INCIDENTS

It is the responsibility of all staff of the FBDM to report all incidents of fraud, corruption, theft, maladministration and other suspected irregularities of this nature to his Manager. If the applicable staff member is not comfortable reporting such matters to his Manager, he should report the matter to his Manager's superior, with final recourse to the Accounting Officer and the fraud risk committee.

Concerns are better raised in writing. The background and history of the concern, giving names, dates and places where possible should be set out and the reason why the individual is particularly concerned about the situation. The earlier the

concern is reported, the easier it is to take action and initiate recovery procedures where necessary.

Staff members are not expected to prove the truth of an allegation; they will need to demonstrate to the person contacted that there are sufficient grounds for concern.

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

- a) Verbally, immediately after discovery of such an incident;
- b) This verbal report must be followed by a detailed written report to be submitted within 24 hours of the discovery of such an incident.

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

- a) Telephonically within twenty four hours of receiving the report from the Manager in regards to an incident;
- b) This telephonic report must be followed by a detailed written report to be submitted within seven days after discovery of such an incident.

If the matter could lead to the laying of criminal charges, the Accounting Officer will report within 24 hours to the South African Police Services.

Where a staff member is alleged to have committed an act of fraud, corruption, theft, or maladministration the Manager must institute disciplinary proceedings, within a reasonable period, in terms of the disciplinary code and procedure of the FBDM. The FBDM will furthermore initiate disciplinary measures against offenders with a view to seeking termination of the employment relationship

where the acts of dishonesty are proven as this type of conduct will usually damage the employer/employee relationship of trust.

As soon as disciplinary hearings concerning charges of financial misconduct are completed, the outcome must be reported within 48 hours to the Accounting Officer. Should the Accounting Officer be the effected party the outcome of the hearing will be reported to the Executive Mayor. The following will be reported on:

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

The Accounting Officer, in consultation with the fraud risk committee, is also required to ensure that losses or damages suffered by the FBDM as a result of an act committed or omitted by an staff member must be recovered from such a staff member if he is liable in law. The Accounting Officer must determine the amount of the loss or damage and, in writing request that staff member to pay the amount within 30 days or in reasonable installments. If the staff member fails to comply with the request, the legal process will then be initiated by the Accounting Officer.

This includes, where appropriate, calling on the support of the Asset Forfeiture Unit to recover misappropriated assets from offenders; asking the court to grant compensation orders on conviction of an accused party in terms of section 300 of the Criminal Procedure Act no 51 of 1977, as well as utilizing legal representatives to initiate civil recovery on behalf of the FBDM.

In recovering losses from dishonest employees the accounting officer will utilise the recent amendments to the Pension Funds Act which allows an employer, on registration of a criminal police docket with the SA Police Service, to request the pension fund to freeze employee benefit payments to an employee allegedly involved in dishonest conduct, pending finalization of the criminal prosecution, whereafter, if the employee is convicted, any losses caused by the employees conduct can be deducted from the benefits due to the employee.

13. PROTECTION OF WHISTLE BLOWERS

Whistle blowing is the process by which staff or other individuals can raise a concern about serious malpractice within an organization. It is similar to an early warning system and a means of enabling stakeholders to find out when something is going wrong in time to take corrective action.

Staff that are victimized and subjected to an occupational detriment for blowing the whistle on improprieties now have a legal remedy against their employer.

The Protected Disclosures Act, 26 of 2000 makes provision for the protection of staff that makes a disclosure that is protected in terms of this Act.

Any disclosure made in good faith and substantially in accordance with any procedure prescribed by the staff's employer for reporting is considered a protected disclosure under this act. A staff member making such a disclosure is protected from being subjected to an occupational damage on account of having made a protected disclosure.

A staff member who suspects or reports suspected dishonest activity or such activity which he has witnessed should be given the opportunity to remain anonymous should he so require.

The FBDM recognises that staff members will be concerned about potential victimization, recrimination and even threats to personal safety as a result of disclosing dishonest activities. The FBDM is therefore in the process of initiating a fraud hotline which will provide an independent toll-free fraud hotline number that staff can contact to report irregular conduct. This facility will be provided by an independent service provider who will guarantee to respect confidentiality/anonymity of callers, where this is required by the caller. This toll-free number will be provided to all employees and stakeholders.

The hotline call information will be submitted to a designated senior official in the organization who will then initiate steps to investigate the allegation. Where that person is implicated by the caller, the service provider will only submit the report to a designated alternate recipient, who will then initiate investigation.

Allegations made by staff that are false and made with malicious intentions, should be discouraged by Managers. Where such malicious or false allegations are discovered, the person who made the allegations must be subjected to firm disciplinary action. Such disclosures are not protected by the Protected Disclosures Act.

