

## 1.0 Policy

RGRTA is committed to compliance with all applicable laws, rules and regulations to which it is subject and to promulgating policies and procedures to interpret and apply those laws, rules, and regulations appropriately and correctly. RGRTA's internal controls and operating procedures are designed to detect and to prevent or deter improper activities. However, even the best systems of control cannot always provide absolute safeguards against irregularities. Further, RGRTA policies and procedures are designed to guide Board members, officers, and employees on proper and expected standards of behavior when performing their duties for and on behalf of RGRTA. RGRTA recognizes its responsibility to investigate any good faith reports or allegations of suspected improper activities or policy violations as well as the responsive actions taken by RGRTA and its personnel, if applicable.

In accordance with statutory requirements, RGRTA has adopted the policy that it will not take any adverse Personnel Action against an employee who, in good faith and in accordance with the practices and procedures required by this Policy, makes a Protected Disclosure even if the suspected Improper Activity or Improper Order does not create or present a substantial and specific danger to the public health or safety.

## 2.0 Purpose

The purpose of this policy is to provide RGRTA Board members, officers, and employees with a confidential means to report credible allegations of misconduct, wrongdoing, or unethical behavior and to protect those individuals, when acting in good faith, from personal or professional retaliation.

## 3.0 Definitions

- **Authority** and **RGRTA** each mean the Rochester Genesee Regional Transportation Authority and its wholly controlled subsidiaries, (RTS, RTS Access, RTS Genesee, RTS Livingston, RTS Ontario, RTS Orleans, RTS Seneca, RTS Wayne, and RTS Wyoming). RGRTA, when used in discussing prohibitions set forth in this Policy, means not only the Authority itself, but also each individual who has authority over another individual. For example, a statement in this Policy that RGRTA is prohibited from doing something also means that an RGRTA employee's supervisor is prohibited from taking that same action.
- **Good Faith** means a disclosure is made with the reasonable belief that such information is true and that the act disclosed constitutes an Improper Activity or Improper Order.
- **Improper Activity** means an action taken in the course of performing the duties of a Board member, officer or employee of RGRTA, that is or appears:
  - To be in violation of any applicable state or federal law, rule or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraud, coercion, conversion, criminal or unethical behavior, conflict of interest, waste, intentional reporting of false or misleading information, or misuse of Authority property; or
  - To be in violation of material RGRTA policies and/or procedures; or
  - To involve gross misconduct, gross incompetence, or gross inefficiency.
- **Improper Order** means a directive to violate or to assist in violating an applicable federal, state, or local law, rule or regulation or a material RGRTA policy or procedure.
- **Investigators** are those persons authorized by the Chief Legal Counsel, or the Chief Executive Officer to conduct fact-finding and analysis related to cases of alleged Improper Activities or Improper Orders.

- **Personnel Action** means an action affecting continued employment, compensation, appointment, promotion, transfer, assignment, reassignment, suspension, reinstatement, or evaluation of performance.
- **Protected Disclosure** means a good faith communication that discloses, or demonstrates an intention to disclose, information that may evidence an Improper Activity; an Improper Order; or any condition that may significantly threaten the health or safety of employees or the public, but only if the disclosure or intention to disclose was made for the purpose of remedying that condition.
- **Public Body** includes the following:
  - The United States Congress, any state legislature, or any popularly-elected local governmental body, or any member or employee thereof; or
  - Any federal, state, or local judiciary, or any member or employee thereof, or any grand or petit jury; or
  - Any federal, state, or local regulatory, administrative, or public agency or authority, or instrumentality thereof; or
  - Any federal, state, or local law enforcement agency, prosecutorial office, or police or peace officer.
- **Subject** means any individual who is the focus of investigative fact-finding either by virtue of an allegation made or evidence gathered during the course of an investigation.
- **Whistleblower** means a person or entity making a Protected Disclosure in good faith.

## 4.0 Considerations, Statutes, and Regulations

### 4.1. New York Civil Service Law

As a New York Public Authority, RGRTA is subject to New York Civil Service Law §75-b, which prohibits it from taking any adverse Personnel Action, including dismissal, against an employee because that employee in good faith discloses to a Public Body information: (i) regarding an Improper Activity or Improper Order; or (ii) which the employee reasonably believes to be true and reasonably believes constitutes an Improper Activity or Improper Order. This prohibition only applies if the employee, prior to disclosing information to the Public Body, made a good-faith effort to provide the information to RGRTA and gave RGRTA a reasonable time to take appropriate action. However, these additional steps are not necessary if the Improper Activity or Improper Order is causing imminent and serious danger to public health or safety.

