



OFFICE OF INSPECTOR GENERAL
City of Albuquerque

Melissa Santistevan
Inspector General

P.O. Box 1293, Suite 5025
Albuquerque, New Mexico 87103
Telephone: (505) 768-3150
Fax: (505) 768-3158

Report of Investigation

FILE NO: 23-0047-C

SUBJECT MATTER: Alleged false statements made through a complaint resulting in the harassment of a City employee for participation in a previous OIG investigation and the subsequent corrective action.

STATUS: Final

INVESTIGATOR: M. Santistevan

DocuSigned by:

Melissa R. Santistevan

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MELISSA SANTISTEVAN
INSPECTOR GENERAL
OFFICE OF INSPECTOR GENERAL

July 24, 2023

Date of Completion

DocuSigned by:

Edmund E. Perea

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EDMUND E. PEREA, ESQ
ACCOUNTABILITY IN GOVERNMENT
OVERSIGHT COMMITTEE CHAIRPERSON

August 30, 2023

Date of Approval

DISTRIBUTION:

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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 May 22, 2023, the Office of Inspector General (OIG) initiated an investigation into the alleged false statements made through a complaint resulting in the harassment of a City employee for their participation in a previous OIG investigation and the subsequent corrective action. It was alleged that the Administration had received a complaint from a contractor that the referring party was advising contractors to file a class action suit against the City while the referring party was delivering letters to those who may have been exposed to asbestos. The OIG determined that the allegations contained elements of harassment or retaliation and that it was appropriate for the OIG to conduct a fact-finding investigation. The purpose of the investigation was to substantiate or not substantiate, through the collection of sufficient evidence, the allegations of harassment or retaliation of the City employee for their participation in the OIG investigation.

The OIG's investigation revealed sufficient evidence for the OIG to conclude the allegation that the basis for the complaint was a false statement was substantiated. The evidence obtained was consistent with concluding the allegation of harassment or retaliation of a City employee for their participation in the report of investigation 23-0018-C is not substantiated.

ABBREVIATIONS

A1: City Official
A2: City Official
CITY: City of Albuquerque
D1: City Director
D2: City Director
E1: City Employee
E2: City Employee
E3: City Employee
E4: City Employee
E5: City Employee
E6: City Employee
E7: City Employee
FCS: Family and Community Services Department
GSD: General Services Department
OIG: Office of Inspector General
RM: Risk Management Division
V1: Contractor
V2: Contractor

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 public trust.

Complaint

Alleged false statements made through a complaint resulting in the harassment of a City employee for their participation in a previous OIG investigation and the subsequent corrective action. It was alleged that the Administration had received a complaint from a contractor that the referring party was advising contractors to file a class action suit against the City while the referring party was delivering letters to those who may have been exposed to asbestos.

Background

On March 2, 2023, the OIG initiated an investigation into allegations of potential violations of the Occupational Health and Safety Act (OSHA) and nonfeasance by employees related to the City's demolition and remodeling of the Gibson Health Hub facility creating a threat to the health of anyone in the facility.

On May 1, 2023, the OIG publicly released the AGO-approved and signed Report of Investigation 23-0018-C related to the Gibson Health Hub construction project. The report intentionally did not include the identification of twenty-two (22) witnesses interviewed due to their fear of retaliation for participation in the investigation.

On May 3, 2023, a meeting was held by RM and GSD to discuss how to professionally work through issues involving the Gateway Center and the potential asbestos exposure to both employees and the general public. On May 19, 2023, the RM employee hand-delivered letters to seven contract employees who were at the facility. The remaining letters were sent out via email by an FCS employee.

On May 19, 2023, A1 called E4 stating that A1 had received a complaint that the RM employee handing out letters was telling contractors to file a class action suit against the City.

On May 22, 2023, a complaint was filed with the OIG and an inquiry into this matter was initiated.

SCOPE AND METHODOLOGY

Scope: The hand delivery of Asbestos Notification letters on May 19, 2023.

