

April 13, 2021

FOI No.: 2021-20

VIA E-MAIL – Redacted

Redacted

Dear Redacted

Re: Request for Records
Freedom of Information and Protection of Privacy Act

The City of White Rock has reviewed your request for access to the following records pursuant to the Freedom of Information and Protection of Privacy Act:

1. *Documents/discussions the HR Director, Jacquie Johnston, has had with any lawyers over compliance of the hiring process with the Human Rights Code*
2. *Contact information of the lawyers*
3. *Documents and policy the HR department relies on with respect to employment equity considerations and data collection*

I have been unable to locate any records responsive to items 1. And 2.

Access to the City's Respectful Workplace Policy is available. A copy is attached below.

Please contact our office if you have any questions or concerns.

Sincerely,



Ken Overton
Manager, Property, Risk Management, and FOI
604-541-2104

Att.

Corporate Administration
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THE CORPORATION OF THE
CITY OF WHITE ROCK
15322 BUENA VISTA AVENUE, WHITE ROCK, B.C. V4B 1Y6



POLICY TITLE: **RESPECTFUL WORKPLACE**
POLICY NUMBER: **HUMAN RESOURCES - 405**

<i>Date of Council Adoption: April 2, 2012</i>	<i>Date of Last Amendment: September 30, 2019</i>
<i>Council Resolution Number: 2012-090, 2013-134; 2014-014, 2015-309, 2019-407; 2020-575</i>	
<i>Originating Department: Human Resources</i>	<i>Date last reviewed by the Governance and Legislation Committee: November 9, 2020</i>

Policy:

1.0 Purpose

The purpose of this policy is to assist the City of White Rock, Council, and its Employees in fostering and maintaining a respectful working environment that is free from discrimination, bullying and harassment. The policy outlines the roles and responsibilities of the City, Council and its Employees in promoting and maintaining a respectful workplace where Employees are treated with dignity and respect. As well, it provides the procedures to be taken in resolving a complaint of bullying, harassment or discrimination.

2.0 Principles

Every Employee has the right to work in a respectful atmosphere that promotes equal opportunities and is free from harassment, bullying and discrimination.

Bullying, harassment and discrimination as described in this policy is strictly prohibited and will not be tolerated by the City of White Rock. All complaints of bullying, harassment or discrimination will be addressed in a fair, unbiased and timely manner. If it is determined that an Employee engaged in harassment, bullying or discrimination then disciplinary action will result up to and including immediate termination of employment.

This policy prohibits retaliation or reprisals against anyone who, in good faith, reports a violation of this policy or participates in a complaint investigation process. If any Employee is found to have retaliated against another Employee in such circumstance, disciplinary action will result up to and including immediate termination of employment.

Complaints found to be false, frivolous or malicious are also considered a violation of this policy and will result in disciplinary action up to and including immediate termination of employment.

Failure to comply with any other responsibilities or obligations pursuant to this policy may result in disciplinary action, up to and including immediate termination of employment.

This policy is developed in accordance with Sections 115, 116 and 117 of the *Workers Compensation Act* which sets out the general duties of employers, workers and supervisors respectively, and Guideline G-D3-115(1)-3 Bullying and harassment, of the *Workers Compensation Act*.

3.0 Scope

The conduct prohibited by this policy applies to all persons associated with or employed by the City of White Rock, including Employees, contractors, students, volunteers, members of the public and elected officials. This policy applies to all aspects of the employment relationship including employment-related functions and to off-duty conduct that has the potential to negatively impact the work environment, whether or not the function or conduct occurs at City facilities or worksites. Bullying and harassment through electronic technology and cyberspace, including phones, email, text and chat messaging, the internet and social media, is prohibited.

This policy covers:

- Discrimination and harassment, including sexual harassment, based on the protected grounds of the *British Columbia Human Rights Code*
- Personal harassment including bullying

This policy does not limit the rights of the City to appropriately and in good faith manage the workforce as described in section 5.0 below. The City has the responsibility to investigate incidents, with or without the person's consent, where there are concerns of alleged discrimination, bullying or harassment, and the potential impact of such conduct on a respectful workplace.

