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Report of Investigation and Review

FILE NO: 20-0001-I **DATE:** October 28, 2020

SUBJECT: Improper Personnel Action/Abuse of Position

STATUS: Final

INVESTIGATOR: P.P.

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Executive Summary

The OIG conducted and completed investigation 19-0002-I "Beehive" which was approved on May 27, 2020. During the course of that investigation several other red flags were found along with similar complaints being brought to our attention. All had a common denominator, the Former Animal Welfare Department Director (AWD), D1. The decision was made to open a separate investigation to look into those issues.

The objectives of the investigation were to determine:

- Whether D1 violated Administrative Instruction No: 3-14 (F) (IV): City funds may not be used to purchase an item merely for the convenience of one or more employees.
- Whether there was favoritism in the promotion of an AWD Fiscal Officer to Fiscal Manager.

From information gathered during the investigation, there is enough evidence to substantiate D1 violated Administrative Instruction No: 3-14(F)(IV) which states: City funds may not be used to purchase an item merely for the convenience of one or more employees. D1 had over $10,000 in Apple products to include 2 MacBook Pro's, 2 iPad Pro's, iPhone 11 Pro, AirPod Pros, Apple watch and other accessories. As director, D1 took advantage of his position and tax payer dollars. These products were items of convenience for one employee.

The renovations and items purchased for D1's office were questionable, at an estimated total cost of $15,291 which includes a 75-inch tv/monitor.

A review was conducted of the approval process in reclassifying the Fiscal Officer to Fiscal Manager position. The process took six approvals up to the City's CAO to reclassify the position. Interviews with the interviewers rating the four candidates for the AWD Fiscal Manager position found FM1 scored the highest.

The proper steps were followed in reclassifying the position at AWD. From information gathered FM1, met the qualifications for the AWD Fiscal Manager position and scored the highest points by all three interviewers.

Conclusion:

The allegation D1 violated Administrative Instruction No:3-14 (F)(IV) is substantiated.
The allegation D1 hired FM1 who was unqualified for the position is unsubstantiated.

Recommendations:

- City Directors be made aware of Administrative Instruction 3-14 regarding purchasing items merely for the convenience of one or more employees.

- The City's Purchasing Card Policies and Procedures be followed by Department Directors, Program Administrators, Reconcilers, and Card holders.

Introduction and Background:

The mission of the Office of Inspector General (OIG) is to promote a culture of integrity, accountability, and transparency throughout the City of Albuquerque (City) in order to safeguard and preserve the public trust. The OIG conducted and completed investigation 19-0002-I "Beehive" which was approved on May 27, 2020. During the course of that investigation several other red flags were found along with similar complaints being brought to our attention. All had a common denominator, the Former Animal Welfare Department Director (AWD), D1. The decision was made to open a separate investigation to look into the issues. D1's actions while at AWD and Environmental Health Department (EHD) were the focus of this investigation.

Prior to D1's position as director of AWD, he was the interim director/deputy director for EHD. While D1 was at EHD, he and other managerial level staff made p-card purchases at the local Apple Store for many items to include, Apple watches, Apple AirPods, an Apple iPad, Apple MacBook's and Apple TV's. The majority of the products were for D1. When D1 became AWD Director, he continued purchasing Apple products. While at the AWD East Side location he renovated his office also using Apple products.

When D1 transferred to AWD as director, he transferred EHD's Management Analyst II who took a lateral transfer and became the Fiscal Officer at AWD. D1 would later reclassify the Fiscal Officer position to a Fiscal Manager position at a substantial pay increase. FM1 interviewed for the Fiscal Manager and was selected.

Scope:

The objectives of the investigation were to determine:

- Whether D1 violated Administrative Instruction No: 3-14 (F) (IV): City funds may not be used to purchase an item merely for the convenience of one or more employees.
- Whether there was any favoritism in the promotion of an AWD Fiscal Officer to Fiscal Manager.

