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City of Albuquerque

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Informative Investigative Case Synopsis

FILE NO: 23-0053-I

SUBJECT MATTER: Allegation of retaliation for participation in an investigation by relocating a City employee to another location with the same title but different duties with a one (1) day notice.

STATUS: Final

INVESTIGATOR: M. Santistevan

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August 25, 2023

Date of Completion

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October 25, 2023

Date of Approval

DISTRIBUTION:

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President City Council
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City Attorney
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File

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EXECUTIVE SUMMARY

The City of Albuquerque Office of Inspector General conducts investigations, inspections, evaluations, and reviews in accordance with AIG standards.

City Ordinance 2-17-2 states the Inspector General's goals are to (1) Conduct investigations, inspections, evaluations, and reviews 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) Carry out the activities of the Office of Inspector General through independence in both fact and appearance, investigation and interdiction; and (4) Propose ways to increase the city's legal, fiscal and ethical accountability to ensure that tax payers' dollars are spent in a manner consistent with the highest standards of local governments.

In June 2023, the Office of Inspector General (OIG) initiated an investigation into the alleged retaliation for participation in an OIG investigation by relocating a City employee to another location with the same title but different duties with a one (1) day notice. 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 an investigation.

The OIG investigation revealed evidence to support the notice of transfer but also revealed that the transfer was put on hold and has not been officially processed as of the date of this report. Given the evidence, the OIG could not substantiate the allegation of retaliation for participation in an investigation by relocating a City employee to another location with the same title but different duties with a one (1) day notice.

ABBREVIATIONS

CITY: City of Albuquerque
E1: City Employee
E2: City Employee
HR: Departmental Human Resources
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 in order to safeguard and preserve public trust. Investigations, inspections, evaluations, and reviews are conducted in accordance with AIG Standards.

Complaint

Alleged retaliation for participation in an investigation by relocating a City employee to another location with the same title but different duties with a one (1) day notice.

Background

In May 2023, the OIG released an investigation where there were concerns of possible retaliation against the participants in the investigation due to the fact that the OIG was advised that some departments had a copy of the full report of the investigation.

In June 2023, a one (1) day notification of relocation was sent to a City employee who participated in the investigation.

SCOPE AND METHODOLOGY

Scope: The events surrounding the relocation of a City employee to another location with the same title but different duties with a one (1) day notice.

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
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
Write report
Present report at AGO meeting
Publish Report to OIG web

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

INVESTIGATION

Allegation 1: Alleged retaliation for participation in an investigation by relocating a City employee to another location with the same title but different duties with a one (1) day notice.

Authority:

Article 17: Inspector General Ordinance

Code of Conduct

Article 7: Whistleblower Policy

Evidence:

Intradepartmental memorandum

Email

Personnel records

Analysis: In conducting our investigation, the OIG considered the following facts as a basis for our analysis.

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

In April 2023, E2 was allegedly advised not to seek out those who participated in the investigation and not to retaliate.

In June 2023, E1 received an email from HR regarding a reporting change. Attached was an interdepartmental memorandum that stated the change was effective the following day and would

require the employee to report to a new location and a new reporting director. The job duties changed but not the title or pay.

The OIG learned that E2 contacted E1 on June 2, 2023, regarding needing assistance with a specific division. E1 was advised that E1 would still be working on projects. E1 was willing to help on a temporary basis. On June 5, 2023, E1 received an email from HR that included an interdepartmental memorandum notifying E1 of a relocation, a change in job duties, and a new reporting director but no change in job title, job description, or pay. The OIG's review of job descriptions revealed that the change in job duties would have E1 performing duties that were not aligned with their experience.

E1 indicated questioning the email and interdepartmental memorandum and was advised that E2 was unfamiliar with the process and that the relocation was on hold for two weeks.

On August 25, 2023, the OIG learned that no changes had taken place and that no further discussion regarding the relocation after the hold was initiated.

The provisions of Article 17, the City's Code of Conduct, and Article 7 were considered during the OIG's analysis of the applicability of improper governmental actions that are alleged to have resulted in harassment or retaliation.

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 OIG considered the above sections of Article 17 as they relate to the allegation and the previously published report of investigation.

The OIG discovered that the relocation was put on hold and that no change has occurred as of the date of this report, therefore there was no retaliation.

Section 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.”

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 discovered that the relocation was put on hold and that no change occurred as of the date of this report. The OIG is unable to validate that there was an actual violation of the Code of Conduct due to the fact that the relocation did not occur.

Section 3-7-2 Findings and Intent states “the public health, safety, and welfare are better protected by instituting a procedure for reporting improper governmental action, encouraging such reporting and protecting those who properly report such action from retaliation. Proper reporting will provide the opportunity to minimize any adverse impacts of improper governmental actions.

Section 3-7-3 defines retaliation or retaliatory action as any disciplinary action taken because (1) an employee lawfully disclosed information or filed an allowable complaint pursuant to this article, (2) an employee testified or assisted or is scheduled to testify or assist in any investigation, action or proceeding relating to the lawful disclosure of information by another employee pursuant to this article, or (3) the supervisor who imposed the disciplinary action believed the employee receiving the disciplinary action was involved in the activities described in parts (1) and (2) of this paragraph and such belief was the primary reason for the disciplinary action.

The OIG considered whether there were violations of Article 7 as they relate to the allegation but was unable to establish that retaliation under Article 7 occurred because the event had not yet occurred.

Conclusion: The OIG investigation revealed evidence to support the notice of transfer but also revealed that the transfer was put on hold and has not been officially processed as of the date of this report. Given the evidence, the OIG could not substantiate the allegation of retaliation for participation in an investigation by relocating a City employee to another location with the same title but different duties with a one (1) day notice.