

Kareeberg Municipality



Corruption and Fraud Prevention Policy

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DEFINITION

In this policy, unless the context indicates otherwise, a word or expression, to which a meaning has been assigned in the Municipal Finance Management Act has the same meaning; and

“Corruption” refers to-

Any person who, directly or indirectly-

- a) Accepts or agree or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
- b) Gives or agree or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person,

In order to act, personally or by influencing another person so to act, in a manner-

- (i) That amounts to the-
 - (aa) illegal, dishonest, unauthorized, incomplete, or biased; or
 - (bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any power, duties or function arising out of a constitutional, statutory, contractual or any other legal obligation;
- (ii) That amounts to-
 - (aa) the abuse of a position of authority
 - (bb) a breach of trust; or
 - (cc) the violation of a legal duty or a set of rules;
- (iii) designed to achieve an unjustified result; or
- (iv) that amounts to any other unauthorized or improper or inducement to do or not to do anything,

Is guilty of the offence of corruption;

“Corrupt activities” refer to-

Any person who, directly or indirectly, accepts or agree or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person, as-

- (a) an inducement to, personally or by influencing any person so to act-
 - (i) award a tender, in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, to a particular person; or
 - (ii) upon an invitation to tender for such contract, make tender for that contract which has as its aim to cause the tender to accept a particular tender; or
 - (iii) withdraw a tender made by him or her for such contract; or
- (b) a reward for acting as contemplated in paragraph (a) (i) (ii) or (iii),

is guilty of the offence of corrupt activities relating to procuring and withdrawal of tenders. (Section 13 (1) of the Prevention and Combating of Corrupt activities Act (PCCA).

Section 13 (2) of the PCCA stipulate that, any person who, directly or indirectly

- a) gives or agree or offers to give any gratification to any other person, whether for the benefit of other person or the benefit of another person, as
 - (i) an inducement to, personally or by influencing any other person so to act, award a tender, in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, to a particular person; or
 - (ii) a reward for acting as contemplated in subparagraph (i); or
- b) with the intent to obtain a tender in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, gives or agree or offers to give any gratification to any person who has made a tender in relation to that contract, whether for the benefit of that tender or for the benefit of any other person, as-
 - (i) an inducement to withdraw the tender; or

(ii) a reward for withdrawing or having withdrawn the tender

is guilty of the offence of corrupt activities relating to procuring and withdrawal of tenders.

“Dishonesty” is a generic term embracing all forms of conduct involving deception on the part of employees and include for this policy’s purposes, all the definitions and acts dealt with in this policy. Dishonesty includes any act or mission which entails deceit.

“Theft” means the unlawful and intentional misappropriation of another’s property or property which is in his/her lawful possession, with the intention to deprive the owner of its rights permanently.

1. INTRODUCTION

- 1.1 The perpetration of acts of corruption, fraud and theft by public officials is viewed by taxpayers and by the municipality with utmost seriousness. The perpetration of such act, is a criminal offence and necessitates the employer to take the required action in response to it.
- 1.2 The objective of this policy is to develop and foster a climate within the Kareeberg Municipality (“the municipality”) where all employees 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 the disposal, and strive actively to gain the support of public in this endeavour.
- 1.3 This policy also sets down the stance of the municipality 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 persist.
- 1.4 The goal of fraud and corruption prevention within the municipality is to manage the susceptibility to risk with a view to reducing it and to raise the level of fraud awareness amongst employees and other stakeholders;
- 1.5 The policy is also intended to communication the municipality’s commitment to eliminate fraud and that the municipality supports and fosters a culture of zero tolerance to fraud and all its activities. Through this policy, the municipality undertakes to combat all forms of fraud and corruption as well as to remain pro-active in the fight against fraud.

