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Report of Investigation

FILE NO: 22-0064-C

SUBJECT: Retaliation for participating in an investigation for timecard fraud.

STATUS:

INVESTIGATOR: M. Santistevan/P. Pacheco

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May 16, 2022
Date of Completion

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OVERSIGHT COMMITTEE CHAIRPERSON

May 20, 2022
Date of Approval

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EXECUTIVE SUMMARY

Under 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.

On April 1, 2022, the Office of Inspector General (OIG) received a telephone complaint alleging retaliation, in the form of reassignment to a different supervisor and requiring office relocation to a smaller space, as the result of participation in an investigation conducted by the OIG and a private investigation firm regarding timecard fraud. The complainant also alleged that there was physical damage to personal property as a result of the participation in the investigation. The OIG determined that this allegation contained potential abuse and that it was appropriate for the OIG to conduct a fact-finding investigation. The purpose of the investigation was to address the alleged retaliation for participation in a workplace investigation.

The OIG investigated the allegations in coordination with the City of Albuquerque's Human Resource Department (Central Human Resources). Central Human Resources initiated notices of investigation to employees determined to be witnesses or subjects. The OIG researched internal software to obtain a list of all employees, identified as subjects or witnesses, to acquire contact information and job positions and applicable unions for each employee. The OIG reviewed union contracts applicable to the employees alleged to be participants or witnesses in the matter. The OIG reviewed the City of Albuquerque's Personnel Policies and the Code of Conduct. The OIG obtained and reviewed emails between January 1, 2022, and April 8, 2022. The OIG researched workplace retaliation in general and as it pertains to EEOC regulations. The OIG conducted interviews with the complainants, subjects, and witnesses.

The original complaint submitted to the Office of the Inspector General stated two (2) separate allegations. In response to allegation 1, a review of all emails between January 1, 2022, and April 8, 2022, revealed no discussion as an indication of a reorganization in the Finance division until March 20, 2022. The facts and circumstances provide the impetus for the allegation of retaliation for participating in the investigation, regarding timecard fraud in the Aviation Finance and Warehouse Division, publicly issued on April 4, 2022. Concerning allegation 2, the OIG was unable to obtain sufficient and appropriate evidence to substantiate the physical damage to personal property during work hours on the work premises due to an error in pulling the data on the correct date before the footage was recorded over as the acceptable practice by Security.

As a result of our investigation, the OIG has issued a management letter and appendix A containing two (2) recommendations for improvement related to the OIG observations.

ABBREVIATIONS

A1: City Administrator
AVHR: Aviation Human Resources
E1: Aviation Employee
E2: Aviation Employee
E3: Aviation Employee
E4: Aviation Employee
E5: Aviation Employee
E6: Aviation Employee
E7: Aviation Employee
E8: Aviation Employee
E9: Aviation Employee
OIG: Office of Inspector General

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 to safeguard and preserve the public trust.

The OIG received a complaint alleging retaliation, in the form of reassignment to a different supervisor and requiring office relocation to a smaller space, as the result of participation in an investigation conducted by the OIG and a private investigation firm regarding timecard fraud. The complainant also alleged that there was physical damage to personal property as a result of the participation in the investigation.

SCOPE AND METHODOLOGY

The scope of the investigation involved the performance of certain procedures to acquire and assess documentation, timelines, emails, and testimony as it pertains to the matter of retaliation for participation in a previously issued investigation regarding timecard fraud. The methodology consisted of:

- Reviewing documents submitted with the complaint.
- Researching internal software to obtain a list of all employees in the identified divisions, acquiring contact information and job positions and applicable unions for each employee subject to the investigation.
- Coordinating with Central Human Resources to initiate notices of investigation to identified participants and witnesses.
- Contacting the Risk and Legal Departments to determine if there is pending litigation on any of the employees identified.
- Reviewing previously issued investigations related to Aviation timecard fraud.
- Reviewing Union contracts for each position and gaining an understanding as it relates to participation in investigations.
- Reviewing job descriptions for the reclassified employees.
- Reviewing documentation related to the reclassification.

- Reviewing emails from January 1, 2022, to April 8, 2022, to determine the basis and timeline of reorganization.

SCOPE AND METHODOLOGY (continued)

- Interviewing employees, managers, and others as necessary.

