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Informative Investigative Case Synopsis

FILE NO: 23-0096-C

SUBJECT MATTER: Allegation of retaliation for participation in a previous investigation and for raising concerns over the stadium location by proposing a modification to the Integrated Development Ordinance (IDO) to eliminate landfill monitoring for City-owned landfills.

STATUS: Final

INVESTIGATOR: M. Santistevan

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February 9, 2024
Date of Completion

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May 15, 2024
Date of Approval

DISTRIBUTION:

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EXECUTIVE SUMMARY

The City of Albuquerque Office of Inspector General conducts investigations, inspections, evaluations, and reviews following the Association of Inspectors General (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.”

As defined in the Inspector General Ordinance § 2-17-3, “fraud is the knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Waste is the thoughtless or careless expenditure, mismanagement, or abuse of resources to the detriment of the City. Abuse is the use of resources or exercise of authority that is contrary to rule or policy, or knowingly inconsistent with any established mission or objectives for the resource, or the position held by the person exercising the authority. Abuse does not necessarily involve fraud or illegal acts.”

In November 2023, the Office of Inspector General (OIG) initiated an investigation into the alleged retaliation for participation in a previous investigation and for raising concerns over the stadium location by proposing a modification to the Integrated Development Ordinance (IDO) to eliminate landfill monitoring for City-owned landfills.

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 substantiate or not substantiate, through the collection of sufficient evidence, the allegations of retaliation, for participation in a previous investigation and for raising concerns over the stadium location by proposing a modification to the IDO to eliminate landfill monitoring for City-owned landfills.

The OIG investigation revealed evidence to support the proposed ordinance change but also revealed that the proposal was removed from consideration in January 2024. Given the evidence, the OIG could not substantiate the allegation of retaliation, by a Director, for participation in a previous investigation and for raising concerns over the stadium location by proposing a modification to the IDO to eliminate landfill monitoring for City-owned landfills.

ABBREVIATIONS

CITY: City of Albuquerque
D1: Director
D2: Director
E1: City Employee
E2: City Employee
E3: City Employee
IDO: Integrated Development Ordinance
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 public trust. Investigations, inspections, evaluations, and reviews are conducted following AIG Standards.

Complaint

Allegation of retaliation for participation in a previous investigation and for raising concerns over the stadium location by proposing a modification to the Integrated Development Ordinance (IDO) to eliminate landfill monitoring for City-owned landfills.

Background

The IDO ordinance was originally developed to regulate areas around landfills within Albuquerque that were not regulated by either the State of New Mexico or the United States Environmental Protection Agency. The “Interim Guidelines for Development within City Designated Landfill Buffer Zones” (Interim Guidelines) were drafted in part as a response to a settlement against the City by a local developer for landfill gas migration from the closed Los Angeles landfill into the developer’s property. The City vowed to take a “programmatic approach to our landfill issues and not deal with them on a case-by-case basis.”

In the fall of 2023, proposed changes for Section 5-2(H) of the IDO were submitted, to the Planning Department. The proposed changes stated they were being proposed by the Administration. These changes would eliminate the monitoring of landfills older than thirty (30) years which would remove all landfills currently regulated under the ordinance and therefore a significant portion of duties performed by the City’s Environmental Services Division.

SCOPE AND METHODOLOGY

Scope: The proposed changes to the IDO and the subsequent action on the proposed changes to the IDO.

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
- Review the IDO and proposed changes
- 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

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

INVESTIGATION

Allegation:

Alleged retaliation for participation in a previous investigation and for raising concerns over the stadium location by proposing a modification to the Integrated Development Ordinance (IDO) to eliminate landfill monitoring for City-owned landfills.

Authority:

Article 17: Inspector General Ordinance

Code of Conduct

Article 7: Whistleblower Policy

Integrated Development Ordinance

Evidence:

Minutes from the Environmental Planning Commission

Technical Comments on the proposed changes to the IDO related to 5-2(H)

Analysis:

In conducting our investigation, the OIG considered the above-noted evidence 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”.

On January 19, 2024, the OIG obtained the following update regarding the actions taken at the Environmental Planning Commission meeting held on January 11, 2024.

“Multiple comments were submitted in opposition to the changes to the IDO Landfill Gas mitigation procedures by exempting landfills closed more than 30 years ago from the landfill gas mitigation procedures. EPC deliberated on this, and seeing no clear benefit thereby requested a condition be presented for the amendment (Item # 15) to be removed. Based upon the policy conflict identified, Planning Staff concurs with this and has provided a recommended condition of approval to remove this item from consideration.”

This excerpt reflects that the proposed change to 5-2 (H) was removed from consideration, implying that no change would occur to this section of the IDO. Absent an action that a reasonable employee would believe, is intended to discourage protected activity, the OIG is unable to conclude that retaliation occurred.

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 proposed change to the IDO to eliminate the monitoring of landfills was removed from consideration 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 proposed change to the IDO to eliminate the monitoring of landfills was removed from consideration as of the date of this report, therefore there was no retaliation. The OIG is unable to validate that there was an actual violation of the Code of Conduct because the IDO change 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 no adverse action occurred.

Conclusion:

The OIG investigation revealed evidence to support the proposed ordinance change but also revealed that the proposal was removed from consideration in January 2024. Given the evidence, the OIG could not substantiate the allegation of retaliation, by a Director, for participation in a previous investigation and for raising concerns over the stadium location by proposing a modification to the IDO to eliminate landfill monitoring for City-owned landfills.