The Complaint Resolution process as defined in section 8.0 below does not apply to persons who are not Employees.

4.0 Definitions

A Respectful Workplace - A place free from discrimination, harassment and bullying of any kind, and where all Employees are treated with dignity and respect and where diversity and inclusion are valued.

A respectful workplace:

- promotes positive communication
- embraces diversity and equality
- values dignity of the person
- encourages fair and respectful treatment
- encourages thinking about how other people want and deserve to be treated

- applauds polite, courteous and considerate conduct
- promotes collegiality and team work
- supports an inclusive atmosphere
- promotes active listening
- promotes the sharing of opinions and ideas in an open-minded environment
- encourages positive feedback for ideas, suggestions or work that is accomplished well
- encourages thinking before we act or speak or type
- encourages considering how our actions affect others

In short, a respectful workplace is about ‘raising the bar’ for the way we treat each other.

Allegation - An unproven assertion, claim or statement based on a person’s perception that someone has done something wrong.

Bullying - A type of harassment that is marked by the intentional, persistent attempt of one or more persons to intimidate, demean, torment, control, mentally or physically harm or isolate another person(s).

Bullying Behaviour includes:

- Persistent, excessive and unjustified criticism that intimidates or humiliates
- A deliberate attempt to sabotage a person’s ability to do their job properly
- Abusive, vindictive, malicious behaviour and misuse of power deliberately aimed at undermining a person’s dignity and self-esteem

Cyberbullying: Using electronic technology, the internet or social media with the intent to harm or isolate another person.

Examples of Bullying

Other than the obvious forms of bullying, such as verbal, emotional and physical abuse, threats, and intimidation, other examples as part of a pattern of behaviour may include, but are not limited to:

- Excluding, shunning or ignoring
- Unwarranted persistent, excessive and unjustified criticizing of another person or their work
- Spreading malicious rumours and making false allegations about another person
- Undermining or hindering another person’s work by sabotaging their ability to do their job properly
- Assigning or making unreasonable work demands; setting impossible deadlines and goals
- Constantly changing goals, expectations and guidelines applicable to the targeted person
- Removing responsibilities from the target and making them feel useless
- Blocking the target’s application for leave, training or promotion for unjustified reasons
- Rumors spread by email or posted on websites such as social networking sites
- Embarrassing pictures or videos spread electronically such as by e-mail or posted on websites such as social networking sites
- Fake profiles created to disparage, intimidate or humiliate another person

Complainant - The person bringing the complaint forward and/or alleging that discrimination or harassment has occurred. There may be one or more Complainants.

Discrimination – Adverse or negative treatment of a person related to his/her employment based on a prohibited ground of discrimination under the *BC Human Rights Code*. Discrimination includes making adverse distinctions between persons based on a prohibited ground.

Prohibited grounds of discrimination include:

- Race
- Colour
- Ancestry
- Place of origin (birthplace)
- Age
- Religion
- Marital status
- Political belief
- Criminal convictions unrelated to employment
- Physical disability
- Mental disability
- Sex (including pregnancy)
- Gender identity or expression
- Sexual orientation
- Family status

Employee(s) - Includes all employees (full-time, part-time, temporary fulltime, casual, probationary), apprentices, and paid students.

Harassment – As defined in this policy, any of the three following types of behaviours:

a. Harassment based on a prohibited ground of discrimination

Unwelcome or objectionable conduct, comment or behaviour directed towards another person that:

- is directly or indirectly based on a prohibited ground of discrimination under the *BC Human Rights Code*,
- the individual knows or ought reasonably to know would be unwelcome or offensive to another, and
- has the effect of creating an intimidating, hostile or offensive work environment or leads to adverse job-related consequences.

b. Sexual Harassment

Unwanted, unwelcome, unsolicited, or unreciprocated conduct, that is sexual in nature. Including: sexual advances, requests for sexual favors or other verbal or physical behavior of a sexual nature that:

- Has the purpose or effect of creating an intimidating, hostile or offensive work environment,
- Has the purpose or effect of undermining work performance, work relationships or productivity, or

- Places conditions upon employment, promotion, work assignments, and compensation or is used as the basis for decisions generally affecting an individual's employment.

c. Personal Harassment

A type of harassment that is not related to one of the prohibited grounds of discrimination. Personal harassment is any inappropriate conduct, comment, display, action, or gesture by a person towards another person that the first person ought to have known would cause the other person to be humiliated or intimidated.