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

INVESTIGATION

Background

On January 7, 2022, the Office of Inspector General and a private investigation firm initiated separate investigations into timecard fraud within the Aviation Finance and Warehouse divisions. On March 1, 2022, E1 noticed the tire on his vehicle was flat, the vehicle was able to be taken to a repair shop for assessment. The mechanic found a razor blade embedded in the tire and determined that to be the cause of the flat tire. On March 17, 2022, the Office of Inspector General released the observation and recommendations to the E4 for a response to be included in the investigation report to be submitted to the Accountability in Governance and Oversight Committee (AGO). On March 24, 2022, the OIG's investigation was presented to the AGO for approval. On March 25, 2022, the report was provided to E4 and A1 for a five-business day technical review, before being published on the OIG website. On April 1, 2022, the OIG received a complaint of retaliation due to participation in the investigation. On April 4, 2022, the OIG published its investigative report regarding alleged timecard fraud within the Aviation Department.

Considerations

To conduct our investigation, the OIG considered the following:

Retaliation, as defined by the City of Albuquerque's Central Human Resource Labor/Relations Office as "Any action a reasonable employee would believe, is intended to discourage protected activity".

The City of Albuquerque Inspector General Ordinance, Article 17, § 2-17-12 (D) states "No person shall retaliate against, punish or penalize any other person for complaining to, cooperating with, or assisting the Inspector General in the performance of his office."

City of Albuquerque Code of Conduct 301

§301.2 Professional Excellence states "Employees are encouraged to strive for personal and professional excellence as a means of keeping current on relevant issues and administering the public's business with professional competence, efficiency, and effectiveness."

§301.3 Standards of Conduct states “Employees shall in all instances maintain their conduct at the highest personal and professional standards to promote public confidence and trust in the City and public institutions and in a manner that merits the respect and cooperation of coworkers and the community. Employees shall not use insulting, abusive, or offensive language or actions toward the public or co-workers. Ethnic or sexist jokes, slurs, and other comments or actions that might embarrass or offend others are prohibited. Employees shall not harass others by making sexual advances or by creating an intimidating or offensive working environment or making false accusations regarding such conduct. Display of visual materials that may be sexually or racially offensive is also prohibited. Employees shall not have in their possession during assigned work hours, including lunch periods, in any facility, vehicle, or worksite, illegal drugs, alcohol, drug paraphernalia, weapons, or explosives, unless directly related to their city responsibilities. Additionally, employees may not use any product for other than its intended manufactured use. Employees are responsible for notifying their immediate supervisor in writing of a conviction, entry of a “no contest” plea, or imposition of a sentence if the infraction relates to the position held by the employee. Misdemeanor convictions will be considered based on job-relatedness.”

§301.17 Supervision of Employees states “Employees with supervisory duties or responsibilities shall, in all instances, ensure that all supervisory actions comply with the provisions of the Merit System Ordinance, Labor-Management Relations Ordinance, Personnel Rules and Regulations, applicable legislation, and relevant judicial/administrative decisions.”

Observations

Allegation 1: Retaliation, in the form of reassignment to a different supervisor and requiring office relocation to a smaller space, as the result of participation in an investigation conducted by the OIG and a private investigation firm regarding timecard fraud.

The Office of Inspector General reviewed emails and other relevant documents to determine the timeline of events as stated below, related to the allegation of retaliation, in the form of reassignment to a different supervisor and requiring office relocation to a smaller space, as the result of participation in an investigation conducted by the OIG and a private investigation firm regarding timecard fraud.

A review of all emails between January 1, 2022, and April 8, 2022, revealed no discussion as an indication of a reorganization in the Finance division until March 20, 2022.

On March 17, 2022, the OIG released the observations and recommendations to E4 for a response.

On March 20, 2022, an email was sent from E4 to E5 to inquire about ‘managers’ classifications and whether there is a possibility of transferring them to a new section.’

On March 22, 2022, an email with an Aviation Division organization chart was identified. The organizational chart did not reflect the current design of the Finance division nor was there any indication of a reorganization in the chart or the body of the email.

On March 31, 2022, emails containing “reports to” change forms for E1, E6, and E9 were being discussed and preparation of the forms was assigned.

On April 1, 2022, an email detailing a meeting between E1, E2, and E3 regarding the change in E1’s new reporting supervisor.

On April 1, 2022, an email between E2 and E5 indicated that AVHR should have reviewed the memos before their issuance.

April 3, 2022, an email was sent to the union representative regarding retaliation.

April 4, 2022, emails were sent to E1, E6, and E9 providing each with a copy of the change in reporting memo.

April 4, 2022, email to OIG detailing events believed to be retaliation by E2 and E3.

April 5, 2022, email to IT requesting to set up a new employee to mirror access held by E1.

April 5, 2022, email from E4 to E5 to request grade and classification of E6.

April 5, 2022, email from E5 to E4 providing grade and classification of E6.

April 5, 2022, email from E2 to IT to coordinate the relocation of ports for E1’s office.