### 4.2. New York Labor Law

RGRTA is also subject to New York State Labor Law §740, which adds that RGRTA may not take any adverse Personnel Action against an employee in retaliation for:

1. Disclosing or threatening to disclose to a supervisor or to a Public Body an activity, policy or practice of RGRTA that is in violation of law, rule or regulation if the violation creates and presents a substantial and specific danger to the public health or safety; or
2. Providing information to, or testifying before, any Public Body conducting an investigation, hearing or inquiry into any such violation or alleged violation of a law, rule or regulation by RGRTA; or
3. Objecting to, or refusing to participate in, any activity, policy or Practice in violation of a law, rule, or regulation.

### 4.3. Public Authorities Law

In accordance with Title 12 of Article 9 of the Public Authorities Law, RGRTA is required to adhere to the whistleblower protection policy stated herein. Further, all commissioners, officers, and employees of RGRTA shall have access to New York State's Authorities Budget Office as an alternative vessel for the good faith reporting of an actual or perceived Improper Activity or an Improper Order or allegations of misconduct or unethical behavior at RGRTA. Individuals utilizing the Authorities Budget Office shall also be protected from any form of personal or professional retaliation.

## 5.0 Details

### 5.1. Making a Protected Disclosure Report

Any person may make a Protected Disclosure. Protected Disclosures are encouraged to be made in writing to assure a clear understanding of the issues raised, but may be made orally. Such reports should be factual rather than anecdotal, speculative or conclusory, and contain as much specific information as possible to allow for proper assessment of the nature, extent, and urgency of preliminary investigative procedures.

Normally, a Protected Disclosure should be made to the Whistleblower's immediate supervisor. However, if the Protected Disclosure pertains to that immediate supervisor, it should be made instead to the Chief Legal Counsel or the Chief Executive Officer.

If the Protected Disclosure is pertaining to the Chief Legal Counsel, it should be made to the Chief Executive Officer.

If the Protected Disclosure is pertaining to the Chief Executive Officer, it should be made to the Chief Legal Counsel and the Chair of the Board of Commissioners.

In the event of allegations of an Improper Activity or Improper Order concerning the delivery of Medicaid reimbursable services, the Protected Disclosure should be made to the Medicaid Compliance Officer or the Chief Legal Counsel. RGRTA shall provide opportunities to report an Improper Activity or Improper Order concerning the delivery of Medicaid reimbursable services anonymously through a dedicated telephone line that is maintained separate and distinct from the Authority's official telephone system. This telephone line shall be unmanned and will alert the Medicaid Compliance Officer when a message is left on it. The Medicaid Compliance Officer will in turn alert the appropriate manager and/or senior administrative official to evaluate the credibility of the allegation(s) in order to determine whether an investigation should be initiated. Anonymous reporting will make an investigation more difficult and, therefore, decrease the likelihood of initiation. Therefore, it is imperative that as much detailed information as possible be provided in order to substantiate an anonymous claim.

### 5.2. Receiving a Protected Disclosure Report

All RGRTA employees, and especially any Board member, officer or other management employee, should be mindful of and alert to oral or written, formal or informal communications that may constitute a Protected Disclosure. Anyone receiving a Protected Disclosure shall ensure that the matter is promptly reported to his/her supervisor and to the Chief Legal Counsel (unless the Protected Disclosure involves the Chief Legal Counsel, in which case it should be brought to the attention of the Chief Executive Officer). Oral Disclosures should be documented by the person receiving the Disclosure by a written transcription of the oral report as soon as practicable. All subsequent internal communications regarding a Protected Disclosure should be in writing and retained in accordance with

legal document retention requirements.

### 5.3. Reporting a Protected Disclosure Report

RGRTA employees in supervisory roles must report to the Chief Legal Counsel any Protected Disclosure, including any allegations of suspected Improper Activities or Improper Orders, whether received as a Protected Disclosure, reported to them by others, or discovered in the course of performing their own duties. This reporting is particularly necessary and must be done especially promptly in situations in which the matter:

1. Involves allegations or events that have a significant possibility of constituting criminal activity; or
2. Involves a significant threat to the health and safety of employees and/or the general public; or
3. Involves the misuse of RGRTA resources; or
4. Creates exposure to liability in potentially significant amounts; or
5. Is likely to receive media or other public attention; or
6. Is judged significant or sensitive for other reasons.

