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**Report of Investigation**

**FILE NO:** 21-0057-C

**DATE:** 12/15/2021

**SUBJECT:** City Operators Policy Violation, failure to report accident timely

**STATUS:** Final

**INVESTIGATOR:** Peter Pacheco/Melissa Santistevan

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## EXECUTIVE SUMMARY

On October 16, 2021, the Office of Inspector General (“OIG”) received communications through our online complaint hotline from an anonymous citizen reporting that an Administrator (A-1) was involved in an accident in a city vehicle that cost the City of Albuquerque (City) taxpayers approximately \$5,000 for repairs to both vehicles, not including lost man hours from the mechanics at Pino yards. The allegation stated that A-1 purposely failed to report this accident to APD, therefore, no investigation occurred to determine fault or if there was any impairment. Additionally, the allegations state that A-1 failed to promptly report the accident that took place on September 14, 2021 to Risk Management. On September 29, 2021, a report was filed with Risk Management. The allegations state that when the accident was reported, a false name for the other driver was listed with no other information. The complaint stated that A-1 “has been in the position for 16 years, A-1 knows the rules. What was A-1 hiding? Are there other individuals who witnessed the violation you are reporting?”

Pursuant to City Ordinance 2-17-2, the Inspector General's goals are to: (1) Conduct investigations in an efficient, impartial, equitable and objective manner; (2) Prevent and detect fraud, waste and abuse in city activities including all city contracts and partnerships; (3) Deter criminal activity through independence in fact and appearance, investigation and interdiction; and (4) Propose ways to increase the city's legal, fiscal and ethical accountability to insure that tax payers' dollars are spent in a manner consistent with the highest standards of local governments.

After receiving this communication, it was determined that the allegation contained potential fraud, waste, or abuse and the OIG determined that it was appropriate to conduct a fact-finding investigation. On October 18, 2021, the OIG initiated an investigation. The purpose of the investigation was to address potential fraud, waste, or abuse related to a City Administrator violating the City Operator Permit (COP) policy and failing to timely report and accident involving a City vehicle.

The OIG investigated the matters by reviewing a timeline of events and supporting documentation, reviewing the report submitted to Risk Management, reviewing the COP policy, reviewing estimates of damage and repair records from City facilities as well as any other facilities utilized, reviewing the release via check payment for damages to the other driver, conducting interviews with witnesses and the City’s Risk Manager, and conducting an interview with A-1. The OIG was provided access to the records and the OIG is appreciative to all personnel for their cooperation in the conduct of this fact-finding investigation.

The OIG’s investigation reveals that A-1’s actions were improper and were not supported by the City’s policies and procedures. A-1 admitted to not following the COP policy and that a police report was not filed. Witnesses interviewed stated that A-1 did not appear to be impaired in any way. A-1 also stated that A-1 was not impaired.

Overall, the OIG found that A-1 did violate the COP policy by not filing a timely report and not filing a police report. The OIG did not find evidence to support that A-1 was impaired at the time of the accident. The OIG has identified areas of concern with City’s COP policy and training. As a result of our investigation, recommendations have been made for improvement that may aid in mitigating liability to the City. See the OBSERVATIONS AND RECOMMENDATIONS section of the report.

## **ABBREVIATIONS**

A-1: Administrator  
OIG: Office of Inspector General  
APD: Albuquerque Police Department  
W-1: Witness 1  
W-2: Witness 2  
E-1: Employee 1  
E-2: Employee 2  
COP: City Operator Permit

## **INTRODUCTION**

The mission of the Office of Inspector General (OIG) is to promote a culture of integrity, accountability, and transparency throughout the City of Albuquerque in order to safeguard and preserve the public trust.

On October 16, 2021, the OIG received communications through our online complaint hotline from an anonymous citizen reporting that an Administrator (A-1) was involved in an accident in a city vehicle that cost the City taxpayers approximately \$5,000 for repairs to both vehicles, not including lost man hours from the mechanics at Pino yards. The allegation stated that A-1 purposely failed to report this accident to APD, therefore, no investigation occurred to determine fault or if there was any impairment. Additionally, the allegations state that A-1 failed to promptly report the accident that took place on September 14, 2021 to Risk Management. On September 29, 2021, a report was filed with Risk Management. The allegations state that when the accident was reported, a false name for the other driver was listed with no other information. The complaint stated that A-1 “has been in the position for 16 years, A-1 knows the rules. What was A-1 hiding? Are there other individuals who witnessed the violation you are reporting?”

## **SCOPE AND METHODOLOGY**

The scope of the investigation involved the performance of certain procedures to assess A-1’s compliance with applicable laws, regulations, policies and procedures.

1. Review report submitted to Risk Management along with analysis of dates
2. Obtain a timeline of events with other supporting documentation
3. Request the Police Report
4. Obtain and review relevant policies and procedures for the City.
5. Request documentation showing the dollar amount of the damage to both vehicles and any payment made to the other driver.
6. Request documentation of repairs done on either vehicle at a City facility

7. Interviews of witnesses
8. Interview with Risk Management's COP Administrator
9. Interview with subject, A-1

This report was developed based on information from interviews, observations, and the OIG's review of selected documentation and records.