April 6, 2022, email from E3 to E2 requesting the proposed organization chart from March 2021.

April 6, 2022, email inquiry from E2 to E5 requesting a step increase for E7.

April 6, 2022, email response from E5 to E2 indicating such action would require justification and need the approval of E4.

April 7, 2022, email request for a meeting between E1 and E5.

April 7, 2022, email detailing a meeting between E7 and E1 regarding job duties.

April 7, 2022, email between E1 and E5 to set a meeting time.

April 8, 2022, email from E5 to E4, forwarding E1’s request for union assistance on retaliation.

April 8, 2022, E1 email documenting events of April 7, 2022, with E7.

April 8, 2022, Email from E7 to E1 and E6 indicating the beginning reporting date of April 9, 2022.

A review of all emails between January 1, 2022, and April 8, 2022, revealed no discussion of a reorganization in the Finance division until March 20, 2022. The facts and circumstances provide the impetus for the allegation of retaliation for participating in the investigation, regarding timecard fraud in the Aviation Finance and Warehouse Divisions, publicly issued on April 4, 2022.

The interviews conducted with those employees identified as participants or witnesses yielded the following:

An interview with E1 indicated that E1 did not know about the re-organization before the reorganization occurred. E1 was reassigned from one manager to another manager. E1 was advised to relocate to a smaller office while E1's office was to remain empty. E1 perceived the reorganization as punitive, as a form of retaliation due to E1's involvement in the Aviation Timecard Fraud Investigation. After the initiation of the complaint, E1 was reassigned for a second time and permitted to remain in E1's original office space. This reassignment was to better align the duties required by the job description with a more appropriate manager.

Our interview with E2 indicated that a reorganization was discussed in March 2021 but was put on hold. Per E2, discussions regarding the reorganization indicated that a reorganization was necessary to alleviate the workload of some managers and to allocate staff more equitably. In March 2022, E3 initiated discussions of reorganization prompting E2 to notify E6 and E7 about the possibility of upcoming changes. E2 stated that E7 had expressed some concerns about the change. E2 did not notify E1 or E9 of the possible changes and is unaware if E3 notified either of them. E2 stated that the reassignment was part of the reorganization to better allocate staffing and that the relocation of E1 was at the request of E7. E2 stated that E7 thought it made more sense to have all employees in the division in the same area for ease of discussions, meetings, etc. E2 did have concerns about E1 working outside E1's job description but only after concerns were raised by E1 noting the duties had been performed for much longer than anyone anticipated. E2 believed this was not initially an issue because the duties were lower than E1's position and E1 volunteered to perform the duties temporarily. E2 is unaware of any hostility between management and staff in the division. E2 does not believe the reorganization was retaliation for the previous investigation but did acknowledge how the timing of events could lead one to reach that conclusion.

Our interview with E3 indicated that the genesis of the reorganization was March 2021. E2 presented a proposed organizational chart. E3 stated that it was E3's intention. that the warehouse would report to E2. E3 stated that E2 was already overextended so the reorganization would reduce E2's oversight responsibilities. The previous Aviation Director gave the green light for the reorganization. When the previous Director left, all positions were put on hold. E3 never received notification that the holds were lifted but some positions had been reclassified so E3 assumed that the hold was lifted. E2 and E3 met in February 2022 and E3 decided to initiate the reorganization at the end of March 2022 as the result of the hiring of the C28 position that was going to report to E2. E3 spoke to E5 to get E5's 'blessing' and E2 and E3 started finalizing the reorganization. E3 stated that E4 was notified of the reorganization before it occurred because they met every day. E3 stated that staff was told that changes were coming but there was no formal notification. E5 was notified that E3 wanted to move forward with the reorganization on March 30, 2022. E3 never created an organizational chart to show how the reorganization would be completed. E3 notified E5 of the change on March 31, 2022. Within two weeks of the reorganization, E2 and E7 were made aware of the reorganization. E7 returned to the office on March 4, 2022, and was then notified that E1 and E6 were provided a reclassification memo on April 1, 2022. E3 stated, that in hindsight, E3 should have advised E7 before issuing the memos. E3 did have concerns about E1 working outside E1's job description but E1 did volunteer to do it. E3 expected it to be for two (2) or three (3) months but then it turned into seven (7) months. E3 stated that it made sense to have someone performing the duties who knew how to do it. Everyone from the Director to HR

