

Appendix M

Whistleblower Policy

Adopted by Selectboard
June 4, 2012

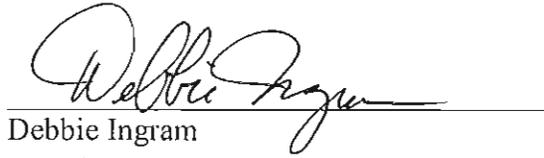
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The statements contained in this policy are guidelines and summaries. Nothing in this policy alters any employee's status as an employee at will, nor does it alter or supersede any disciplinary or termination provisions in any relevant collective bargaining agreement. As with any Town personnel policy, this Whistleblower Policy is subject to revision or revocation in the sole discretion of the Town, with notice to employees.

This policy is hereby adopted by the Selectboard of the Town of Williston, Vermont this 4th day of June and is effective as of this date until amended or repealed.



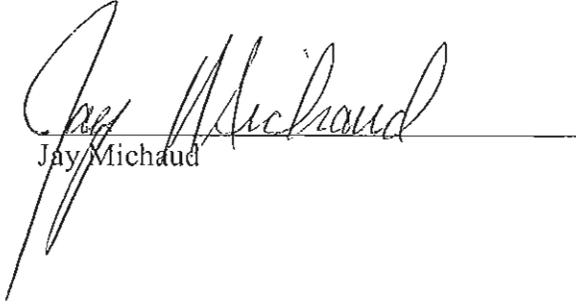
Terry Macaig



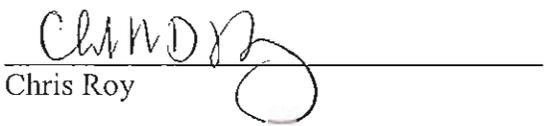
Debbie Ingram



Jeff Fehrs



Jay Michaud



Chris Roy

Whistleblower Policy

1. Statement of Purpose

The purpose of this policy is to provide clear policies and guidelines for use by Town of Williston employees and members of the community in order to encourage the reporting of alleged fraudulent, illegal, and dishonest activities by Town employees, and to protect anyone who does report alleged activity from retaliation by the Town or other Williston employees.

2. Policy

2.1. It is critical that the Town of Williston fosters and maintains a workplace with high ethical standards of conduct in all activities and that it conducts its business in a fair, effective, efficient, and transparent manner. Further, the Town must protect its assets and resources from fraudulent, illegal, and dishonest activities by maintaining effective internal controls and by identifying and investigating any possibility of fraud or other improper activities.

2.2. It is therefore the policy of the Town of Williston to encourage reporting by its employees of improper governmental action taken by Town of Williston officers or employees and to protect Town employees who have reported potentially improper governmental actions in good faith in accordance with the Town policies and procedures.

3. Definitions

- 3.1. Improper Governmental Action: Any action by a Town employee that is undertaken in the performance of the employee's official duties, whether or not the action is within the scope of the employee's employment; and is:
- a. In violation of any federal, state or local law or rule;
 - b. An abuse of authority;
 - c. Action that is of substantial and specific danger to the public health or safety;
 - d. Involves theft of or misappropriation of the Town's or a Town resident's resources, property, information, assets or funds, or an attempt to do any of the same, or that represents a conflict of interest;
 - e. Involves intentional falsification of records (including failure to disclose material facts or making of false or misleading entries or statements with the intent to deceive on any Town document or other official document, report, or form, including but not limited to, Town financial records and environmental regulatory reporting), or the willful and unauthorized destruction and/or mutilation of any Town document or other official document, report, or form;
 - f. Intentionally submitting false claims for payment or reimbursement;
 - g. Knowingly submitting and/or signing a timesheet that contains false information;

- h. Forgery or intentional unauthorized alteration of a Town document or other official document, application, report, or form, including but not limited to, Town financial documents;
 - i. Improprieties in the handling or reporting of financial transactions for the Town;
 - j. Authorizing or receiving payment by the Town for goods not received or services not performed; or
 - k. Computer-related activity involving unauthorized alteration or destruction of data, forgery, or manipulation of data or misappropriation of Town-owned software.
- 3.2. "Improper Governmental Action" does not include personnel actions (for example, hiring, firing, complaints, grievances, transfers, reassignments, performance evaluations, reductions in pay, suspensions, demotions, violations of labor agreements or reprimands, promotions, reassignment). In addition, employees are not free to disclose matters that would affect a person's right to legally protected confidential communications.
- 3.3. Retaliatory Action: Any material adverse change in the terms and conditions of an employee's employment undertaken as a result of that employee bringing forth a report of improper governmental action, in good faith, or providing information to or testifying before a public body, or objecting to or refusing to participate in an activity which the employee reasonably believes constitutes improper governmental action, or that poses a risk to public health, safety or the environment.
- 3.4. Emergency: a circumstance that if not immediately changed may cause damage to persons or property.

4. Procedures for Reporting

- 4.1. When to Report - A complaint filed under this Policy should be filed as soon as the employee becomes aware of the improper governmental action but no later than 30 days after the date of the act or event which is subject of the complaint. The Town will investigate complaints of improper governmental action that allegedly occurred outside such time period, but it must be understood that the passage of time may impair the Town's ability to perform an investigation.
- 4.2. To Whom A Report Should be Made - Except as set forth in Section 6 below, reports made pursuant to this policy should be made in accordance with the following procedure:
- a. If a Town employee is making the report, all reports should first be made to the employee's Department Head, unless the report involves alleged misconduct by that Department Head. If the action is not within the Department Head's specific authority, the Department Head should immediately report the matter to the Town Manager.