The scope of the investigation included the following activities as part of the investigative process:

- Interviews of appropriate personnel;
- Review of pertinent documents;
- Review of social media; and
- Communication with pertinent City departments.

Note: Interviews can be found in the Appendix

Background:

Apple Purchases and Office Renovation

Administrative Instruction No: 3-14 (F) (IV) states: City funds may not be used to purchase an item merely for the convenience of one or more employees.

The OIG requested information from EHD regarding purchases made at the Apple Store, to include justification for the purchases and an inventory audit.

A total of 39 items were purchased between March 2016 through August 2018 totaling $9,975.18. The inventory audit done by EHD revealed 16 items were believed to have been taken to AWD by D1 to include, Apple TV's, Apple AirPods, an Apple iPad and Apple MacBook.

The OIG received an Interoffice Memorandum from the Acting Director of EHD regarding justification of the Apple purchases. Below is an excerpt of the Interoffice Memorandum.

> *Environmental Health affirms that all of the purchases in question were properly approved according to Department policy, and maintains that these purchases were justified. Environmental Health has consistently been an "early adopter" of available technology…*

D1 was asked about the Apple purchases and stated EHD had several Apple users within the department. The Apple TV's were hooked up in office rooms and conference rooms in order to be able to project computer screens onto the tv's. The AirPods were used for hands free talking. Apple watches were purchased by D1 and the other EHD deputy director as an accessory to the phone, to get mail alerts, text alerts, keep calendars, etc. The OIG asked D1 if he considered the Apple watch and AirPods to be items of convenience. D1 stated, "That's a good question". D1 stated he thinks they increase the convenience and are less intrusive. D1 sits at the head of the table for a lot of meetings and felt that, out of respect to others present, it was not a "fantastic idea" to be looking down at one's phone. D1 stated he had to be available in the event the Mayor or Mayor's office called.

When D1 became the director at AWD he continued purchasing Apple products to include another MacBook Pro and iPad Pro. The OIG estimated D1 had over $10,000 in Apple products at his disposal. In March of 2019, D1 also had a renovation done at the East Side location for his new office costing over $15,000 to include a 75 inch tv "monitor".

D1 was also attempting to purchase a Ford Explorer, Limited Edition model. This model came with additional features, such as leather seats and twin panel moonroof. The quoted price was $49,887. The City's Fleet stated "not sure we can justify such a large price difference". City Fleet stated they did not move forward because the price could not be justified.

The OIG communicated with AWD's Systems Administrator II (SA1) who stated D1 had several phones, both Apple and Samsung, while he was AWD Director. Several Apple TVs were purchased so he could use them to interface with his Apple laptops. He did bring several of his Apple products with him from Environmental Health. SA1 stated he also purchased multiple Apple accessories including AirPods, chargers, cases, etc.

SA1 stated he was never uncomfortable buying these items for the director, as he knew directors are in charge of the budget for their department.

Upon resigning from the City, D1 turned in 13'' and 15'' Apple MacBook Pro's, two 12.9'' Apple iPad Pro's, one Apple watch, one pair of AirPod Pro's, and one iPhone 11 Pro max. There were several small electronics such as speakers and Amazon Alexa's left in his office.

Pictures of D1's office renovation:

AWD Fiscal Manager Position

Several complaints were received regarding FM1 being promoted to the position of Fiscal Manager at AWD. The complainants stated the AWD Fiscal Manager position was created for FM1 who was not qualified for the position. A complainant also stated FM1 "got in very familiar with D1". E1 went from making $27.10 as a Fiscal Officer to $40.29 as the Fiscal Manager.

The Fiscal Manager job description states the following for "Minimum Education and Experience Requirements":

Related education and experience may be interchangeable on a year for year basis. Exception: The nine (9) required credits hours in accounting are not interchangeable.

Bachelor's degree in accounting, business administration or related field to include nine (9) credit hours in accounting with a passing grade 'C' or better, plus seven (7) years professional fiscal management experience and four (4) years direct supervisory experience in a management and/or administrative capacity. Governmental accounting education and/or government accounting experience preferred.