Personal harassment includes verbal or physical abuse, threats, violence, bullying, insults, belittling comments, or intimidation, and subtler forms of harassment such as unwelcome non-verbal gestures, manipulation, ignoring or isolating a person or treating a person adversely for no legitimate work purpose, when the person engaged in the conduct ought to have known it would cause the other person to be humiliated or intimidated.

Harassment of any kind may be intentional or unintentional. Generally it consists of repeated incidents or actions; however, a single serious incident that has a lasting harmful effect may constitute harassment. Examples of harassment include but are not limited to:

- Verbal or written insults, abuse or threats, physical assault (actual or threatened)
- Bullying, hazing
- Derogatory, demeaning, degrading or intimidating comments
- Racial or ethnic slurs, including racially derogatory nicknames
- Practical jokes which cause embarrassment, endanger safety, or negatively affect work performance
- Unwelcome or offensive jokes, innuendo, taunting or teasing based on a prohibited ground of discrimination
- Unwelcome remarks, questions, jokes, innuendo, gestures or taunting about a person's body, sex, sexual orientation, sexual attractiveness or unattractiveness, including: sexual invitations, requesting sexual favors or making sexual advances with actual or implied work-related consequences
- Unwanted physical contact such as touching, patting, pinching, grabbing, brushing up against, hugging, kissing and any touching with a sexual connotation, including intimidation, threats or actual physical assault of a sexual nature
- Display of sexual or pornographic materials, including emails and electronic materials, offensive or sexually explicit pictures, posters, pin-ups, graffiti, cartoons or sayings
- Patronizing or condescending behavior
- Excluding, shunning, ostracizing, misuse of authority
- Malicious gestures or actions
- Spreading of malicious rumours or lies
- Unwarranted and excessive supervision or criticism of an individual
- Bullying including cyberbullying

Mediation - A voluntary process where parties in dispute consent to meet with a Mediator to determine whether the dispute can be resolved in a mutually satisfactory manner. Mediation discussions between parties are private and confidential.

Personal Information and Confidentiality – any allegation or informal or formal complaint of inappropriate workplace behaviour under the policy will be considered personal information “supplied in confidence” as per Section 22(2)(f) of the *Freedom of Information and Protection of Privacy Act* (FOIPPA) and the substance of the investigative reports and meetings held by those in authority to make a decision on the disposition of the complaint will be protected from disclosure to third parties in accordance with section 22(2)(f) and Section 22(2)(h) of the Act and any other provisions and laws as applicable.

Reasonable Person Standard - A test to determine whether a reasonable person, in a similar situation as the Complainant, would be humiliated, offended or intimidated as a result of another person’s conduct or pattern of conduct.

Respondent - The person(s) who the allegations of harassment or discrimination have been made against in accordance with this policy.

Retaliation - Any intentional act or omission by a person, in response to a complaint, that adversely affects a Complainant, a person named in a complaint or person who gives evidence or assists in a complaint, including:

- Coercion or intimidation
- Suspension, lay-off or dismissal, demotion or loss of opportunity for promotion, discontinuation or elimination of the job
- Transfer of duties, change of location, reduction in wages or hours
- Imposition of any discipline, reprimand or other penalty

Workplace - Includes City facilities, worksites, offices, vehicles, parks, washrooms, locations visited by Employees or elected officials on City-related business; including conferences, meetings, client sites, locations of work-based social gatherings and all written, verbal and electronic communication taking place in such venues or for work-related purposes.

5.0 Workplace Harassment Is NOT:

Management of the workforce:

- Supervision, direction or management of Employees undertaken in a good faith manner for a legitimate work purpose does not constitute harassment. For example, harassment does not include changes to working conditions, corrective action, discipline, termination of employment, decisions relating to workload and deadlines, performance evaluation, transfers, changes in job duties, lay-offs, demotions and reorganizations unless such

conduct is carried out in an abusive or threatening manner or is intended to cause emotional harm.