The methodology consisted of:

- Assess complaint allegation
- Obtain and review evidence in support of the allegation
- Prepare an investigation work plan
- Review the Inspector General Ordinance, Article 17
- Review the Code of Conduct, 301
- Review Whistleblower Policy, Article 7
- Research employee information for those identified
- Collect evidence or statements to corroborate the events
- Send out Notice of Interviews
- Conduct interviews
- Contact the Legal Department to identify pending litigation that would prohibit OIG from investigating
- Contact Risk Management to identify pending litigation that would prohibit OIG from investigating

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

INVESTIGATION

Allegation 1: Alleged false statements made through a complaint resulting in the harassment of a City employee for participation in a previous OIG investigation and the subsequent corrective

action. It was alleged that the Administration had received a complaint from a contractor that the referring party was advising contractors to file a class action suit against the City while the referring party was delivering letters to those who may have been exposed to Asbestos.

Authority:

Article 17: Inspector General Ordinance

301. Code of Conduct

Evidence:

Sign in log to Administrative Offices

Phone History

Interview statements

Interviews:

An interview with A1 revealed the following information regarding the allegation received regarding an RM employee telling a contractor to join a class action suit.

A1 stated the complaint came into A1's office telephone. A1 stated that they do not generally get or answer calls on the office phone because people usually call the cell phone. A1 stated they were heading out but decided to answer the call. A1 said the person calling was anonymous. The caller said the person who received the letter was working on electrical and that RM gave the letter to the contractor. A1 said the contractor did not take the matter seriously.

A1 stated this is hearsay but that there was a similar case in California where the parties received approximately \$250,000 each.

A1 was concerned so they called E4 and told E4 that RM should not advise on legal matters. A1 stated they didn't know if these events did or did not happen. A1 told E3 this is what they heard. A1 said they advised E3 that a script should be used when delivering the letters.

A1 stated they felt the caller was being coached on what to say by someone else with the caller. A1 did not recognize the caller as an employee but did think that an employee put the caller up to calling.

An interview with E1 revealed the following information regarding their knowledge of the Asbestos Notification letters.

A2 said that E4 and E1 were to work with E6 to prepare and send out the Asbestos Notification letter. E6 took on the responsibility of emailing out the letters and E3 was advised to hand-deliver

letters to the contracted employees on site. On May 19, 2023, the letters were hand-delivered to the contractors.

E1 stated that A1 called E4 on May 19, 2023, late in the afternoon, and was angry. A1 told E4 that an electrician said that the person handing out the notices was advising the contractors to join a class action suit against the City. E4 then called E1 to advise E1 of the complaint so E1 could talk to E3 about what was said when handing out the letters. E4 advised E1 that if it was determined that E3 did give out the alleged information, disciplinary action would need to be taken. E1 stated that they did not know which electrician made the allegation. E1 stated that they spoke to E3, the individual who hand-delivered the notices and that the individual adamantly denied the allegation and said that no other information was given out other than handing out the letter. E1 and E4 stated that no disciplinary action was taken against E3.

The OIG asked E1 how E3 would have known about a similar class action suit in California and E1 stated that E7 shared the information with E3.

An interview with E3 revealed the following information regarding their knowledge of the Asbestos Notification letters.

E3 stated that they had hand-delivered the letters of Asbestos Notification to contractors at the Gateway Center on May 19, 2023.

After working hours on May 19, 2023, E3 stated that they received a call from E1. This call was precipitated by a call E1 received from E4 who had received a call from A1. The purpose of the call was to ask E3 if they were telling the contractors to make a class-action suit against the city.

E3 adamantly denied making any statements other than directing the contractors to call the contact information in the letter if they had questions. E3 was upset that someone would make such an allegation and was concerned that this was harassment or retaliation for RM's participation in investigation 23-0018-C.

There was a total of seven (7) contract employees from two (2) different companies. E3 provided the names of the individuals who received hand-delivered letters and the companies each worked for stating that the OIG could call them.

