



TACOMA HOUSING AUTHORITY

Policy No.	HR-10.55
Policy	Employee or Job Applicant Complaint
Date	July 16, 2009

1. Purpose

- ▶ To encourage employees or applicants for employment to report their significant concerns about employment related matters, including alleged violations of THA’s policy prohibiting unlawful discrimination and harassment, or improper governmental action at THA;
- ▶ To provide a process for this purpose;
- ▶ To protect employees who complain or report under this policy from retaliation for doing so in good faith and to prohibit the use of this process for malicious reasons;
- ▶ The procedure to implement this policy, along with *THA Policy CR-10 Reasonable Accommodation*, provides the grievance processes required by 24 C.F.R. § 8.53(b) and 28 C.F.R. § 35.107(b).

2. Sources for Policy

- ▶ Whistle Blower Protection Act, Chap. 42.41 RCW
- ▶ Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., 24 C.F.R. Part 8.53(b), and 28 C.F.R. § 35.107(b)
- ▶ Washington Law Against Discrimination Chap. 49.60 RCW
- ▶ *THA Policy CR-05: Prohibition of Unlawful Discrimination, Harassment, and Retaliation*

3. Scope of Policy

This policy applies to all THA employees and applicants for employment.

4. Who is Responsible for Implementing Policy

Who	Responsibilities
<i>All staff</i>	<ul style="list-style-type: none"> ▶ To report in good faith their significant concerns about employment-related matters or improper governmental action they believe may be occurring at THA; ▶ Are responsible for submitting a complaint and following the procedure outlined below if they feel they have been unfairly treated. Complaints should be filled within 30 days of the occurrence of the conduct or action complained of.
<i>Supervisors Department Directors</i>	<ul style="list-style-type: none"> ▶ To assure staff that THA welcomes their good faith reports and that THA will protect such reporters from retaliation. ▶ To attempt to resolve complaints at the first step; ▶ To receive reports and forward them to the Human

Who	Responsibilities
	Resources Department.
<i>Human Resources Dept.</i>	<ul style="list-style-type: none"> ▶ To investigate each complaint, determining whether there is or is not probable cause, presenting findings and recommendations to the Executive Director, and implementing final resolution; ▶ To include this policy in all orientation of new staff; ▶ To forward reports to the Executive Director. ▶ To keep the archives of all reports.
<i>Executive Director</i>	▶ To respond to findings of violations as appropriate.

5. Definitions		
<i>Emergency</i>	Circumstances that if not immediately changed may cause damage or injury to persons or property	
<i>Improper governmental action</i>	<p>Any action by a THA employee:</p> <ul style="list-style-type: none"> (i) that is undertaken in the performance of his or her official duties, whether or not the action is within the scope of his or her employment; and, (ii) that violates any federal, state, or local law , is an abuse of authority, is of substantial and specific danger to the public health or safety, or is a gross waste of public funds. <p>Examples of improper government action include:</p> <ul style="list-style-type: none"> ▶ stealing THA property; ▶ accepting or soliciting bribes; ▶ having THA employees do work on private property while on THA time or with THA equipment; ▶ manipulating THA’s waiting list for housing or housing assistance to favor family or friends. <p>“<i>Improper government action</i>” does NOT include personnel actions, including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of a collective bargaining or civil service laws, alleged labor agreement violations, reprimands or any action that may be taken under Chap. 42.56 RCW, Public Employees Collective Bargaining Act.</p>	
<i>Outside Agencies</i>	Pierce County Prosecutor 930 Tacoma Avenue South, Room 946 Tacoma WA 98402-2171 (253) 798-7400	State Auditor’s Office P.O. Box 40021 Olympia, WA 98504-0021 (360) 902-0370
	U.S. Dept. of Housing and Urban Development	City of Tacoma Department of Human Rights/Human

5. Definitions		
	Seattle Federal Office Bldg. Suite 255 909 1st Avenue Seattle, WA 98104 (206) 220-5101	Services Room 836 747 Market Street Tacoma, WA 98402-3779 (253) 591-5151
	The contact list provided here is accurate as of the effective date of this Policy and is subject to change without notice. It is recommended that you verify accuracy.	
<i>Retaliatory Action</i>	(a) Any material adverse change in a local government employee's employment status, or the terms and conditions of employment including denial of adequate staff to perform duties when such staff would be available, frequent staff changes, frequent and undesirable office changes, refusal to assign meaningful work or to provide available, adequate tools or equipment to perform the job, unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations, demotion, transfer, reassignment, reduction in pay, denial of promotion, suspension, dismissal, or any other disciplinary action; or (b) material hostile actions by another employee towards a local government employee that were encouraged by a supervisor or senior manager.	

6. Forms Associated with this Policy		
<i>THA Form HR-10.55(1)</i>	<i>Employee or Job Applicant Complaint</i>	
<i>THA Form HR-10.55(5)</i>	<i>Employee or Job Applicant Appeal</i>	

7. Policy

Prompt and effective resolution of employee complaints relating to employment is a vital element of staff morale. It is the policy of the Tacoma Housing Authority to resolve employees' job-related complaints in a prompt, professional and impartial manner consistent with THA's policies and procedures, and with laws prohibiting discrimination in employment. Issues that can and should be raised under this policy include working conditions, application of THA policies, charges of discrimination (whether regarding sex, marital status, race, color, creed, religion, national origin, age or handicap), or harassment (whether sexual or because of another protected classification).