- b. If a Town employee is making a report that involves alleged misconduct by her/his Department Head, the employee should report the matter directly to the Town Manager.
- c. If a Town employee is making a report that involves alleged misconduct by the Town Manager, the employee should report the matter to the Chair of the Selectboard.
- d. If a Town employee is making a report that involves alleged misconduct by the Chair of the Selectboard, the employee should report the matter to Vice Chair of the Selectboard.
- e. If someone other than a Town employee is making the report, the report should be made to the Department Head who has specific authority over the matter, the Town Manager the Chair of the Selectboard, or the Vice Chair of the Selectboard.

4.3. Emergencies - In the case of an emergency, where the employee believes that damage to persons or property may result if action is not taken immediately, an employee may report the improper governmental action directly to the appropriate governmental agency with responsibility for investigating the improper action; provided that the employee also notifies the appropriate Department Head, Town Manager or Chair or Vice Chair of the Select Board, as indicated in 4.2 above, at the same time or within 24 hours of making an emergency report under this provision.

4.4. How to Report - Use of the "Whistleblower Complaint Form" is desirable (located on the Town website on the Town Manager's webpage under "Complaint Handling Process"; or in the informational slots at Town Hall). In all cases, a report under this policy should be made in writing and delivered to the appropriate person or entity identified herein.

4.5. Confidentiality - Reports of violations will be kept confidential to the extent possible and as permitted by applicable law. Full confidentiality cannot be guaranteed as, for example, some disclosures may be necessary in order to fully investigate a complaint.

4.6. Anonymous Allegations - This policy encourages employees to put their names to allegations because appropriate follow-up questions and investigation may not be possible unless the source of the information is identified. Concerns expressed anonymously will be explored appropriately, but consideration will be given to:

- a. The seriousness of the issue raised;
- b. The credibility of the concern; and
- c. The likelihood of confirming the allegation from attributable sources.

5. **Response to Reports**

The Department Head, Town Manager, or Selectboard Chair or Vice Chair as the case may be, shall promptly investigate the report of improper government action.

The person responsible for the investigation may employ or contract for internal or external investigative personnel and/or contractors as deemed appropriate, given the circumstances of a particular situation. After the investigation is completed (preferably within thirty (30) days of the employee's report, absent extenuating circumstances), the employee shall be advised of the results of the investigation, except that personnel actions taken as a result of the investigation may be kept confidential. Should the investigation require more than thirty (30) days, a status report shall be provided to the reporting party.

6. Reports Outside of Regular Procedures

6.1. There are certain circumstances in which it may be appropriate for employees to report information about improper governmental action directly to an outside agency instead of reporting such information through the normal chain of command, as set forth above. Such circumstances include the following:

- a. If a Town employee reasonably believes that no investigation was undertaken by the Town to determine whether an improper government action occurred;
- b. If a Town employee reasonably believes that criminal activity is ongoing and that reporting such activity would be dangerous to the reporting employee or would result in the destruction of evidence of wrongdoing; or
- c. If a Town employee reasonably believes that there has been a so-called "Brady violation"¹ by another Town employee and the reporting employee reasonably believes that following the normal reporting requirements set forth above would result in destruction of evidence or other injustice.

6.2. In the event that an employee decides to make a report to an outside agency pursuant to this provision, such employee shall subsequently inform the Town Manager or the Chair or Vice Chair of the Selectboard of his or her report to the outside agency, unless the outside agency advises the employee that doing so would, in the outside agency's opinion, jeopardize the investigation or otherwise be inappropriate under the circumstances. Informing Town officers of the report to the outside agency, as described above, should be made not later than 48 hours after the report to the outside agency has been made.

7. Protections Against Retaliation

It is a violation of this policy for any employee to take retaliatory action because another employee or citizen, who, in good faith, provided information that improper government action may have occurred, regardless of the outcome of the initial

¹ A "Brady violation" refers to a legal standard set forth in the United States Supreme Court case *Brady v. Maryland*, 373 U.S. 83 (1963). *Brady* requires the disclosure of exculpatory information which is favorable to a defendant in a criminal prosecution matter (which may include information that undermines the credibility of police officers who might be called upon to testify in such matters), where such information is material to a finding of guilt or material to the punishment that may be rendered. See *United States v. Bagley*, 473 U.S. 667 (1985).

compliant. Employees who believe they have been retaliated against for reporting suspected improper governmental action should follow this procedure:

- 7.1. Employees must provide a written complaint to their Department Head within thirty (30) days of the occurrence of the alleged retaliatory action. If their Department Head is involved, the notice should go to the Town Manager, to the Chair of the Selectboard if the Town Manager is involved, or to the Vice Chair of the Selectboard if the Chair of the Selectboard is involved.
- 7.2. The written charge shall specify the alleged retaliatory action and the relief requested. The complaint shall be investigated by an appropriate individual, individuals, or contractor(s), and a response provided in writing, preferably within thirty (30) days of receipt of the written charge. Should the investigation require more than thirty (30) days, a status report shall be provided to the reporting party.
- 7.3. An employee who brings forth a complaint that he or she knows to be untrue, or who provides false or misleading information (by overt statement or material omission) in connection with the investigation of a complaint, may be subject to discipline, up to and including termination.
- 7.4. This Policy does not prohibit the Town from taking any personnel action, including disciplining or discharging any Town employee for legitimate, non-retaliatory or non-discriminatory reasons.
- 7.5. The right of a whistleblower for protection against retaliation does not include immunity for any personal wrongdoing that is alleged and investigated.
- 7.6. Allegations made, or information provided to, internal or external government authorities in bad faith may result in disciplinary action.

8. Enforcement

Violations of this policy and these procedures may result in appropriate disciplinary action, up to and including dismissal.