14.HARASSMENT OR VICTIMISATION

FBDM acknowledges the fact that the decision to report a concern can be a difficult one to make, not least because of fear of reprisal from those responsible for the irregularity. FBDM will not tolerate harassment or victimisation and will take action to protect staff when they raise a concern in good faith. Any act of harassment or victimisation should be reported to the Head of Department. This does not mean that if a staff member is already the subject of disciplinary or other action, that action will be halted as a result of their whistle blowing.

15. CONFIDENTIALITY

All information relating to irregularities that is received and investigated by Managers will be treated confidentially. The progression of investigations will be handled in a confidential manner and will not be disclosed or discussed with any other person(s) other than those who have a legitimate right to such information. This is important in order to avoid harming the reputations of suspected persons who are subsequently found innocent of wrongful conduct.

No person is authorized to supply any information with regard to the issues covered within this policy to the media without the express permission of the Accounting Officer.

16. ANONYMOUS ALLEGATIONS

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

- seriousness of the issue raised;
- credibility of the concern; and
- likelihood of confirming the allegation.

17. FALSE ALLEGATIONS

Staff or other parties must understand the implications (resources and costs) of undertaking investigations and should therefore guard against making allegations, which are false and made with malicious intent.

18. CONFLICT OF INTEREST

It is a conflict of interest for any staff member acting or failing to act on a matter where the staff member has an interest or another person or entity that is in a relationship with the staff member has an interest.

In this regard, all FBDM employees and stakeholders are compelled to declare their business interests in terms of the declaration of interests. For the sake of clarity in respect of the anti-fraud obligations this requirement goes further, in that all employees are required to declare business interests whether they are registered or not and declaration is required irrespective of whether such entity is dormant or active.

In addition in terms of Sec 20 (t) of the Public Service Act, a government employee shall be guilty of misconduct if he/she does paid work without obtaining permission from a Head of Department.

19. APPLICATION OF PREVENTION CONTROLS AND DETECTION MECHANISMS

In all instances where incidents of fraud, corruption, theft, maladministration and other similar irregularities of this nature take place, all Managers are required to immediately review the controls which have been breached in order to prevent similar irregularities from taking place in future, within a period of 48 hours after the occurrence of the initial incident. The Head of the Internal Audit Unit may be contacted for assistance. Additionally Internal audit will be mandated to initiate programs to regularly review the fraud risk, monitor compliance to the policy and initiate random anti-fraud testing within the different fraud risk areas.

In compliance with the MFMA, Fraud Prevention Plans (FPP) will be developed and implemented by all heads of department.

20. TRAINING, EDUCATION AND AWARENESS

In order for the Policy to be sustainable, it must be supported by a structured 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 regard to this Policy.

21. ADMINISTRATION

The custodian of this policy is the Accounting Officer who is supported in its implementation by the all Heads of Department.

The Accounting Officer assisted by the fraud risk committee is responsible for the administration, revision, interpretation, and application of this policy. It will be reviewed annually, and revised as required.

The accounting officer must establish a fraud risk committee to assist him in the fraud risk management process.

- **composition of the committee**

The composition of the committee should be clearly defined and should include senior officials representing the key areas of activity in the organisation. It is suggested that the following business processes or activity areas should provide representation on the committee:

- Finance
- Administration
- Procurement
- HR / Payroll

- Information technology
- Internal Audit

- **responsibilities of the committee**

The responsibilities of the committee would include:

Coordinating the overall approach to fraud control and the implementation of the fraud risk strategy

Determining priorities for fraud control initiatives and continually identifying areas of high-risk exposure and the adequacy of controls in high risk areas. This should be done in conjunction with internal audit and take into account frauds already identified. A formal update of the fraud risk assessment should be performed at least annually.

- Documenting responsibilities for strategy implementation.
- Co-ordinating / Implementing adequate fraud communication and training programmes in order to:
 - Inform staff and other key role players of their responsibilities for fraud prevention and detection and ensure that they have adequate skills to assess risk and identify problem areas.
 - Ensure adequate communication of identified fraud throughout the organisation and, where applicable to external parties, including the results of disciplinary or legal action throughout the organisation.
 - Receiving reports of alleged fraud and reports required in terms of conflict of interest and gifts policies. Documenting such reports and ensuring adequate follow-up as required.
 - Determining investigative and disciplinary action for detected fraud.
 - Reporting regularly to the Accounting Officer the progress on the fraud risk strategy, details of frauds identified, actions taken and the results thereof.
 - Reporting fraud to appropriate external authorities as required.

- Keeping up to date with fraud control issues and updating the strategy where appropriate.
 - Assessing the effectiveness of the strategy and taking corrective action where necessary.
-