



OFFICE OF INSPECTOR GENERAL
City of Albuquerque

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Investigative Informative Case Synopsis

FILE NO: 22-0197-C

SUBJECT MATTER: Allegation of abuse of authority by a City employee for requiring the use of an employee's certification to fulfill a State requirement without the permission of the employee.

STATUS: Final

INVESTIGATOR: M. Santistevan

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March 6, 2023
Date of Completion

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Edmund Perea

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ACCOUNTABILITY IN GOVERNMENT
OVERSIGHT COMMITTEE CHAIRPERSON

April 26, 2023
Date of Approval

DISTRIBUTION:

Honorable Mayor
President City Council
Chief Administrative Officer
City Councilors
Director Council Services
City Attorney
Department Director
Members, Accountability and Government Oversight Committee
File

EXECUTIVE SUMMARY

According 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.

On November 14, 2022, the Office of Inspector General (OIG) received an email alleging abuse of authority by a City employee (E2) for requiring the use of an employee's certification to fulfill a State requirement without the permission of the employee. The OIG determined that the allegations contained elements of fraud, waste, or abuse and that it was appropriate for the OIG to conduct a fact-finding investigation. The purpose of the investigation was to determine if the allegation of abuse of authority by a City employee for requiring the use of an employee's certification to fulfill a State requirement without the permission of the employee is supported by evidence that may substantiate or not substantiate the complaint.

The OIG reviewed the complainant's statement, notes, emails, the Human Resource hiring packet for position 10002835, the request for special pay dated November 4, 2022, and signed by the HR Director, the Department Director, and the Chief Administrative Officer on November 7, 2022, the resignation letter, and the memorandum of understanding (MOU) between the City and Bernalillo County.

As a result of the investigation and based on the definition of improper governmental action as defined in the Whistleblower Ordinance, Article 7, the OIG was not able to substantiate the allegation of abuse of authority by E2. The action was a personnel matter which is explicitly exempted from the City's definition of improper governmental action. Additionally, the investigation revealed that the employee resigned rather than accepting the temporary upgrade resulting in the City not utilizing the employee's certification but instead obtaining an MOU with Bernalillo County to act in the capacity of the Certified Building Official (CBO) for the City.

ABBREVIATIONS

CBO:	Certified Building Official
City:	City of Albuquerque
C1:	Complainant
E1:	City Employee
E2:	City Employee
MOU:	Memorandum of Understanding
OIG:	Office of Inspector General

INTRODUCTION

The mission of the Office of Inspector General (OIG) is to provide independent and objective insight, oversight, and foresight in promoting integrity, efficiency, overall effectiveness, accountability, and transparency in government to safeguard and preserve public trust.

Complaint

An allegation of abuse of authority by a City employee for requiring the use of an employee's certification to fulfill a State requirement without the permission of the employee.

Background

The City is required to have a qualified certified building official by NMSA 1978, Article 13. The City's Chief Building Official retired effective July 31, 2022. Effective September 10, 2022, the City hired a Chief Building Official that did not possess the required certifications. The job description for the Chief Building Official provided six months to obtain the credential of Certified Building Official (CBO) and twelve months to obtain a Commercial Building, Residential Building, Electrical, Mechanical, or Plumbing Inspector Certification from the State of New Mexico.

The OIG conducted a fact-finding investigation and was able to substantiate the allegation that the City's Planning Department did not obtain an approved extension of time for the Chief Building Official to obtain the CBO designation or enter into a memorandum of understanding (MOU) with another political subdivision meeting the requirements within the sixty (60) days as prescribed in Article 13 §60-13-41 (G). The OIG can substantiate that the City's Planning Department did request an extension before the sixty (60) day deadline. The OIG is also able to substantiate that the City's Planning Department was ultimately provided an extension of time dated September 30, 2022, which was sixty-one (61) days after the retirement of the City's Chief Building Official who held a valid CBO designation.

The original MOU reflected an expiration date of November 15, 2022, although the OIG was able to obtain a letter from New Mexico Regulation and Licensing Division (NMRLD) Construction Industries Division indicating that an oral agreement for extension was obtained through November 30, 2022. On November 30, 2022, the City entered into another MOU that expired on January 29, 2023. The City entered into a six (6) month extension with Bernalillo County commencing on January 31, 2023, to act in the capacity of the City's CBO.

INVESTIGATION

Allegation: Allegation of abuse of authority by a City employee for requiring the use of an employee's certification to fulfill a State requirement without the permission of the employee.

Authority: Article 17: Inspector General

Article 7: Whistleblower Policy

City of Albuquerque Code of Conduct

Evidence: Complainant's statement

Emails

Human Resource hiring packet for position 10002835

A Request for Special Pay dated November 4, 2022, and signed by the HR Director, the Department Director, and the Chief Administrative Officer on November 7, 2022.

Resignation letter dated November 9, 2022

Memorandum of Understanding between the City and Bernalillo County

Complainant Statement: On November 14, 2022, the OIG received a tip hotline call and was provided the following information.

In a statement on October 3, 2022, C1 indicated that the individual hired on August 30, 2022, for position 10002835 did not meet the qualifications. On September 29, 2022, E1 contacted C1 to ask if the City could use C1's CBO certification. C1 stated "no" but that C1 would accept the E19 position applied for in which C1 met the qualifications but was not hired.

C1 stated that on November 7, 2022, C1 submitted a two-week notice because the City was using C1's CBO license without permission.

On November 7, 2022, a meeting was held between C1 and E2 where E2 asked C1 to allow the City to use C1's CBO designation and to sign a temporary job upgrade providing an additional \$220 per pay period. When C1 responded with "no", E2 indicated that E2 could require the complainant to take on the duties of the CBO.