## **INVESTIGATION**

### **Background**

A-1 has been with the City for a number of years and has been in current position since December 2017. A-1 is in Administration and works in the Mayor's Office.

On September 15, 2021, A-1 was driving South on 5<sup>th</sup> street, pulled to the light at 5<sup>th</sup> and Tijeras to turn east on Marquette. A-1 waited for a few seconds as the light was red. Driver in truck had right of way but was stopped and there was no indication of motion. A-1 thought driver was inattentive or stalled. A-1 made the turn and the driver of the truck began to move, resulting in a collision. A-1 admitted that it was bad judgement given the situation. A-1 got out of vehicle and approached the truck driver and asked if she was ok, the driver indicated that she was. A-1 admitted fault to the truck driver. The truck's driver got out of the vehicle and walked with A-1 to the rear of the vehicle and both noted minor bumper damage. A-1 asked if police should be called but the truck driver stated she was in a hurry to get to an appointment. The truck driver repeated that statement a couple of times. A-1 decided not to call the police because no-one was hurt, it was a minor collision and the police had other more pressing issues to address. A-1 and the other driver exchanged insurance information. There were no photos of the damage to both vehicles taken at the scene. A-1 walking back to the vehicle when a gentleman approached him as said "Oh it's you" A-1, the gentlemen asked if everyone was ok and then walked over to the driver of the truck and while handing her a business card, he stated "I'm an attorney and I saw everything so if you need my services here is my card". A-1 did not know or recognize the gentleman.

A-1 drove to City Hall and immediately spoke to W-1 who is an employee in the Risk Management Department and explained the incident. W-1 asked A-1 if anyone was hurt, A-1 advised W-1 that no one was hurt. W-1 was out walking with W-2 and both heard the collision and noted that it seemed minor and continued their walk. W-1 took A-1 to one of the Risk Management offices and provided A-1 with the necessary steps for reporting. W-1 emailed A-1 the paperwork to be filed. A-1 stated it was a few days after the incident when the paperwork was addressed. A-1 completed the paperwork, then left it on the desk for a few days before providing it to an Assistant, E-1, to turn into Risk Management. E-1 had provided Risk Management with the other driver's information that was obtained in the original exchange between the truck driver and A-1. A-1 had

been called by Geico but referred them to Risk Management. After referring the claims agent to Risk Management, A-1 did not hear anything else regarding the matter.

In January 2018, A-1 took the COP training and was issued a permit to drive City vehicles. According to an interview with employee 2, E-2, of Risk Management the COP training offered in January 2018 was different than the training offered today. The City contracted with Smith system to provide the training. The training went over “this is how you drive” and “how not to get road rage”, it did not go over the City’s policy. E-2 stated that COP certification is required to be renewed once every four years.

The results observed from the procedures performed highlight a failure to follow the COP policy by A-1 and policy and procedure deficiencies, which may result in liability for the City.

### **General Observations**

While conducting our fact-finding investigation, the OIG noted that the accident occurred on September 15, 2021 and that the police were not called to the scene of the accident nor was it indicated that a Supervisor was called as required by the COP policy. Because the Police were not contacted, A-1 should have filed a report at a local Police Substation. An inquiry and request of the police report from Albuquerque Police Department revealed that no report was filed.

A-1 did immediately, informally report the incident to a member of Risk Management but not to the appropriate Risk Management Personnel. Per the COP policy, A-1 should have promptly filed a report to Risk Management but the report was not filed until September 29, 2021, fourteen (14) days after the incident. A-1 acknowledged the failure to follow the policy and to promptly file the report.

An estimate of the damages to the City vehicle, totaling \$3,528.68, prepared by Chalmers Collision Center was provided to OIG. The City’s Fleet Services repaired the damages to the City Vehicle. An estimate of the damages, totaling \$1,116.07, for the other driver’s vehicle prepared by Discount Collision Center LLC was used to determine the amount paid to the other driver along with the property release in full statement.

E-2, from Risk Management, indicated that the policy stated that City employees must recertify every four (4) years, however, the policy does not contain such language. The COP policy does not explicitly require that the operator of a City vehicle involved in an accident be tested for impairment.

An accident review committee reviewed this incident and found A-1 at fault for a preventable accident and assessed the required points per the policy toward the operators COP. The point assessment will remain in effect for a year and will not be affected by a renewal of the COP.

## CONCLUSION

The OIG's investigation reveals that the A-1's actions were improper and not supported by the City's COP policy. A-1 acknowledged the failure to follow the policy and to promptly file the report.

Overall, the OIG found that A-1 did violate the COP policy by not filing a timely report and not filing a police report. The OIG did not find evidence to support that A-1 was impaired at the time of the accident. The OIG has identified areas of concern with City's COP policy and training. As a result of our investigation, OIG has made three (3) recommendations that may aid in mitigating liability to the City.