said it was fine since it was voluntary. E3 stated that the management analyst should be taking in all the information and telling people what the end product should look like so E3 could see match exceptions as an appropriate function. E3 does not believe there is a hostile work environment. E3 is unaware of any hostility between management and staff in the division. E3 believes that management has gone out of its way to address the concerns brought forth by E1. E3 thought the reorganization would allow staff to thrive. After the reorganization, E5 suggested that E1 be moved under E8 because the duties were better aligned with the job description. E9's reassignment alleviated E3's management oversight as well, the reorganization was meant to condense management level oversight. E3 advised E9 a long time ago that reporting to E3 would not be permanent. E3 does not know if E6, E9, or E7 felt the moves might be retaliation. E3 acknowledged that the timing was "really wonky" and E3 had an "intuition" and should have listened to it but the C28 was starting and E3 did not want to overburden E2. E3 was thinking first and foremost of E2. E2 told E3 that E6 was notified in February 2022 because E6 needs time to process the change. E8 was aware of the changes due to management meetings. E6 had no input into the design of the reorganization. E1 told E2 and E8 that the private investigator on the previous investigation insinuated that everyone believes that E1 made the previous complaint. E3 stated that the truth is that we don't know. E3 stated that the reorganization was going to happen whether there was an investigation or no investigation. E3 didn't think it would look like retaliation. E3 thought this was going to help everybody. E3 wasn't going to let the investigation change the entire course of what E3 was trying to implement for a year. E3 stated that over the last five (5) years, the division reorganized all the time.

The interview, conducted in April 2022, with E4 revealed that E3 proposed a change to the organizational structure roughly five (5) to six (6) weeks ago. E7 would report to E2, and E6 and E1 would report to E7. E3 indicated that this had been previously addressed with the former Administration. E4 directed E3 to get with E5 to ensure the changes were consistent with the roles and responsibilities of the job descriptions. E4 stated that E4 learned of the actual reorganization after it occurred. Approximately, three (3) weeks ago, E4 stated that E5 advised E4 that the change had been implemented by E3 without addressing the appropriateness of the roles with E5. E4 stated that some of the reorganization made sense but E4 expressed concern and advised E3 and E5 to review the duties once again and to consider other options because E1 might be performing work outside the job description and that the current reporting structure does not seem to align with E1's duties. E4 advised E3 that E5 was to be present in all discussions with employees. E4 stated that E4 was not aware of the reorganization of E9. E4 has not witnessed hostility but stated that E4 did learn that another staff has heard E6 raise their voice to E2. E4 believes that the management team is inexperienced and could benefit from mentoring on topics including critical conversations and conflict resolution. E4 did indicate that E3 and E2 avoid conflict and expect things to work themselves out. E4 stated that E4 learned that E7 had not been notified of the reorganization until after it occurred creating concerns. E4 is in the process of implementing a mentoring program. E4 stated that the reorganization intended to realign the division but that there were missteps in this process.

The interview with E5 indicated a change in reporting structure did occur on April 1, 2022, as the result of previous investigations for timecard fraud and the results caused the division to look at the structure of the finance division and realign based on the duties that employees were actually performing for efficiency. E5 stated that E5 and E4 were not notified until after the restructure occurred via a copy of the notices issued to E1, E6, and E9. E5 stated that an old union representative notified E5 that a complaint was sent to them in error. Eventually, the complainant

reached out to E5. E5 did not know who initiated the reorganization but that it had to be E2 or E3. E5 did not identify any duties related to purchasing in the Management Analyst job description. E5 stated that E2 indicated that there are some duties that E2 felt could be a component of the Management Analyst position. Once the timekeeping functions and reconciliations had been removed, E5 did not feel that E1 was working outside the job description. E5 has never seen E2 or E3 create a hostile work environment. As a part of E5's duties, E5 has been advised complaints of a hostile work environment. E5 does not think this was done as a form of retaliation but rather E2 and E3 are not experienced with how to move employees and reviewing contracts and that this lack of experience contributed to hurt feelings. E5 stated that E5 could see how the perception of retaliation could be derived by the employees. E5 advised E4 that E2 and E3 are spending too much time managing lower-level managers and that the structure should be reviewed to ensure that all work is being completed efficiently. E5 is not aware of why E9 was reassigned to E2. E5 stated there were no pay grade or classification changes as the result of the reorganization. After a review of the job description, E5 advised management that the management analyst job description be revisited and possibly reclassified to better align the duties with the appropriate manager. After the decision was made, E5 was notified of the subsequent reclassification.

The interview with E6 revealed that E6 was also reassigned from one manager to another manager. E6 did not perceive the reassignment as being punitive or as a form of retaliation. E6 indicated that although E6 was never a part of discussions and never saw a plan, the Aviation Finance Division had a vision that included aligning the purchasing division. E6 stated that it made sense given the City Administration and the appointment of a new Aviation Director.