### 5.4. Investigating a Protected Disclosure Report

The Chief Legal Counsel shall:

1. Conduct a preliminary investigation to assess reporting obligations to parties outside of RGRTA such as, but not necessarily limited to:
  - a. Reports to the Rochester Police Department of any Protected Disclosure based on allegations which, if true, may indicate that a crime was committed; and
  - b. Reports of allegations of Improper Activities or Improper Orders to funding entities or regulatory agencies when required, applicable and appropriate; and
  - c. Reports to insurance or bonding companies.
2. Make the Compliance and Governance Committees aware of the Protected Disclosure and keep both committees informed as to the progress of the investigation.
3. Conduct an investigation that is appropriate under the circumstances in accordance with this Policy.
4. Have overall responsibility for implementation of this Policy and shall be responsible for investigating all reports of Improper Activities or Improper Orders of which he/she is made aware.

Other parties may become involved in investigations of matters based on their areas of oversight responsibility or topical expertise, for example, environmental health and safety or risk management.

The Chief Legal Counsel shall be responsible for assuring that:

1. Appropriate resources and expertise are brought to bear to insure the timely and thorough review of reports or allegations of suspected Improper Activities and Improper Orders; and
2. The proper investigative channels are utilized according to appropriate expertise and jurisdiction; and
3. Any and all other parties brought into an investigation will be bound by and obligated to all provisions set forth in this Policy, including , but not limited to confidentiality; and
4. Significant elements and progress of investigations are monitored to ensure that allegations are timely and thoroughly addressed; and

5. Communications are facilitated and coordinated across investigative channels as necessary to ensure comprehensive attention to all facets of the matter; and
6. There are no conflicts of interest on the part of any party involved in specific investigations; and
7. All appropriate administrative and senior officials, the Compliance Committee and the Governance Committee are apprised of the allegations and the investigation as necessary and appropriate; and
8. All appropriate reporting occurs to parties outside RGRTA; and
9. The plan to address the reported Improper Activity or Improper Order is appropriate to the circumstances.

## 5.5. Cooperating with an Investigation

All RGRTA employees have a duty to cooperate with investigations initiated under this Policy. Any RGRTA commissioners, officers, or employees who are interviewed, asked to provide information or otherwise participate in an investigation have a duty to cooperate fully with RGRTA-authorized investigators. Participants should refrain from discussing or disclosing the investigation or their testimony with anyone not connected to the investigation. In no case should participants discuss the investigation subject, nature of evidence requested or provided, or testimony given to investigators with any third party unless specifically authorized to do so by the Chief Legal Counsel.

Subject to the terms of the collective bargaining agreements, a person under investigation may be placed on an administrative leave or an investigatory leave, as appropriate, when it is determined by RGRTA that such a leave would serve the best interests of the employee, RGRTA or both. Such a leave is not to be interpreted as an accusation or a conclusion of guilt or innocence of any individual, including the person on leave, nor is it to be interpreted as retaliatory in nature.

## 5.6. Confidentiality

Whistleblowers frequently make their reports in confidence. To the extent possible within the limitations of law and this Policy and the need to conduct a competent investigation, confidentiality of Whistleblowers will be maintained. Whistleblowers should be cautioned, however, that their identity might become known for reasons outside of the control of those receiving the Disclosures or RGRTA management. Should the Whistleblower self-disclose his or her identity, RGRTA will no longer be obligated to maintain such confidence. Similarly, the identity of the subject(s) of the investigation will be maintained in confidence with the same limitations.

## 5.7. No Retaliation

Irrespective of the outcome of any investigation, no RGRTA Board member, officer, or employee shall be subject to **any** form of retaliation, harassment, or Personnel Action following his or her Protected Disclosure. No RGRTA Board member, officer, or employee shall retaliate against any Whistleblower for making a Protected Disclosure, whether through threat, coercion, or abuse of authority and, no RGRTA Board member, officer or employee shall interfere with the right of any other RGRTA Board member, officer, or employee by any improper means aimed at deterring a Protected Disclosure. **Any attempts at retaliation or interference are strictly prohibited.** Further:

1. All allegations of retaliation against a Whistleblower or interference with an individual seeking to make the Protected Disclosure will be thoroughly investigated by RGRTA; and
2. All allegations of retaliation or interference will be taken and treated seriously and, irrespective of the outcome of the initial disclosure, will be treated as a separate matter.