2. SCOPE OF THE POLICY

- 2.1 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 municipality;
 - b) Consultants, suppliers, contractors and other providers of goods or service to the municipality; and
 - c) Non-Governmental Organizations and other parties receiving benefits from the municipality

3. THE POLICY

- 3.1 The municipality's policy to fraud is zero tolerance.
- 3.2 All fraud, corruption, theft, maladministration or any other dishonest activities of a similar nature will be investigated and followed up by applying the appropriate remedies and the full extent of the law. Appropriate prevention and detection controls must be developed and enforced. These include the existing financial and other controls and checking mechanisms as prescribed.

4. STATUTORY FRAMEWORK

Various Acts are relevant to the anti-corruption and anti- fraud strategy in local governments. One way or another, they service to supplement each other in the combating of corruption and fraud. Some of the most important Acts are:

- 4.1 The constitution of the Republic of South Africa, 1996.
- 4.2 Municipality Finance Management Act, No 56 of 2003 (MFMA)
- 4.3 Municipal Systems Act, No32 of 2000
- 4.4 Local Government: Municipal Structures Act, No 117 of 1998.
- 4.5 The Prevention and Combating of corrupt Activities Act, No 12 of 2004 (PCCA)
- 4.6 Protected Disclosures Act, No 26 of 2000 (PDA)
- 4.7 Promotion of Administrative justice Act, No 3 of 2000 (PAJA)
- 4.8 Prevention of Organized crime Act 212 of 1998.

5. Various offences

5.1 What is fraud

The action of an act or attempt by an employee to fool someone in obtaining a benefit that such person would not normally be entitled to. The beneficiary of this benefit may also be an institution or someone other than the employee. 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.

Fraud can thus be described as any conduct or behavior of which a dishonest representation and /or appropriation forms an element.

E.g. Employee creates a fictitious order and invoice of a service provider and transfer the payment to his/her own bank account or another person or institution's account.

E.g. Employee submit a medical certificate in which the period which a doctor booked him or her off, is altered, e.g. 10 -13 April 2015 and altered to 10-18 April 2015

E.g. Employee who passed only grade 10 submits a false senior certificate

5.2 What is corruption?

Corruption refers to any conduct or behavior where a person accepts, agrees or offer any gratification or reward or present for him/her or for another person, for an illegal or dishonest purpose. Such behavior includes acts such as abuse of power, abuse of privileged information, bribery, conflict of interest, embezzlement, extortion and fraud

E.g. An official working in supply chain management provides a prospect contractor with inside information with regard to an amount for which a tender may be successful. In turn for the information, the official receives a gift/ benefit/ cash reward.

5.3 What is Bribery?

Bribery involves the promise, offering or giving of a benefit that improperly affects the actions or decisions of an employee. This benefit may accrue to the employee or other person or entity

E.g. A vehicle examiner is offering promised or given a benefit or gift (such as a soccer ball, stainless steel braai, meat) or cash payment in order to issue a roadworthy certificate

5.4 What is conflict of interest?

Conflict of interest means when employees place themselves in a position where personal interests are, or may be at odds with the interests of the employer. Employees act in bad faith when they secret place themselves in positions of conflicting interests, or actually make secret profits.

E.g. An employee who form part of an interview panel where a family member or close friend is interviewed, must declare this relationship or withdraw from the interviewing panel, to prevent a conflict of interest to nepotism or favoritism.

E.g. If an employee who is responsible for the consideration of an application to proclaim a residential area as a business area, is aware that the applicant (or objectors) is a family member, close friend or an entity to which he/ she has ties with, such employee must disclose these facts to avoid a conflict of interest and recuse him -/ herself from the process

E.g. An official who as a result of his/ her duties, has knowledge of residential areas that are to be proclaimed as business area, and then informs family members and friends to allow them acquire residential properties with a view to sell these as business properties at a premium.

5.5 What is conspiracy?

Conspiracy means to conspire to commit an offence by means of luring or instructing someone to do something unauthorized or unlawful. Conspiracy is a transgression, even if no offence was committed

E.g. An employee working in the financial department convince the foreman to temper with the water meter of a family member caught to bypass the meter

5.6 What is deception?

Deception is a false representation, by words or conduct, of a matter of fact or law that is made deliberately or recklessly to another person.