Prior to being promoted to Fiscal Manager at AWD, FM1 was a Management Analyst II at EHD. On May 8, 2018, FM1 interviewed for the EHD Fiscal Manager position and shortly thereafter was recommended to HR for the position. The position required a four year degree and FM1 had a two year associate's degree. HR was using experience that could be interchangeable on a year for year basis for education. After being recommended, HR determined FM1 did not have enough experience to qualify for the position. The position would later be re-advertised.

A review found FM1 and D1 received an email on April 25, 2018 that contained a list of all the candidates, to include herself, who had applied for the EHD Fiscal Manager position. Emails going forward regarding the hiring process were not sent to FM1. While at EHD, FM1's position made her the person to review the interview list.

In 2014, AWD's Fiscal Manager position was downgraded to a Fiscal Officer position. When D1 took over as Director for AWD, he wanted to bring back the position of Fiscal Manager.

The Former HR Director provided the following timeline of FM1 and how she qualified for the Fiscal Manager position at AWD:

> 12-27-2014—FM1 was promoted to Fiscal Officer E16, worked in the position at Senior Affairs Department for 2 years, 7 months until 7-22-2017 when transferred into a Management Analyst II position at EHD.
>
> 10-28-2017—FM1's "reports to" changed to D1 and she was temporarily upgraded to fill in as Fiscal Manager as the former Fiscal Manager for EHD was terminated while on probation (10-31-2017). Researching Peoplesoft, FM1 continued to fill in as the Fiscal Manager until her Administrative transfer by D1 as a Fiscal Officer on 9-1-2018 to Animal Welfare.
>
> When FM1 was promoted (12-27-2014) to Fiscal Officer E16 she was given credit for 7 years Fiscal Management experience, two years for her Associates in Applied Science to include 12 credit hours of accounting with a "C" or better grade, and 2 years of direct supervisory experience. She accrued 2.7 more years of related experience plus two more years of direct supervisory experience to qualify for the position of Fiscal Manager E18.
>
> When she applied for the E18 Fiscal Manager position in Environmental Health, the position calls for 11 years total experience. She only had 10.2 so the temporary upgrade she received qualified her for the Fiscal Manager position in AWD when she applied.

FM1, along with four other candidates, were selected to be interviewed for the AWD Fiscal Manager position. D1, along with 2 other City employees, conducted the interviews. One candidate who was a Fiscal Manager in another City department could not make the interview due to an illness. The OIG contacted the candidate to see if she was given the opportunity to interview at a later date. The candidate stated she was not provided a chance to interview on another date. The HR person she spoke with indicated they would call her for an interview if they did not find someone to hire in the group they were interviewing.

A review was done of the approval process in reclassifying the position. The process took six approvals to include the City's CAO to reclassify the position.

A review was done of the scoring of the four candidates interviewed for the AWD Fiscal Manager position. FM1 scored the highest with all three interviewers.

The proper steps were followed in reclassifying the position at AWD. From information gathered, FM1 met the qualifications for the AWD Fiscal Manager position and scored the highest points by all three interviewers.

Conclusion:

From information gathered during the investigation, there is enough evidence to substantiate D1 violated Administrative Instruction No: 3-14 (F) (IV) which states: City funds may not be used to purchase an item merely for the convenience of one or more employees.

The renovations and items purchased for D1's office are questionable at an estimated total cost of $15,291 which include a 75-inch tv/monitor.

From information gathered during the investigation, FM1 was qualified for the position. The allegation FM1 was unqualified for the position is not substantiated.

AWD's Director stated she would do a review and return the items D1 brought over from EHD.

Recommendations:

- City Directors be made aware of Administrative Instruction 3-14 regarding purchasing items merely for the convenience of one or more employees.
- The City's Purchasing Card Policies and Procedures be followed by Department Directors, Program Administrators, Reconcilers, and Card holders.