During an interview with E4 about their knowledge of the allegations that an RM employee was telling contractors to join a class action suit against the City, the following information was obtained.

E4 started by saying that the meeting they had with D1 and D2 on May 19, 2023, resulted in E4 explaining the concern over potential liability. E4 brought up a case out of San Diego, CA that is similar to the City's matter and E4 explained that there was a class action lawsuit that gave rise to significant monies being paid to many people.

After the meeting, E4 met with A1 to advise A1 about the events of the meeting with D1 and D2. E4 stated that this was important because E4 received a phone call from A1 at 5:00 p.m. the same day as the meeting with D1 and D2. E4 stated that A1 was angry. A1 told E4 that an electrician contacted the Mayor's Office and told A1 that the person handing out the letters was telling the contractors that they could join a class action suit and make money like in CA. E4 advised A1 that

E4 didn't think this information was correct. A1 told E4 to stop talking and let A1 finish A1's sentence. E4 stated that E3 was the RM employee who hand-delivered the notices to the electricians.

The OIG asked E4 how E3 would have known about the case but E4 did not know. E4 stated that E1 had given a copy of the case to E7.

The OIG reached out to V1 multiple times. When we spoke to the owner, we were told that V1's employees weren't told anything and that V1 was upset because the owner hadn't even seen the letter.

The OIG reached out to V2 and spoke to the Project Manager who indicated that the employer did not receive the letter and was unable to acknowledge the contents of the letter. The Project Manager expressed frustration that V2 was not apprised of the letter before it was provided to its employees. This information was passed to RM who contacted V2 to explain the letter. The OIG reached out once again and spoke to the Project Manager who stated that each of the employees was asked what they were told when they were provided the letter. According to the Project Manager, the employees weren't told anything, they were just handed the letter.

The OIG inquired with E5 about the process for logging in at the Administrative Office. E5 advised the OIG that all general visitors should sign the log upon arriving. E5 stated that internal City employees are not required to sign in although some do. The logs are maintained.

Analysis:

When conducting 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 provisions of Article 17, the City's Code of Conduct, and Article 7 were considered during the OIG's analysis of the complaint.

Article 17 provides the Office of Inspector General the authority to prevent and deter fraud, waste, and abuse through investigations or inspections. Section 2-17-12 (A) states all city officials, employees, and contractors shall promptly notify the Inspector General of an instance 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.

Section 2-17-12 (D), (E), and (F) state: 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 the office. Each and every violation of this article is a criminal violation subject to the provisions of §1-1-99 ROA 1994. Any official or employee who violates the Inspector

General Ordinance may be subject to discipline as may be specified in the Merit System Ordinance or any applicable collective bargaining agreement.

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

Section 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 by 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.”

Section 301.9 False Statements states “No employee shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification, appointment or investigation, or in any manner commit any fraud, conceal any wrongdoing or knowingly withhold information about wrongdoing in connection with employment with the City or in connection with the work-related conduct of any City employee.”

Section 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.”

The OIG considered that this complaint was filed in accordance with Section 2-17-12 (A). The complaint alleged a violation of Section 2-17-12 (D) as the referring party perceived the events to be retaliation or harassment related to the previously issued report of investigation 23-0018-C. The OIG requested and obtained a copy of the log between May 1 and May 30, 2023. The OIG found no evidence of a sign-in by any individual who received a letter of Asbestos Notification.

The OIG obtained a phone log that revealed no evidence of any calls being received on the phone identified as the source of the complaint intake. Corroborating information obtained through interviews revealed that the contractors handed the letters were not told to file a class action suit against the City. Although the OIG was able to verify that the basis for the complaint was false and could have been initiated as a form of harassment, we could not validate the complaint. The OIG was able to verify that no action had been taken against the employee that could be considered retaliation.

Finding: The evidence obtained was consistent with concluding the allegation that the basis for the complaint was a false statement was substantiated. The evidence obtained was consistent with concluding the allegation of harassment or retaliation of a City employee for their participation in the report of investigation 23-0018-C is not substantiated.