E.g. An employee who must consider to who a tender must be awarded, disqualifies a company's tender on the basis that it is a front company of another company which also tendered, knowing that this reason is false or unsubstantiated

E.g. An employee states in an interview for a higher position that he or she had represented the employee before in many arbitration proceedings, whilst he or she only attended one arbitration as a witness

5.7 What is Embezzlement?

Embezzlement involves the dishonest appropriation by an employee of any money or property given to him or her to control such resources on behalf of the employer. It is classified as a form of theft.

E.g. An employee responsible for the management and control of photo copy paper steals boxes of such paper and sells it to other shops or persons.

5.8 What is Extortion?

Extortion is an offence usually committed by a public official who uses his position to take money or any other benefit that is not due to him. If the benefit is obtained by threats, this offence may also amount to blackmail. This act often involves a public servant coercing a person or entity to provide a benefit to him/she in exchange for action in a particular manner

E.g. A traffic officer arrest a driver of a vehicle for driving under the influence. He/she warns the offender that unless he/she is paid R2 000 the driver will be locked up and charged with driving under the influence of alcohol.

5.9 What is falsification of Records?

Falsification means the falsification of any records or document with a view to obtaining some advantage of monetary value or otherwise. It is a form of fraud.

E.g. Employee submits a medical certificate in which the period which a doctor booked him/her off, is altered, e.g. 10-13 April 2015 is altered to 10-18 April 2015.

E.g. Employee who passed only grade 10 submits a false senior certificate.

E.g. Employee signing an attendance register as having being on duty, while he/she was absent without permission.

6. Responsibilities

6.1. The Accounting officer bears the ultimate responsibility for fraud and corruption risk management within the municipality. This includes the co-ordination of risk assessment, overseeing the investigation of suspected fraud and corruption, and facilitation for the reporting of such instances.

6.2 Responsibility for carrying out this anti-fraud and corruption policy is delegated to senior management by the Accounting Officer, whose final responsibility is not affected by such delegation. Senior management, to whom responsibility is delegated, is required to be committed to the eradication of fraud and corruption, and implementing the adopted anti-corruption strategies of the Municipality.

They are required to ensure that the municipality strives to be perceived as ethical in all its dealings with the public and other interested parties. In this regard, senior management, under the guidance of the Accounting Officer, will ensure that it does not become complacent in dealing with fraud and corruption and that it will ensure

the municipality's overall fraud and corruption strategy is reviewed and updated regularly

- 6.3 The collective ethical conduct of all the individual employees of a municipality reflects the municipality's ethical conduct. In this regard, the highest standards of ethical are required by employees when fulfilling their duties. All employees are expected to abide by the Code of Conduct.

7. INTERNAL CONTROLS

- 7.1. The municipality considers internal controls to be the first line of defence against fraud and corruption. While internal controls may not fully protect the municipality against fraud and corruption, they are essential elements in the overall anti-corruption strategy.

- 7.2 Responsible officials are required to ensure that the internal controls that are in place are compliant with statutory requirements, are fit for purpose, and are rigorously implemented.

8. INTERNAL AUDIT

- 8.1 The internal audit unit will be responsible for implementing an internal audit program which will incorporate steps to evaluate adherence to internal controls.

- 8.2 A robust internal audit plan, which focuses on the prevalent high fraud and corruption risks, serves as an effective preventative as well as an effective detection measure. The internal audit function will compile such a plan on an annual basis, and such a plan will also include surprise audits.

9. PROCEDURES

- 9.1 The municipality and the municipal council expect employees, stakeholders, service providers and ratepayers to report any reasonable suspicions, allegations and incidents of fraud of whatever value, to the municipality.

- 9.2 In order to limit the risks associated with widespread negative perceptions amongst employees, the municipality requires its employees to report all situations or activities that they perceive to be fraudulent to their managers. This includes reporting of all suspicions, allegations and incidents of fraud.

