



Workplace Investigations Review P2019-03

Issued by the
Internal Audit Office
January 3, 2019



Internal Audit Office

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DATE: January 3, 2019

TO: Tomas Gonzalez, City Manager

FROM: Edmundo S. Calderon, CIA, CGAP, CRMA, Chief Internal Auditor

SUBJECT: Workplace Investigations Review

At your request, the Internal Audit Office conducted a review of Workplace Investigations. This engagement was accepted based on the engagement's potential to improve management of risks, add value, and/or improve the organization's operations (IIA 2010.C1). The work performed does not constitute an audit conducted in accordance with Generally Accepted Government Auditing Standards (GAS 2.12). The observations and conclusions that are reported in this memorandum do not require Management responses.

Background:

The City of El Paso has processes and mechanisms in place for employees to file Grievances, an Ethics Ordinance Violation complaint, and a Workplace Complaint:

- **Grievance:** Filed when a non-uniformed employee believes a City or Departmental rule or policy has alleged to have been violated.
- **Accessibility Grievance:** Complaints alleging discrimination on the basis of disability under ADA (Americans with Disabilities Act) or the Rehabilitation Act of 1973 Section 504.
- **Ethics Ordinance Violation Complaint:** A complaint regarding an alleged violation of the Ethics Ordinance by City officers and City employees.
- **Workplace Complaint:** A complaint regarding a work related incident(s) or to report allegations of misconduct, such as discrimination or harassment.

Objectives:

The objective of this review was to perform an assessment of the investigation processes and protocols in place within the City of El Paso for when alleged workplace complaints are submitted by or against a City employee or City official.

Methodology:

To achieve our audit objectives we:

- Conducted interviews with Executive Management, HR Management, City Attorney's Office personnel, City Hall HR personnel, Departmental Human Resources Managers (DHRMs) located at randomly selected City Departments, and the Accessibility Compliance Officer.
- Conducted an assessment of the following:
 - tracking mechanisms in place throughout the City of El Paso to track employee grievances and complaints,
 - applicable policies, processes, and procedures,
 - City of El Paso website links and forms,
- Identified gaps within the processes and protocols reviewed.
- Tracked two (2) complaints filed by Department Heads against a former City Representative. We were unable to locate the original complaints in the Human Resources Department, City Attorney's Office, or the City Manager's Office.

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Based on our review, we have identified the following six (6) observations:

OBSERVATION 1

Code of Conduct for Elected Officials

City of El Paso Strategic Plan 2017:

- Goal 5.1 *Set a climate of respect, collaboration and team spirit among Council, city staff and the community.*
- Goal 6.8 *Support transparent and inclusive government.*

As a best practice, the Institute for Local Government, a 501(c)(3) nonprofit organization, recommends “Codes of Conduct for Elected Boards”:

- *Collaboration among elected bodies and between individual members takes effort. Finding common ground and cultivating respectful relationships early on can make for a more civil and effective governing body.*
- *A guiding document, or code of conduct, can help facilitate such collaboration and serve as a framework for decorum between individual members and elected body as a whole.*

The City of El Paso has not adopted a Code of Conduct for elected officials describing the manner in which Council members should treat one another, city staff, constituents, and others.

- The El Paso City Charter provides procedures and rules for Council members, and lists the powers and duties of City Council, the Mayor, and the Mayor Pro Tempore.
- The City Ethics Ordinance provides guidance on ethical issues and questions of right and wrong.

Recommendation

The City of El Paso should adopt a Code of Conduct for elected officials to describe the manner in which Council members should treat one another, city staff, constituents, and others they come into contact with in representing the City of El Paso.



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OBSERVATION 2

Department Head Authority Over Final Discipline Disposition

City of El Paso Strategic Plan 2017:

- Goal 6.10 *Enhance the quality of decision making with legal representation and support.*
- Goal 6.13 *Maintain systems integrity, compliance, and business continuity.*

Civil Service Rules and Regulations:

- Rule 8. Section 3. Notice of Proposed Disciplinary Action, Procedures and Limitation of Action:
Within ten (10) working days of receipt of the notice of proposed disciplinary action, the employee may request a conference with the Department Head... During the conference, the employee, their representative, and the Department Head shall engage in discussions with a view toward reaching a consensus and agreement relative to the proposed disciplinary action... In the event such a consensus is reached, the execution by the employee of documents finalizing the settlement agreement shall constitute a waiver of the employee's right to appeal to the Commission, and the employee shall be so advised in plain language.
- Rule 11. Departmental Rules. Section 1:
Any Department Head shall have the right to promulgate rules and regulations regarding the operation of his department, and the conduct of the employee therein, subject to the consent and approval of the City Manager, provided that such rules do not conflict with the Civil Service Charter or the Rules promulgated thereunder.