- It is not harassment for a manager or supervisor to informally or formally investigate behaviour or incidents of concern that occur at or arise from the workplace by interviewing Employees unless an interview is carried out in an abusive or threatening manner or intended to cause emotional harm.
- It is not harassment for a supervisor or manager during an investigation to warn an Employee of the disciplinary consequences that may result from failure to comply with this Policy including engaging in bullying & harassment, failing to cooperate with the company's investigation, failure to report bullying & harassment, breaching confidentiality or retaliation.

Interpersonal conflict between persons at the workplace is not harassment unless the conflict results in behavior that is considered threatening or abusive.

- Expressing differences of opinion is not harassment.
- Personal disputes over non work-related matters should not be engaged in at the workplace. Disputes over work-related matters should be resolved respectfully between the persons involved or with the assistance of a supervisor, manager or Human Resources.
- It is not harassment to respectfully and constructively attempt to resolve workplace issues with co-workers.

6.0 Responsibilities

Council, Management and Supervisors

Have the responsibility to:

- Act in a manner that is consistent with a Respectful Workplace
- Not engage in behaviour that constitutes discrimination, bullying or harassment as defined in this policy
- Comply with, administer and promote awareness, understanding and compliance by everyone of this policy
- Participate in training and become familiar with this policy
- Model inclusive and respectful behaviour
- Lead by example in treating all Employees with dignity and respect
- Set and enforce standards of appropriate workplace conduct
- Promptly respond to reported or suspected breaches of this policy
- Deal with all incidents or allegations in a manner consistent with this policy and in consultation with Human Resources as required
- Maintain confidentiality related to complaints to the extent possible to comply with this policy, investigate complaints in a fair, unbiased and thorough manner and take corrective action
- Know and abide by Sections 115 and Policy Guidelines D3-115-2, Employer Duties, Workplace Bullying and Harassment and D3-117-2, Supervisor Duties, Workplace Bullying and Harassment, of the *Workers Compensation Act*.

- Know and comply with the rights and obligations arising from the *BC Human Rights Code*

Human Resources

Has the responsibility to:

- Act in a manner that is consistent with a Respectful Workplace
- Not engage in behaviour that constitutes discrimination, bullying or harassment as defined in this policy
- Comply with, administer and promote awareness, understanding and compliance by everyone of this policy, the *BC Human Rights Code*, and related policies, guidelines and regulations under the *Workers Compensation Act*
- Ensure management, supervisors, elected officials and Employees are provided with training on respectful workplace behaviour including bullying and harassment training
- Advise management with regards to this policy and assist with addressing resolving issues of bullying, harassment and discrimination
- Promptly respond to reported or suspected breaches of this policy
- Investigate allegations of discrimination, bullying and harassment
- Provide mediation where appropriate and determine when a third party mediation is appropriate
- Maintain confidentiality to the extent possible to comply with this policy, investigate complaints in a fair, unbiased and thorough manner, and take corrective action
- Conduct any follow-up steps that are determined to be appropriate following an investigation
- Keep records of complaints, investigations, corrective action and follow-up measures in a secure manner
- Review the policies and procedures and steps taken by the City to address bullying and harassment on an annual basis
- Comply with this policy and any other policy implemented by the City related to preventing and addressing bullying & harassment

Employees including Union representatives

Have the responsibility to:

- Act in a manner that is consistent with a Respectful Workplace
- Not engage in behaviour that constitutes discrimination, bullying or harassment as defined in this policy
- Participate in training and become familiar with this policy
- Know and comply with the rights and obligations arising from this policy and the *BC Human Rights Code*
- Attempt to resolve differences with other Employees in a respectful way as soon as possible and raise concerns in a timely manner

- Inform a person engaged in unwelcome conduct that it is not welcome as long as the Employee is comfortable doing so safely
- Promptly report breaches or potential breaches of this policy including bullying and harassment of any kind that is experienced or observed
- Fully cooperate with interventions, investigations and mediations to resolve complaints
- Maintain confidentiality related to complaints
- Know and abide by Policy Guideline D3-116-1, Worker Duties – Workplace Bullying and Harassment, of the *Workers Compensation Act*

7.0. Confidentiality

Allegations of discrimination and harassment, especially sexual harassment, often involve the collection, use and disclosure of sensitive personal information. It is imperative that confidentiality is maintained, not only from a legal standpoint but it is essential in order to ensure people feel comfortable to come forward and confident that their personal information will not be shared. Confidentiality must also be maintained in order to protect the reputations and interests of those whom the allegations are made against.