- 9.3 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 and Chief Financial Officer. This reporting must take place as follows:

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

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

- a) By informing the mayor telephonically within 24 hours of receiving the report from the manager on an incident;
- b) This telephonic report must be followed at by a detailed written report to be submitted to council 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 Africa Police Services.

9.5 Where an employee 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 procedures of the municipality. As soon as disciplinary hearings concerning charges of financial misconduct are completed, the outcome must be reported within 48 hours to council as follows:

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

Recommendations should be made to Council regarding the publication of the matter through internal or external media.

- 9.5.1 The Accounting officer is also required to ensure that losses or damages suffered by the municipality as a result of an act committed or omitted by an employee must be recovered from such an employee if he/she is liable by law. The Accounting officer, with the assistance of the chief financial officer, must determine the amount of the loss or damage and, in writing request the employee to pay the amount within 30 days or in reasonable installments. If the employee fails to comply with the request, the legal process will then be initiated.
- 9.5.2 All managers are required to take steps needed to promote a culture where all employees are able to report fraud candidly without fear of recrimination and with confidence that these reports will be dealt with appropriately.
- 9.6 All managers are required to ensure that the specific mechanisms and channels of reporting of such allegation are known to all employees, including the proper procedure for approaching higher levels of management. This information should be made available through training, use of procedure manuals and by poster campaigns.
- 9.7 Managers are responsible for daily operations and for the internal control systems within their organizational responsibility. Where managers do not have the expertise to evaluate internal control they should call upon the support from internal audit.
- 9.8 For issues raised by employees, members of the public and service providers, the action taken by the municipality will depend on the nature of the concern. The matters raised may be:
 - a) Investigated internally; or
 - b) An external forensic investigator may be appointed.
 - c) The matter may be referred to the South African Police Service (SAPS) or other law enforcement agency for investigative assistance, and appropriate charges laid.
- 9.9 investigations will be undertaken by appropriately qualified and experienced persons who are independent of the department where investigations are required. This may be a manager within the municipality itself, an external consultant or in accordance with acceptable practices and legal requirements. Independence and objectivity of investigations are paramount.

- 9.10 Managers are required to take all reasonable steps to ensure that losses or damages suffered by the municipality as result of all reported acts committed or omitted by an employee or any other person are recovered from such an employee or other person if he or she is found to be liable, in accordance with council policies and procedures
- 9.11 the responsible manager with the assistance of other relevant managers, will also ensure that the following steps are taken with regard to financial misconduct in line with the provisions of the MFMA and Municipal Systems Act;
- a) Ensuring that disciplinary proceedings are carried out in accordance with the relevant prescripts;
 - b) Ensure that disciplinary proceedings are instituted within 30 days;
 - c) Annually submitting to the Auditor-General a schedule of:
 - (i) The outcome of any disciplinary hearings and/or criminal charges;
 - (ii) The names and ranks of officials involved; and
 - (iii) The sanctions and any further actions taken against these officials;
 - d) In term of Section 62(1)(e) of the MFMA, the Accounting Officer, must ensure that disciplinary or, when appropriate, criminal proceedings are instituted against any official of the municipality who has allegedly committed an act of financial misconduct or an offence.
 - e) Take the following into account when determining the appropriateness of disciplinary steps against an official:
 - (i) The circumstances of the transgression;
 - (ii) The extent of the expenditure involved;
 - (iii) The nature and seriousness of the transgression; and
 - (iv) Reporting losses to the South African Police Service, the Accounting officer and the Chief Financial Officer.
- 9.12 In each instance where fraud is detected, management will reassess the adequacy of the current internal control environment (particularly those controls directly impacting on the fraud incident) to consider the need for improvements. Where improvements are required, they should be implemented as soon as practicable. A report to Council in this regard will be met within reasonable time.