Any RGRTA Board member, officer, or employee who retaliates against or attempts to interfere with any individual for having made a Protected Disclosure shall be subject to discipline, which may include termination of employment.

#### **5.8. Roles, Rights, and Responsibilities of Whistleblowers, Investigation Participants, Subjects, and Investigators**

1. Whistleblowers provide initial information related to a reasonable belief that an Improper Activity has occurred or an Improper Order has been given. The motivation of a Whistleblower is irrelevant to the consideration of the validity of the allegations. However, the intentional filing of a false report, whether orally or in writing is itself considered an Improper Activity, upon which RGRTA has the right to act.
2. Whistleblowers are "reporting parties," not investigators. Whistleblowers must refrain from obtaining evidence for which they do not have a right of access. Such improper access may itself be considered an Improper Activity. All investigations and evidence gathering must be the sole responsibility of the Chief Legal Counsel as well as any other parties he/she designates to become involved in an investigation based on their areas of oversight responsibility or topical expertise. Likewise, Whistleblowers do not have a right to participate in any investigative activities unless expressly directed by the Chief Legal Counsel.
3. Whistleblowers have a responsibility to be candid with all investigators and others to whom they make a report of alleged Improper Activities or Improper Orders and shall set forth all known information regarding any reported allegations. Persons making a report of alleged Improper Activities or Improper Orders should be prepared to be interviewed by RGRTA investigators as well as any outside investigators RGRTA chooses or is obligated to engage.
4. Anonymous Whistleblowers must provide sufficient corroborating evidence to justify the commencement of an investigation. An investigation of unspecified Improper Activities or Improper Orders or broad allegations will not be undertaken without verifiable evidentiary support. Because anonymous Whistleblowers cannot be interviewed, it may be more difficult to evaluate the credibility of the allegations and therefore, less likely to cause an investigation to be initiated.
5. A Whistleblower's right to protection from retaliation does not extend to immunity for any complicity in the matters that are the subject of the allegations or an ensuing investigation.
6. Whistleblowers have a right to be informed of the disposition of their disclosure absent overriding legal or public interest reasons. However, Whistleblowers do not have a right to be informed of any details of the investigation that are deemed confidential in nature.
7. Investigations should be launched only after preliminary consideration that establishes that the allegation, if true, constitutes an Improper Activity or Improper Order; and either:
  - a. The allegation is accompanied by information specific enough to be investigated, or
  - b. The allegation has or directly points to corroborating evidence that can be pursued. Such evidence may be testamentary or documentary.
8. The decision to conduct an investigation is not an accusation and is to be treated as a neutral fact finding process. The outcome of an investigation may or may not support a conclusion that an Improper Activity occurred or an Improper Order was given or, if so, by whom. Subjects in an investigation maintain the same rights and protections and hold the same responsibilities as all RGRTA commissioners, officers, and employees.
  - a. The identity of a Subject should be maintained in confidence to the extent possible given the legitimate needs of law and the investigation.

- b. Subjects should normally be informed of the allegations at the outset of a formal investigation and have opportunities for input during the investigation.
- c. Subjects have a duty to cooperate with investigators to the extent that their cooperation will not compromise self-incrimination protections under state or federal law.
- d. Subjects have a right to consult with a person or persons of their choice. This may include legal representation.
- e. Subjects have a responsibility not to interfere with the investigation and to adhere to admonitions from investigators in this regard. Evidence shall not be withheld, destroyed, or tampered with, and witnesses shall not be influenced, coached, or intimidated.
- f. Unless there are compelling reasons to the contrary, subjects should be given the opportunity to respond to material points of evidence contained in an investigation report.
- g. No allegation of Improper Activity or Improper Order against a person shall be considered sustained unless at a minimum, a preponderance of the evidence supports the allegation.
- h. Subjects have a right to be informed of the outcome of the investigation. If allegations are not sustained, the subject should be consulted as to whether public disclosure of the investigation results would be in the best interest of RGRTA and the subject.
- i. Investigation participants and Subjects should be assured that investigators have competency in the area under investigation. Technical and other resources may be drawn upon as necessary to augment the investigation.
- j. All investigators shall be independent and unbiased both in fact and in appearance.
- k. Investigators have a duty of fairness, objectivity, thoroughness, ethical behavior, and observance of legal and professional standards.