Department Heads make the final determination for discipline action without regard to recommendations provided by HR personnel, the City Attorney's Office, and without the City Manager's or his designee's consent and approval.

- HR personnel make discipline recommendations on a formal discipline document, with review and approval from the City Attorney's Office when it involves a suspension or greater, but have no authority over Department Head's discipline decision.
- Department Heads enter into a settlement agreement and reduce the proposed disciplinary action recommended by HR personnel and the City Attorney's Office.
- There is no requirement that settlement agreements be reviewed by City Attorney's Office prior to being issued. Request for review is in practice, but it is not required.

Recommendation

The City Manager with the assistance of the Human Resources Department and City Attorney's Office, should:

- Limit Department Head's ability to reduce proposed discipline action when it involves discipline involving Zero-tolerance policies.
- Require that all settlement agreements be reviewed and approved by the City Attorney's Office.
- Require that all settlement agreements receive the consent and approval of the City Manager or his designee.



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OBSERVATION 3

HR Investigation Tracking Mechanism/Central Repository

City of El Paso Strategic Plan 2017:

- Goal 6.3 *Implement programs to reduce organizational risks.*
- Goal 6.13 *Maintain systems integrity, compliance, and business continuity.*

A strong system of internal controls dictate that an organization should have a comprehensive tracking mechanism to effectively manage investigations.

The Investigation Log provided by the Human Resources Department (HR) on November 8, 2018 contained the following summary of FY 2018 Investigations conducted by HR personnel:

HR Investigation Log Summary for FY18 By Department

# of Departments with Investigations	Investigations Open as of 9/1/2018	Current Investigations Open Over 120 days	FY 2018 Closed	FY 2018 Closed Over 120 days
21	76	13	261	21

There is no centralized comprehensive reporting mechanism for tracking complaints. Central HR maintains an internal log of received complaints and investigations. However, the log is not inclusive of all investigations conducted and is not kept up to date:

- Complaints received outside of the “HR umbrella” such as complaints that are received at the executive level may not be reported to HR.
- “High-level” complaints that are assigned to the Human Resources Assistant Director historically have not been entered into the log until the investigation is complete.
- Departmental Human Resources Managers (DHRMs) housed at a City department are not required to report investigations to Central HR when received. Some DHRMs maintain a separate tracking mechanism for complaints that they receive directly. Their corresponding complaints are not entered into the Central HR log until the HR Analyst assigned to manage the log requests an update.
- DHRMs define investigations that need to be entered into the central HR log differently.
 - Some DHRMs log in everything they receive, others log in only complaints that used the HR’s formal investigation *Fact Finding Process*.

Recommendation

The City Manager with the assistance of the Chief Financial Officer and the Human Resources Department, should:

- Define what an investigation is and when it is required to be reported to Central HR for tracking,
- Implement a method that ensures that all investigations are tracked and reported in a central repository established by the Human Resources Department.



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OBSERVATION 4

Guidance on How to Conduct Investigations and Determine Discipline

City of El Paso Strategic Plan 2017:

- Goal 6.1 *Recruit and retain a skilled and diverse workforce.*

The Human Resources (HR) Department has *Desk Manuals* for the *Fact Finding Process* and the *Discipline Process* to help HR personnel conduct investigations and to determine discipline. The following deficiencies were noted with the procedures contained in the desk manuals:

- Procedures are not clear regarding the assignment of “high-level” investigations. “High-level” investigations include sexual harassment allegations, workplace violence, or allegations involving City Executives. There is an informal practice that the HR Director is informed of all sexual harassment and workplace violence complaints. Also, investigations involving City Executives are conducted by the Assistant HR Director.
- The *Discipline Process Desk Manual* does not specify what documentation is to be submitted by Human Resources personnel to the City Attorney’s Office for the proposed formal discipline recommendations.