10. Responsibility to conduct investigations

10.1 The responsibility to initiate investigations in cases of alleged fraud resides with the Accounting Officer.

10.2 The Accounting officer will report to the South African Police Service in all cases of alleged:

- a) Irregular expenditure that constitute a criminal offence; and
- b) Theft and fraud that occurred in the municipality.

10.3 The Accounting officer is responsible for supplying appropriate feedback on the progress of investigations to all relevant parties on a “need-to-know” basis. Details of fraud/corruption will be supplied to the Audit Committee.

10.4 The following internal processes will be followed:

10.4.1 Incident not relating to Municipal Manager:

Reports incident to Kareeberg Municipality: Municipal Manager and CFO.

- a) CFO reports matter to internal audit.
- b) Municipal Manager ensures that required investigation be done and remedial action taken in terms of legislation.
- c) Incident and report submitted quarterly to internal audit committee.

10.4.2 Incident relating to municipal Manager:

Reports incident to Kareeberg Municipality and CFO.

- a) CFO reports matter in terms of the local Government: Municipal Systems Act, Act 32 of 2000, disciplinary Regulations for senior managers, to mayor and internal audit.
- b) Incident and report submitted quarterly to internal audit committee.

10.4.3 Incident relating to CFO.

Reports incident to Kareeberg Municipality: Municipal Manager:

- a) Municipal Manager reports matter to internal audit.
- b) Incident and report submitted quarterly to internal audit committee.
- c) Municipal manager ensure that required investigation be done and remedial action taken in terms of legislation.

11. PROTECTION OF WHISTLE-BLOWERS

- 11.1 No employee will suffer any penalty or retribution for good-faith reporting of any suspected or actual incident of fraud.
- 11.2 The employer has a responsibility to take all necessary steps to ensure that employees who disclose such information are protected from any reprisals as a result of such disclosure.
- 11.3 All managers should discourage employees or other parties from making allegations that are false or malicious. Where such allegations are discovered, the person who made the allegations must be subjected to disciplinary action or, in the case of external parties, other appropriate action.
- 11.4 The protection disclosures Act, No26 of 2000, makes provision for provision for procedures in terms of which employees may disclose information regarding unlawful or irregular conduct by their employers or other employees in the employ of their employers without fear of victimization. A person shall therefore not:
 - a) prejudice, or threaten to prejudice, the safety or career of; or
 - b) incident or harass, or threaten to intimidate or harass; or
 - c) do any act that is likely to be, to the detriment of another person because the other person
 - (i) has assisted, is assisting or will or may in the future assist the municipality with the investigation;
 - (ii) has furnished, is furnishing or will or may in the future furnish information to the municipality; or
 - (iii) has been or is employed by, or acting on behalf of, an independent agency or appropriate authority to whom or which and allegation has been referred; or
 - (iv) has exercised a power, or performed a duty, conferred or imposed on the other person or is exercising or performing, or will or may in the future exercise or perform, any such power or duty.

- 11.5 All whistle-blowers' identities must remain confidential or anonymous to prevent victimization.
- 11.6 Action to cover up to the wrongdoing and or to retaliate against, or victimise witnesses is strictly forbidden, and such action constitutes a conduct within the jurisdiction of the municipality, which is punishable.

12. PRO-ACTIVE APPROACH

- 12.1 Being pro-active is an essential principle in combating crime. The procedures set out below will assist in identifying risk areas and preventing crime.
- 12.2 The municipality must:
 - 12.2.1. as part of the annual risk assessment process, include fraud and corruption risk assessments to identify potential fraud and corruption risk exposures to the municipality
 - 12.2.2 formulate the above into the municipality's "risk assessment report" which will provide an indication of how fraud and corruption risks are manifested as well as a "risk register" which will include the prioritizing of fraud and corruption risks and indicate actions to mitigate these risks.
 - 12.2.3. compile a robust internal audit plan, which focuses on the prevalent high fraud and corruption risks. Such plan will also include unscheduled audits.
 - 12.2.4. actively and continuously search for evidence of fraud and corruption through appropriate prevention and detection mechanisms.
 - 12.2.5. ensure that comprehensive background checking is carried out on prospective employees, including at least verification of previous employment details, academic qualifications, citizenship and criminal records. The municipality must obtain the necessary legal advice on what is acceptable. Recruitment must be conducted in accordance with the requisite recruitment procedure. It must be a transparent process and all appointments should be confirmed only after due recommendation.