The person(s) investigating a complaint or suspected breach of this policy will disclose personal information to persons as reasonably necessary to comply with this policy, investigate alleged or potential breaches of this policy, and take corrective, remedial and follow-up measures.

Subject to any limits or disclosure requirements imposed by law or required by this policy, all information, oral and written, created, gathered, received or compiled through the course of a complaint and investigation will be maintained in confidence by the Complainant, Respondent, their representatives, witnesses and any other parties that may be privy to the information. Any person breaching confidentiality may be subject to disciplinary action, up to and including immediate termination of employment.

The Director of Human Resources may provide information concerning a complaint to appropriate City officials on a need-to-know basis.

8.0 Complaint Resolution

Informal Resolution

An Employee who believes that he or she has experienced or observed conduct that is not consistent with a Respectful Workplace is encouraged to first resolve the issue through respectful and open dialogue in an informal process. For the purposes of the informal and formal resolution process, “Employee(s)” includes volunteers and practicum students of the City.

Informal Conversation

- If comfortable doing so safely, the Employee is strongly encouraged to approach and engage the person responsible for the conduct in conversation to clarify and resolve concerns.
 - Let them know that their behaviour/conduct is unwelcome
 - Ask them to stop the behaviour
- If the Employee is not comfortable with directly approaching the individual or there is no resolution to the issue, they should promptly contact their supervisor/manager or alternatively a member of Human Resources who will assist in the matter as soon as possible.

Informal Conversation with assistance of Supervisor/Manager or Human Resources Personnel

- The Supervisor, Manager or a member of Human Resources will meet with the Employee to discuss the situation, provide information about the policy, and discuss options for resolution, which may include an informal or formal resolution process.
- Manager/Supervisor/Human Resources may decide to:
 - Meet separately with each person involved in the complaint and review concerns
 - Meet together with all persons to facilitate a conversation to resolve the issue
 - Review policies and reinforce expectations of respectful conduct
 - Seek commitments from persons that they will conduct themselves in a respectful manner
 - Follow-up, where appropriate, with persons after the resolution process to ask whether commitments have been adhered to

An Employee that pursues an informal course of action is not prevented from filing a formal complaint in the future. However, the prompt reporting of all allegations of bullying, harassment or discrimination that are not resolved in an informal matter is required.

Formal Resolution of bullying, harassment and discrimination complaints

If resolution cannot be attained by Informal Resolution and the conduct alleged may constitute bullying, harassment or discrimination of an Employee as defined in this Complaint Resolution section then the complaint by the Employee must go through Formal Resolution. A Formal Resolution process or investigation may be carried out even if the Complainant requests that it not occur because the City is committed to maintaining a workplace free from bullying, harassment and discrimination.

- A complaint of bullying, harassment or discrimination involving the CAO or a member of Council and involving a staff member(s) should be reported to the Director of Human Resources. Conduct of such an investigation, resulting action and any appeals will take place in accordance with the policy.

- Complaints involving Council that do not involve staff will be handled within Council.

Ensuring that we maintain a safe and respectful workplace is everyone's responsibility and deserves our immediate attention. Delays in reporting complaints can compromise the workplace and affect the City's ability to take corrective action when needed. Accordingly, the City expects that a complaint of bullying, harassment or discrimination be filed immediately after the alleged incident(s) have occurred or immediately after any attempts at informally resolving the incident(s) have been unsuccessful, and in any case must be reported no later than the time limits set out in the BC Human Rights Code or the Workers Compensation Act.

A formal complaint should be reported to the Employee's immediate supervisor/manager or directly to Human Resources. In the event the complaint involves the immediate supervisor/manager then it should be reported directly to Human Resources. If a member of Human Resources is involved in the complaint, then it should be reported to the Director of Human Resources and the Chief Administrative Officer.