## OBSERVATIONS AND RECOMMENDATIONS

**Observation 1:** A-1 did not follow the COP policy with regard to Vehicle Accident Reporting. The policy states:

A. Vehicle Accident Reporting Procedure – all drivers

(1) Any driver involved in a motor vehicle accident, while operating a vehicle on official City business, shall immediately call the police and the driver's supervisor or his department investigator to the scene.

(2) The driver shall not leave the scene until the police have completed their investigation. If the police do not investigate at the scene, the driver should make a report at the police station or as directed by his supervisor.

(3) The driver shall not discuss the accident with anyone except the police, the supervisor, legal counsel or an adjuster or other investigator assigned by the Risk Management Division.

(4) The department investigator shall investigate the accident and report the findings to the Fleet Safety Officer or department accident review committee in compliance with this rule.

(5) Department directors shall require that vehicle accident reports be promptly submitted to the Fleet Safety Officer or department accident review committee in compliance with this rule.

**Recommendation:** A-1 should be immediately retrained on City's COP policy.

**Response:** Risk Management will send an email to the COP Liaison, requesting that she send the link for the Online DDC training to be completed by A-1.

**Observation 2:** The City's COP policy does not state a requirement for recertification by employees.

**Recommendation:** The City should consider requiring all drivers of City vehicles be trained and certified annually. This would mitigate the risk of liability in such events due to the fact that the information is addressed more often and can educate drivers of any changes in the Policy.

**Response:** Although not outlined in the policy, it is standard procedure that City Drivers are trained and certified through our Defensive Driver's Course every four (4) years, with the exception of Sworn Firefighters in AFR, who are certified every three (3) years through Coaching the Emergency Vehicle Operator (CEVO) course. Under this standard procedure, employees are issued COPs that expire every four (4) years. Risk Management tracks the expiration dates of all Employee driving certificates, and department liaisons receive weekly lists of Employees whose COP is set to expire within the following 90-days. Those employees are then requested to renew their COP as a term and condition of employment.

Reducing the period of time between certification and renewal would not be the most efficient way to address this Observation. The most recent modification to the COP policy occurred in 2012, and the content of the training does not change frequently enough to necessitate an annual requirement for drivers. However, if/when there are policy or procedural changes, Risk will coordinate with the City's Employee Learning Center (ELC) to develop a presentation that will be mandatory for all COP holders to complete, making them aware of the changes that have taken place. Additionally, the yearly COP requirements for nearly 6,000 Employees (plus temps and volunteers) would be such an extensive workload that it would require a new position be created within Risk Management, as the workload for updating, printing, and distributing COP cards would triple. The COP Administrator would have to download the Employee's certificate, save it to their Origami profile, update the expiration date for the Employee's COP, print, laminate, cut, sort and then inter-office mail over 6,000 COPs each year, compared to the current workload. This leaves little-to-no room for the COP Admin to conduct and update training, input accident reporting information, verify COP credentials for travel requests, and handle any other day-to-day questions and concerns for department liaisons.

The training that Employee A-1 took was the Smith System online driving course, which is no longer offered as an option for City Employees. The training only contained information pertaining to safe driving practices generally and did not contain any City-specific details regarding the COP policies and procedures, such as "what to do if you are in an accident". That training was eliminated as a certification option in June-2019. I believe that anyone who takes, and pays attention to, the current training given to City Employees would know what steps to take in the event of an accident.

Rather than shortening the COP recertification timeline, Risk will perform the following measures to address this observation. Risk currently has printed instruction cards that tell an employee what procedures to follow in the event of an accident. These cards will be distributed to all department liaisons within the City to be given to all current COP holders and placed in all City vehicles. Additionally, new COP holders will receive these cards upon receipt of their COP moving forward.



**Observation 3:** The COP policy does not explicitly require that the operator of a City vehicle involved in an accident be tested for impairment but it also does not explicitly state when testing for impairment could or would be required.

**Recommendation:** The City should consider revising the COP policy to be more explicit to when testing for impairment would or could be required.

**Response:** The requirements for Post-Accident Testing are outlined in Section 1100: Substance Abuse Policy Part 1 Section 13(C), pg 10. An accident that requires a Post-Accident Drug and Alcohol Test is defined in the Substance Abuse Policy as “Accident. An occurrence associated with the operation of City equipment, machinery or vehicles, if as a result (1) an individual dies; (2) an individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or (3) one or more vehicles incurs Disabling Damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle”. Risk will redistribute copies of the City of Albuquerque Post-Accident Decision Making Form to City COP Liaisons to be placed in all City vehicles.

It is important to note that any changes to the COP require public rulemaking hearings as provided by ordinance. Additionally, any changes that effect terms and conditions of employment need to be negotiated with any applicable bargaining units. This is an issue Risk must consider when discussing any potential changes to the COP policy under Recommendation 1 and 2. However, the recommended responses/courses of action provided by Risk management above would not change any current conditional of employment but only provide notice of existing procedures and policy. This also would address any concerns observed and give employees access to existing information during the course of any further accident – which Risk believes is the most effective solution.

It is vitally important that the City address current practices to ensure that the policies and procedures are designed to mitigate potential loss to the City.