Any person, involved in any decision-making process, who may have a conflict of interest, must declare such a conflict in writing to the Head Corporate Services and withdraw from any further procedures.

- 12.2.6. Ensure that background checking is carried out on service providers.
- 12.2.7. Ensure awareness of all legislative obligations placed and that these are properly communicated to all appropriate levels throughout the municipality.

13. PREVENTION MEASURES

- 13.1 Managers must create an environment and culture in which employees believe that dishonest acts will be detected and investigated;
- 13.2. They must:
 - 13.2.1. Participate in in-house training programs covering fraud and corruption prevention and training on the code of Ethics;
 - 13.2.2. Ensure that staff understand that the internal controls are designed and intended to prevent and detect fraud and corruption or any other dishonest activities of a similar nature;
 - 13.2.3. Encourage staff to report suspected fraud and corruption directly to those responsible for investigation without fear of disclosure or retribution; and
 - 13.2.4. Require vendors and contractor to agree in writing as a part of the contract process, to abide by the municipality policies and procedures, and thereby avoid any conflict of interest.
 - 13.2.5. Measures to prevent fraud and corruption should be continually monitored, reviewed and developed particularly as new systems, programs, contracting or arrangements are introduced or modified.

14. DISCLOSURE OF INTERESTS OR BENEFITS

- 14.1 All staff members of the municipality who or whose spouse, partner, business associate or close family, member acquired or stand to acquire any direct benefit from a contract concluded with the municipality, must disclose in writing full particulars of the benefit to the Accounting Officer.

No staff members of the municipality may request, solicit or accept any reward, gift or favor for any activity related to any matter over which he/she has power and/or influence or perceived power and/or influence due to his/her employment by the municipality.

- 14.2. It is expected of each staff member of the municipality who is approached with an offer of a reward, gift or favor for any activity related to any matter over which he/she has power and/or influence or perceived power and/or influence due to his/she employment by the municipality, to disclose such offer to his/her manager without delay.
- 14.3. It is expected of each staff member who receives any reward, gift or favors in his/her capacity as member of staff of the municipality without there being an expectation that the said member of staff use his/her power and/or influence or perceived power and/or influence due to his/her employment by the municipality, to report such rewards, gifts or favors to his/her manager.
- 14.4. Upon disclosure of receipt of any reward, gift or favor, written approval for the legitimate retention of such reward, gift or favor by the employee must be obtained from the Accounting Officer.
- 14.5. The Chief Financial Officer must monitor and maintain a register of interests, gifts and hospitality received by any staff member.

15. CONFIDENTIALITY

- 15.1. While it is the policy of the municipality to keep employees and the public informed of all relevant matters, it is a legal and moral necessity that all reports of fraud must be treated confidentially. The progress of investigation will not be disclosure or discussed with any person (s) other than those who have a legitimate right to such information in order to avoid compromising the reputations of suspected persons who are subsequently exonerated of any wrongful conduct.
- 15.2. No employee is authorized to supply any information with regard to reports of fraud, covered within this policy, to the media or any other party, without the permission of the Accounting Officer.
- 15.3. In order to avoid damaging the reputations of innocent persons initially suspected of wrongful conduct, the results of investigations will be disclosed or discussed by anyone other than those who have a legitimate need to know.
- 15.4. council will decide whether, how and under what circumstances any information relating to corrective actions taken or sanctions imposed regarding incidents of fraud should be brought to the attention of other employees or made public though any other means. A well planned pro-active approach will be taken to disseminating appropriate information.

ACCEPTED: 27 OCTOBER 2016