In the event that the Director of Human Resources is involved in the investigation as a Complainant, Respondent or witness, the Chief Administrative Officer, or designate, will fulfill the role of the Director of Human Resources as it relates to this process.

Formal complaints must be in writing and signed by the Complainant. Information required for a written complaint includes:

- Description of the incident(s) that have led to the complaint being filed
- The date(s) and location(s) where the incident(s) occurred
- The name(s) of the Respondent(s)
- The name(s) of any witnesses
- The effect the incident(s) have had on the Complainant's work and well-being
- Any attempts made to resolve the complaint through an informal process

Employees are encouraged to consult the Director of Human Resources (or a designate) in formalizing their complaint.

The Director of Human Resources, or designate, will determine whether the Complaint involves allegations of bullying, harassment or discrimination that should proceed to the investigation process.

The Investigation

The investigation of a formal complaint will be conducted as soon as possible and will be kept as confidential as possible. Any resolutions necessary as an outcome of the investigation will be implemented in a timely manner.

The Director of Human Resources, or designate, may decide not to proceed with an investigation when a determination is made that:

- The complaint has no reasonable basis, is frivolous, vexatious, malicious, lies outside the scope of conduct prohibited by this policy
- The alleged conduct could not constitute bullying, harassment or discrimination
- The issue is more appropriately dealt with under the Informal Resolution process or under another policy or procedure
- The complainant chooses a different forum for resolution
(see *Other Proceedings* section)

If the allegations would not constitute proceeding with the investigation into the complaint, the Complainant will be informed of this decision and the reasons behind it.

If the complaint proceeds, the Director of Human Resources will conduct the investigation or may appoint a designate or an external investigator to investigate the allegations made by the Complainant. The Complainant and the Respondent will be notified of the investigation and who will be investigating.

The investigator will conduct a thorough and fair investigation of the complaint. The investigator will interview the Complainant, Respondent and any witnesses with relevant information, make findings of fact and determine whether the facts constitute a finding of a breach of this policy.

The investigation will be conducted in a manner that ensures both the Complainant and Respondent each have a fair opportunity to know what the other party is saying and a fair opportunity to be heard. The Respondent will be given the opportunity to respond to the allegations.

Employees have an obligation to participate in the investigative process. Refusing to do so may be grounds for disciplinary action.

At any time during the investigation, the Director of Human Resources may pursue the option to informally resolve the complaint, which may include mediation. The investigation may be suspended for an informal process to occur. If unsuccessful, the investigation will recommence.

In reaching a decision, the investigator will use the standard of proof corresponding to the civil burden of proof on a balance of probabilities.

Upon the conclusion of the investigation, a report will be written setting out the nature of the complaint and the investigation's findings. If the investigator is someone other than the Director of Human Resources, the investigator will provide a confidential report to the Director of Human Resources. The Director of Human Resources, in consultation with the appropriate City personnel, will determine the remedial action that must be taken.

The parties will be informed of the outcome of the investigation.

The above procedure and the investigation carried out are intended to be flexible in order to respond to the specific circumstances at issue. The City reserves the right to engage in a different procedure as deemed appropriate in any given circumstance.

The Complaint, notes, witness statements and all other documentation gathered as part of the investigation will be securely kept in a confidential investigation file.

If it is determined that harassment, bullying or discrimination occurred then disciplinary action will result up to and including immediate termination of employment.

If the investigation determines that the Complainant initiated a false allegation or an allegation with intent to harm the Respondent or others then disciplinary action will result up to and including immediate termination of employment.

9.0 Other Proceedings

This policy does not preclude an Employee from accessing their rights through their Collective Agreement, the *BC Human Rights Code* or the *Workers Compensation Act* as applicable.

10.0 Appeals

Exempt Employees may appeal any disciplinary action to the Chief Administrative Officer. Union Employees may follow the procedures as prescribed in the applicable Collective Agreement.

Rationale:

The City values all of its Employees and is committed to providing a respectful working environment that is free from discrimination and harassment and where all Employees are treated with dignity and respect.