APPENDIX

Interviews

Interview with former Chief Procurement Manager

CPM was asked about Apple purchases made on the P-card and if they were allowable purchases. CPM stated there is nothing in P-card policy stating you can't buy things like that. Administrative Instruction 3-14 does state that you can't buy things of a personal convenience. It's hard to know if buying AirPods has a specific business reason, it's at the director's discretion. It is a matter of what is needed. "Why do you need AirPods and Apple watches?" CPM stated he has a City cell phone, but doesn't know why the City would have to buy him an Apple watch. If CPM wanted an Apple watch, he would buy his own. "It sounds like a convenience or luxury item." Personally, CPM would want to know what is the business need for buying an Apple watch. Based on your position the City will get you a cell phone, after that, his opinion is AirPods and Apple watches are "luxury items".

If someone would ask him if they could purchase those items, there is policy to point to, it is really an interpretation of what's considered an item of convenience or is there a justifiable business reason.

EHD Budget Analyst and Interviewer (E1)

E1 was interviewed and asked to answer questions when she was the Budget Analyst for AWD.

E1 stated in September of 2018, D1 submitted paperwork to reclassify the position from a Fiscal Officer E16 to a Fiscal Manager E18; the position was going to cost more. Her job was to ensure AWD had the appropriations to cover the cost of the position, especially since they were doing it mid-year. When E1 did her financial review there was a concern AWD had overspent their appropriation in the past. Every quarter they would do projections to make sure they were in line to not overspend budget and it was estimated AWD would overspend by $300,000. They had in the past overspent by that much and it was not "farfetched" they possibly could do it again this fiscal year. When asked who wanted the reclassification, E1 stated it was D1. When D1 went to AWD he administratively transferred his EHD administrative assistant, which was a cost savings. D1 also administratively transferred FM1. E1 stated it was unusual that he took his administrative staff. At EHD, FM1 was a Management Analyst that performed fiscal work. When asked if AWD had a Fiscal Manager before, she stated they did. When that Fiscal Manager left they converted the position to a fiscal officer because it was a smaller department. When asked if D1 wanted someone in particular for the job, E1 stated her assumption would be that he took FM1 from EHD to AWD and he wanted her for the position.

E1 stated in May 2018, she was on the interview committee when D1 was hiring a Fiscal Manager for EHD and FM1 was recommended for the position at the time. They tried vetting it through HR and HR rejected it. This was before D1 went to AWD. That proposal was rejected so they re-advertised the position and hired someone else. E1 does not know why it did not go through. When asked if FM1 was the person she selected for the job, she stated yes. She had a history of working at EHD and there was a system used that was exclusive to EHD to track

expenses. The questions were tailored towards that program in a way that would have aligned with the requirements, and she was the only one interviewed that had the experience in the system. When asked if the questions were tailored towards the program or for FM1, E1 stated more towards the program in that particular department. FM1 had been with EHD for a while and then went to another department and came back to EHD. She had the years of working there that would have given her an advantage. E1 does know FM1 was in an acting Fiscal Manager capacity at EHD that would have given her additional experience that could have qualified her. She did not have a four year degree and did not know how HR factors in years of experience for education.

On 12/7/18 E1 sent an email to FM1 that she did not agree with the classification of the Fiscal Manager at AWD because of funding.

Department is projected to overspend existing appropriation by approximately $300,000, as such there are no salary savings to be utilized. They have also had a shortage of animal handlers and are currently utilizing temporary staff to cover shortage. From a budget perspective, I do not agree with the reclassification. Reclassification should be neutral.

When asked why she approved the reclassification of the position on 12/21/2018, E1 stated she was told she had to approve it with the wording "routing of the transaction does not constitute budget approval in this instance", but could not remember by whom. She was worried the budget would not cover the added expense and documented it incase AWD did overspend. E1 stated she was concerned on the physical aspect and said this kind of scenario with budgets does happen.