An interview with E7 provided that months ago, but within the fiscal year, E2 and E3 had mentioned to E7, in passing, streamlining the Finance division and asked if E7 would be ok supervising. E7 indicated that E7 would be fine with that if that is what management needed. E7 stated that E7 never saw a plan and that there were no further discussions until E7 was notified on April 4, 2022, that two (2) employees had been reassigned to report to E7. E7 stated that the two (2) employees had been notified of the reassignment on April 1, 2022. E7 did not believe this reorganization was retaliation. E7 did state that E7 could see how E1 could perceive this as punitive or as retaliation.

An interview with E8 revealed that E8 was aware that the Finance Divisions had previously discussed reallocating the direct reports of E2 to lessen E2's workload. E8 agreed with this management decision. E8 heard about the reorganization a few days before the notice to the two (2) employees. E8 did not believe the reorganization was meant to be punitive or a form of retaliation. E8 became aware of and expressed concern to E4 regarding a comment made by E1 where it was alleged that the private investigator told E1 that everyone thought E1 was responsible for the investigation of Aviation Timecard fraud. E8 stated that E8 could understand how E1 perceived this reorganization as punitive or as a form of retaliation based on E1's previous comment. E8 stated that E1 was being reassigned to another manager where the duties of the job description were better aligned and that E1 will be able to remain in the same office space.

An interview with E9 revealed that E9 was also reassigned from one manager to another manager. E9 stated that upon hire, E9 was aware that a future reorganization was being considered. E9 had the understanding that E9 would also be reporting to E2 along with E1, E6, and E7 due to the relatedness of the functions to the E2 position. E3 initiated the reorganization. E9 did not learn of the actual reorganization until April 1, 2022, when the letter was issued to the affected employees.

E9 stated that there were no plans. E9 did not perceive the reassignment as being punitive or as a form of retaliation. E9 stated that “the interviews and investigations create a hostile work environment and that the Human Resources Department is unprofessional and kind of hostile.”

Collectively, the interviews suggest that there may have been some informal discussions regarding the realignment of the Aviation Finance Division in March of 2021, however, the discussions were not acted upon and were subsequently tabled when the previous Aviation Director left employment with the City of Albuquerque. With the appointment of an Acting Director, a hold was placed on hiring, restructuring, etc. until a new Director could be appointed. The Finance Division’s reorganization discussions could not be validated until March 20, 2022, after the dissemination of the OIG investigation observations to Aviation Management. The facts and circumstances provide the impetus for the allegation of retaliation for participating in the investigation, regarding timecard fraud in the Aviation Finance and Warehouse Divisions, publicly issued on April 4, 2022.

Allegation 2: Physical damage to personal property during work hours on the work premises as a result of the participation in the investigation.

E1, E2, E3, E4, and E5 were aware of the allegation. E4 advised E5 to get with Aviation Security and obtain video footage of the employee parking area. E2 and E3 were made aware of the allegation but were not involved in the internal investigation. E5 requested the footage from the date of the alleged incident however, there was an error and the footage obtained was from April 1, 2022. Video footage is only maintained for a specific period, in the normal course of business, and once the date issue was identified, the footage from the date of the incident could not be obtained.

The OIG obtained pictures of the damage to the personal property and the OIG requested the video of the employee parking area for March 1, 2022, the date of the incident. OIG was provided a video on May 9, 2022, however, when reviewing the footage, the OIG noticed that the date on the footage did not correlate to the date of the incident. A follow-up by the OIG to the Aviation Department revealed that video footage of April 1, 2022, had been pulled and that the division no longer had video footage from the date of the alleged incident, March 1, 2022. Despite having the photos of the damage to the personal property, the OIG could not ascertain that the damage occurred during work hours on the work premises.

The OIG could not substantiate this allegation because video footage from March 1, 2022, was no longer available.

CONCLUSION

The original complaint submitted to the Office of the Inspector General stated two (2) separate allegations. In response to allegation 1, a review of all emails between January 1, 2022, and April 8, 2022, revealed no discussion as an indication of a reorganization in the Finance division until March 20, 2022. The facts and circumstances provide the impetus for the allegation of retaliation for participating in the investigation, regarding timecard fraud in the Aviation Finance and Warehouse Divisions, publicly issued on April 4, 2022. Concerning allegation 2, the OIG was unable to obtain sufficient and appropriate evidence to substantiate the physical damage to personal property during work hours on the work premises. This was the result of an error where the footage obtained was of the incorrect date. Because video footage is only maintained for a specific period, the footage from the date of the incident could not be obtained.

As a result of our investigation, the OIG has issued a management letter and appendix A containing two (2) recommendations for improvement related to the OIG's observations.