The filing of a grievance shall not be construed as reflecting unfavorably on an employee's present standing, performance, or contribution to THA. Any retaliation against the employee for filing his/her complaint is prohibited.

8. Procedure

8.1 Informal Report to Management

THA encourages employees to attempt informally to resolve concerns with his or her supervisor or Department Director. Supervisors should respond promptly.

The prompt and effective resolution of employee complaints is an important part of a productive, enjoyable, and respectful workplace.

Employees can also report concerns to the Human Resources Department or the Executive Director. Supervisors must convey any significant reports of wrongdoing to their Department Director or the Executive Director.

8.2 THA Hotline: 1-800-576-5262

THA employees may also use the Hotline to leave messages, including anonymous messages. The company who manages the Hotline will transcribe all messages and forward the transcript to THA.

8.2.1 The Human Resources Department shall coordinate any investigation of a report.

8.2.2 An HR Department representative will respond to the reporting employee, if known. He or she shall respond on a schedule commensurate with the urgency of the complaint. Reports of emergencies require as immediate a response as practicable.

8.2.3 The Human Resources Department must convey any significant reports of wrongdoing to the Department Director and the Executive Director.

8.3 Union

The unions representing THA's employees are positioned to assist their members either informally or, for concerns arising under the collective bargaining agreement, through formal contract grievance process.

8.4 THA Formal Complaint Process

Any THA employee or job applicant may submit a formal complaint or report. This process is available for employment-related concerns. An employee who wishes to report improper governmental activity under Washington State's Whistle Blower Protection Act, Chap. 42.41 RCW must use this formal complaint process; except that an employee can dispense with this formality in the event of an emergency that may cause loss or damage to persons or property. THA may also use this process on its own even without a formal complaint to respond to evidence of wrongdoing.

8.4.1 Required Procedure

To receive the protections of this policy, an employee must make a good faith attempt to follow the procedure below.

8.4.2 Confidentiality of Complaining or Reporting Employee

If the employee or job applicant is reporting improper governmental action, THA shall keep his or her identity confidential to the extent possible consistent with the need to investigate and except for disclosures required by the law, unless he or she authorizes THA in writing to disclose his or her identity.

If an employee or job applicant is complaining about something else, THA will keep the investigation as confidential as possible. It will share information with others, including the person the employee is complaining about, as necessary to conduct the investigation, to respond to any findings, to participate in any legal proceedings, or to comply with legally required disclosures.

8.4.3 *Reporting*

(a) Report

To report, an employee or job applicant may fill out *THA Form HR-10.55(1) Employee or Job Applicant Complaint* or may put the complaint in writing in their own terms. If an employee requests help, any supervisor, or the Human Resources Department will assist the employee in filling out the form. If a job applicant requests help, the Human Resources Department will assist the applicant in filling out the form.

In the case of an emergency, an employee or job applicant can also report their concerns to the appropriate outside agencies (see 5. *Definitions* above) with jurisdiction for the complaint in question.

(b) Additional Ways to Report

If the reporting employee or job applicant reasonably believes (i) that THA will not or has not adequately investigate the report, or (ii) that THA has failed to take sufficient action in response to a report, the employee or job applicant may take the following additional reporting steps:

- (i) alert the Executive Director in writing of his or her continuing concerns and the basis for them;
- (ii) within five (5) working days of submitting these written concerns to the Executive Director, if the employee's or job applicant's concerns remain unaddressed, the employee may report the matter to the outside agencies with jurisdiction for the issue in question. NOTE: An employee with an employment related concern is always free to file a complaint with an outside enforcement agency such as the Human Rights Department, or to seek the assistance of their union.

8.4.4 *Investigation and Report of Findings*

- (a) When a supervisor, Department Director, or the Human Resources Department receives a complaint, he or she shall promptly alert the Executive Director.

The Executive Director or his or her designee shall promptly investigate the complaint report. THA may also engage the services of an outside investigator.

- (b) THA's investigation shall reach one of two conclusions:
 - (i) A preponderance of the evidence shows that a violation of THA policy occurred;
 - (ii) A preponderance of the evidence does not show that a violation of the policy occurred. If THA finds no violation by the alleged violator and also finds that the complaining party violated this policy either by filing the complaint in bad faith or alleging facts that he or she lacked reason to know were true, the report shall state this finding.
- (c) THA shall prepare a Report of Findings. This report shall describe the investigation and the evidence reviewed. It shall state the conclusion and basis for it.
- (d) The Findings shall go to the Human Resources Department and the Department Director. A copy shall also go into the file for the complaint.