As a result of the interaction between E2 and C1, C1 submitted a resignation dated November 9, 2022, which was effective immediately, as C1 stated that C1 felt there was no other choice.

Analysis: The provisions of Article 17 and Article 7 were considered during the OIG’s analysis of the applicability of the definition of improper governmental actions.

Article 17 provides the Office of Inspector General the authority to prevent and deter fraud, waste, and abuse through investigations of theft or other disappearance of cash, check, or property, misfeasance or nonfeasance, defalcation, and improper governmental actions as defined in the Whistleblower Ordinance and non-compliance with federal and state law, city ordinances and city regulations of which they are aware.

The OIG reviewed and considered the application of the definition of improper governmental action in Article 7: Whistleblower Policy as referenced in Article 17. Improper governmental action is defined as any action by a city employee, an appointed member of a board, commission, or committee, or an elected official of the city that is undertaken in the performance of such person's duties with the city in violation of a federal, state or local government law or rule, an abuse of authority, of substantial and specific danger to the public health or safety, or a gross waste of public funds that violates city policy or rules. The action need not be within the scope of the employee's, elected official's or board, commission, or committee member's official duties to be subject to a claim of improper governmental action. Improper governmental action **does not include city personnel actions**, including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, reprimands, violations of collective bargaining agreements or the merit system ordinance, §§ 3-1-1 et seq. ROA 1994.

Based on the City’s definition cited in Article 7: Whistleblower Policy, the OIG is unable to determine that the Director’s request constituted an improper governmental action as the request was completed as a personnel action.

The OIG reviewed and considered the following sections of the City’s Code of Conduct for analysis.

§ 301.1 Duty to the Public states “The City of Albuquerque is a public service institution. In carrying out their assigned duties and responsibilities, employees must always remember their first obligation is to the general public’s safety and well-being. This obligation must be carried out within the framework of federal, state, and local laws.

§ 301.3 Standards of Conduct states “Employees shall in all instances maintain their conduct at the highest personal and professional standards in order 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.”

§ 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.”

After considering the above sections of the Code of Conduct, the OIG determined that the actions were per the City’s Code of Conduct.

Articles 7 and 17 do not define abuse of authority, therefore, the OIG researched this term and found the following definition. The OIG will apply this definition for the purpose of this investigation.

Law Insider defines abuse of authority as the improper use of position and authority or nonperformance of an act required by law for the purpose of obtaining an undue advantage for himself, his relative, another person or entity, or favoring another person or entity, or as the intentional misuse of authority or position by any City Official for an improper purpose.

The OIG’s review of C1’s statement revealed that C1 was presented with a temporary upgrade to the position of CBO on November 7, 2022. According to C1, this was to be effective until the employee holding the Chief Building Official position could be certified. C1 stated that C1 would only accept the position and therefore felt there was no other choice but to resign. C1 resigned on November 9, 2022, effective immediately. The OIG considered the effect of the immediate resignation and found that the City did not utilize the employee’s CBO designation but instead entered into an MOU with Bernalillo County to act in the capacity of the City’s CBO.

The OIG’s review of emails reflects that the OIG provided the Department with findings from Investigative Report 22-0176-C on October 6, 2022, where a response was provided stating that a request for a 60-day extension to obtain a qualified CBO had been submitted to the State of New Mexico on September 30, 2022, which was before the termination of employment by C1. The OIG considered whether the extension period was intended to obtain consent from C1 to use C1’s designation but this was negated by the fact that C1 did not sign the temporary upgrade and terminated employment on November 9, 2022.

The OIG’s review of the hiring packet for position 10002835 revealed that E2 was aware that the individual hired for the position of Chief Building Official did not possess the certified building official designation. The OIG also discovered that the City’s hiring practices were not followed for this position. The OIG’s investigative report 22-0176-C should be referred to for more information as the scope of this allegation is limited only to whether there was an abuse of authority.

The OIG’s review of the request for special pay dated November 4, 2022, and signed by the HR Director, the Department Director, and the Chief Administrative Officer on November 7, 2022, revealed that the City attempted to rectify the matter more than a month after E1 requested that C1 allow the City to use C1’s CBO designation, whereby C1 indicated that the only resolution for C1 was to be offered the position of CBO.

The OIG's review and consideration of C1's resignation letter dated November 9, 2022, revealed that upon the termination of C1, the City did not use C1's certification to satisfy the state requirement of having a CBO.

The OIG's review of the signed MOU, dated 11/30/2022, for the County to act in the capacity of the City's CBO revealed that the agreement was executed after the termination of employment by C1 although it was initiated

A review of the PeopleSoft system on November 14, 2022, by the OIG, revealed that C1 had not been terminated in the City's system.

The OIG obtained and reviewed the employee file for C1, noting evidence of certifications required for the positions held and performance evaluations for those positions revealing that C1 met or exceeded expectations. The OIG reviewed a letter of resignation to be effective immediately, dated November 9, 2022, signed by C1.

Considering each of the above factors, the OIG could not establish that the City used C1's designation without permission.

Conclusion: As a result of the investigation and based on the definition of improper governmental action as defined in the Whistleblower Ordinance, Article 7, the OIG was not able to substantiate the allegation of abuse of authority by E2. The action was a personnel matter which is explicitly exempted from the City's definition of improper governmental action. The investigation revealed that C1 resigned rather than accepting the temporary upgrade resulting in the City not utilizing the C1's certification but instead obtaining an MOU with Bernalillo County to act in the capacity of the Certified Building Official (CBO) for the City.