EHD Interviewer (E2)

E2 was on the interview panel and was asked about the interview for the EHD Fiscal Manager position at EHD in May 2018. E2 stated at EHD they were under the impression FM1 was qualified. FM1 was recommended for the position, but never received approval from HR. D1 was the one working on the position from start to finish. In FM1's capacity at the time, she was the person reviewing and qualifying candidates for interviews. EHD took her out of the process and had her NeoGov HR access suspended so there would be no question about her qualifying herself. The department does rigorous review to determine who is qualified for the job based on the list received from NeoGov. When a recommendation is made, HR does a review to determine if the person is qualified. In this case the department believed FM1 was qualified and HR did not due to a discrepancy in her experience.

EHD has a "home grown solution" for budget tracking and one of the reasons D1 thought FM1 was qualified is because when she was at EHD as an accountant, she helped put a system together for fiscal tracking. D1 was very confident in FM1 and thought she was the right choice for the position. When asked if the questions were tailored towards FM1, E2 stated no. The questions reflected the values of the department and not exclusively the technical knowledge. E2 stated she went to Senior Affairs and they recruited her back as a Management Analyst II. He feels she would have had a competitive advantage because of her experience at EHD. FM1 was clearly the best person interviewed for the position.

E2 believes D1 took FM1 to AWD because she was a very valuable person. AWD had fiscal issues and D1 wanted to implement the same fiscal tracking system EHD used. He trusted her and she knew the system. E2 stated he had heard the allegation he carved a path for her, but as a person who has managed people for a long time he would say D1 groomed her and gave her an opportunity. His personal opinion is FM1 is very strong person for the job. He believes the process was done right and does not have anything to criticize.

AWD Interviewer (E3)

E3 is currently at EHD as the Fiscal Manager. She was on the interview panel for the Fiscal Manager position at AWD. D1 asked her to be on the panel. E3 stated she didn't know any of the candidates personally that would affect her judgement. She knew them in a professional manner when she had to work with some of them while she worked in Budget. She did know FM1 because she worked at EHD. The OIG asked about a candidate who called in sick and was not interviewed. The OIG asked why that candidate wasn't allowed another time to interview. E3 stated she did not know; she did ask D1 if the candidate rescheduled and D1 said no. E3 stated there was enough time dedicated to each interview, the questions were straight forward and the interviews went quickly. She did not have any input on questions. She stated the questions were tailored to City of Albuquerque employees. All the candidates were City employees. When asked if D1 had a preferred candidate, E3 stated she did not know, but prior being the Budget Analyst for EHD, she had to approve the administrative transfers that D1 wanted to take with him to AWD. He took FM1 and an administrative assistant with him to AWD. She felt there was a preference there, but she could not tell during the interview.

E3 was not pressured in the scoring of the candidates. When asked if FM1 was the most qualified for the position at AWD, E3 stated yes, based on the questions. The majority of the questions asked where questions she would have asked. E3 stated she did not suspect any wrong doing. Each department can tailor their own questions for interviews.

AWD Current Director (AWD1)

When asked if FM1 was qualified to be Fiscal Manager, AWD1 stated she was. AWD1 has had five months at AWD and if FM1 wasn't performing "she would not be here". FM1 will come in on Saturdays if needed and has taken on other roles to include HR while the HR person has been on leave. She has handled investigations and grievances and has a good broad level of experience and is always willing to help. With D1 not having a fiscal background, and with AWD's fiscal issues when he came over, she could see why he wanted to bring FM1 over from EHD. AWD1 stated she believes a Fiscal Manager is needed for AWD.

Regarding all the Apple purchases D1 made, AWD1 was asked if she thought those and other items were necessary. AWD1 stated "it is about a need, not want". The items D1 had were "overkill". The 75 inch tv/monitor in the office is "overkill". In a private organization it's ok, but when you working with tax payer dollars you need to be conservative, does not mean going with the higher priced item such as Apple. You can get good products that are less expensive. AWD1 stated she could see better ways in which AWD and D1 could have spent the money,

such as animal vet care. AWD1 stated “sometimes when you have been with the City so long you know the loop holes”.

AWD1 stated she would do a review and return any items D1 brought over from EHD.