8.4.5 *Following the Report of Findings*

- (a) *Finding of Violation:* If THA finds a policy violation, the Human Resources Department and the Department Director shall undertake action necessary to address the violation and prevent its recurrence, *e.g.* discipline the violator, transfer, training, etc. In choosing the response, they should consult with the complaining party, although THA, not the complaining party, will determine the action to be taken, discipline shall be governed by *THA Policy HR-10.50 Employee Discipline* or the applicable collective bargaining agreement.
- (b) *Finding of No Violation:* THA's finding of no policy violation shall conclude the matter except for appropriate action upon a finding that the person who filed the complaint did so in bad faith or alleged facts that he or she knew or should have known were not true.
- (c) *Summary of Finding and THA's Response:* If there is a finding of violation, THA shall prepare a Summary of Finding and THA's Response. This document shall restate the allegation, state the conclusion of the investigation, and describe THA's response.

- (d) *Distribution of Summary of Findings and THA's Response:* The Human Resources Department will distribute a copy of this Summary as follows:
 - (i) the complaining party;
 - (ii) the alleged violator;
 - (iii) other parties as may be deemed necessary.

8.4.6 *Appeal to THA Board of Commissioners*

An employee or job applicant who believes that THA's response to his or her complaint is mistaken or inadequate may appeal to THA's Board of Commissioners. The appeal process is as follows:

- (a) Within five (5) calendar days of receiving THA's response to his or her report, the employee must fill out *THA Form HR-10.55(5) Employee or Job Applicant Appeal* and deliver it to the Human Resources Department, who will forward it to the Executive Director.
- (b) The Executive Director will forward the appeal to the Chairperson of THA's Board of Commissioners.
- (c) Within forty-five (45) days from the delivery of the *THA Form HR-10.55(5) Employee or Job Applicant Appeal*, the Board, or a committee of the Board that it may establish for the purpose, shall convene to hear from the employee or job applicant and the Executive Director or his designee. This meeting is the "final review meeting." Either may bring witnesses.

The rules of evidence shall not apply.

- (d) The Board shall respond in writing to the employee's or job applicant's request for appeal within ten (10) business days after the next regularly scheduled Board meeting following the conclusion of the Board's final review meeting with the employee and the Executive Director. The Board may choose one of the following decisions: (i) to uphold THA's finding and decision; (ii) to modify or overturn it with direction to the Executive Director on how to proceed.

The Board shall uphold THA's decision unless the Board finds that the decision (i) was based upon a clearly erroneous determination of fact, (ii) was based upon an incorrect interpretation of THA policy, or (iii) was arbitrary and capricious.

8.4.7 *Complaints of Retaliation for Reporting Improper Governmental Activity*

If an employee who has reported improper governmental activity under this policy believes that he or she has experienced retaliation for doing so, and if he or she wishes to report the retaliation, he or she must report in the following manner. **NOTE: The process in this subsection is not available for complaints about other matters.**

(a) Reporting and Investigating Retaliation

No later than thirty (30) days after the alleged retaliatory action, the employee must file a retaliation complaint with his or her supervisor, Department Director, or the Human Resources Department. The employee must use *THA Form HR-10.55(1) Employee or Job Applicant Complaint* for this purpose.

The written complaint must specify the alleged retaliatory action, the evidence for the allegation, and the relief that the employee believes is necessary.

(b) Investigation of Retaliation

The Human Resources Department shall promptly inform the Executive Director of any complaint of retaliation. The Executive Director, or his or her designee, shall investigate the complaint of retaliation.

(c) THA's Response

THA shall respond to the retaliation complaint within thirty (30) days of receiving it. The Executive Director or his or her designee shall prepare a written report describing the findings and, if the initial complaint was justified, the remedial or disciplinary actions THA shall undertake. The Executive Director or his or her designee shall provide a written summary of the report to the complaining or reporting employee and any accused employee.

(d) Confidentiality

THA shall keep the identity of the complaining employee confidential to the extent possible, unless he or she authorizes THA in writing to disclose his or her identity.

(e) Further Review of Retaliation Claims

An employee who filed a charge that he or she has suffered retaliation because of his or her report of improper governmental action and who is not satisfied with THA's response to it may request a hearing before a state administrative law judge to establish that retaliation occurred and to obtain relief.

The employee must deliver a written request for a hearing to the Human Resource Department within fifteen (15) days after receiving THA's response or after the expiration of THA's thirty (30) day period for responding to the initial retaliation complaint.

Within five (5) working days of receiving the request for a hearing, the Human Resource Department shall apply to the Washington State Office of Administrative hearings for an adjudicative proceeding before an administrative law judge.

If the administrative law judge finds that any THA employee engaged in retaliation in violation of this policy, THA shall consider any recommendation that the administrative law judge may make regarding the violator's suspension, with or without pay, or his or her dismissal.

8.5 Encouragement to Report

THA encourages its employees and applicants for employment to report improper governmental action or significant concerns about their employment.

8.6 No Retaliation

THA will not retaliate and will not tolerate retaliation against anyone who in good faith file reports under this policy.

8.7 Record Keeping

The Human Resources Department shall maintain a separate file for all complaints received under this policy. This file shall contain all records pertaining to the complaint, the investigation, and the result, including the Report of Findings and the Summary of Findings and THA's Response.

8.8 Cooperation with Other Enforcement Agencies

THA may modify its response process or investigation as necessary to cooperate with the investigation of any other enforcement agency.