Recommendation

The City Manager with the assistance of the Chief Financial Officer, the Human Resources Department, and City Attorney’s Office, should:

- Document criteria regarding the assignment of “high-level” investigations in order to ensure consistency across departments.
- Develop a list of required documents needed by the City Attorney’s Office when submitting formal discipline for review.



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OBSERVATION 5

No Process in Place for Investigations Involving Spanish Only Speaking Employees

City of El Paso Strategic Plan 2017:

- Goal 5.1 *Set a climate of respect, collaboration and team spirit among Council, city staff and the community.*
- Goal 6.1 *Recruit and retain a skilled and diverse workforce.*
- Goal 6.3 *Implement programs to reduce organizational risks.*
- Goal 6.8 *Support transparent and inclusive government.*

Title VII of the Civil Rights Act nor the United States Constitution protect foreign languages in the workplace. Employers can either implement and enforce monolingual English-only rules or embrace a bilingual workforce and implement language accommodations for Limited English Proficient (LEP) persons.

The City of El Paso has made it a Strategic Plan goal to recruit and retain a diverse workforce. According to the Departmental Human Resources Managers (DHRMs) interviewed, the majority of the labor force at SAM (Streets and Maintenance), Environmental Services, and El Paso Water are Spanish only speaking employees. During our review the following was identified regarding the lack of formal processes for Spanish only speaking employees:

- Required City training such as Violence in the Workplace, ADA Sensitivity, Sexual Harassment, and Ethics are provided in English without any interpretation services.
- City HR forms are provided in English only with no translation into Spanish.
- Interpreters and translators are not used for investigations leaving DHRMs to interpret and translate on their own.

Recommendation

The Human Resources Department (HR) should take reasonable steps to:

- Understand the language needs of the organization,
- Develop and provide Limited English Proficient (LEP) persons with language accommodations such as professional interpreters and translators, translated HR forms and HR training sessions.



OBSERVATION 6

Training of Investigators is Inconsistent

City of El Paso Strategic Plan 2017:

- Goal 6.1 *Recruit and retain a skilled and diverse workforce.*

To ensure consistency among investigators, and to maintain skill sets, best practices of high performing organizations provide an investigations training program for all individuals who are assigned to conduct investigations. Requiring training for staff investigators prior to assigning them cases would increase the likelihood that all investigations are conducted in a consistent manner and with similar standards of proof. Typical training programs usually cover the following topics:

- *Legal requirements (including discrimination, harassment, and retaliation),*
- *Planning an investigation,*
- *Confidentiality,*
- *Interviewing techniques, and*
- *Note-taking and report-writing.*

Best practices also include on-going training as well as obtaining certifications from recognized professional organizations for staff to maintain proficiency and expand upon skill levels.

Human Resources (HR) personnel assigned as investigators are not consistently trained. There is a lack of a defined training program on conducting investigations. There are no requirements for investigators to receive training on a periodic and on-going basis. The following observations were identified:

- Formal relevant training is not provided to Departmental Human Resources Managers (DHRMs) and HR Analysts on how to conduct an internal investigation.
 - DHRMs and Analysts are expected to perform all HR functions.
 - Most training on how to conduct investigations occurs on-the-job with work experience.
 - DHRMs reach out to each other for guidance or obtain specialized training on their own.
 - DHRMs that are assigned to departments with a training budget are given the opportunity of attending specialized courses provided by professional organizations.
- DHRMs housed at City Departments have not received training specific on the *Fact Finding Process Desk Manual* used by HR personnel to conduct investigations:
 - The templates contained in the manual were re-created by departments with their own wording.
 - Not all of the DHRMs utilize the *Fact Finding Process Desk Manual*.
 - Instructions or training is not provided when revisions to procedures or templates are distributed to DHRMs. There is minimal discussion about procedures during monthly DHRM meetings.

Recommendation

The Human Resources Department should establish a formal training program to train staff on how to conduct and document internal investigations.

The Human Resources Department has tentatively scheduled an in-house comprehensive, 3-day training “*Internal Investigations Certificate Program*” for HR staff and DHRMs that conduct investigations in March 2019.



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Inherent Limitations:

Please note that we did not review supporting documentation maintained for investigations. We did not verify the accuracy and completeness of the information contained in any of the tracking mechanisms identified during our review. We did not review the processes in place for employees covered by collective bargaining agreements or paid by an outside vendor.

Conclusion:

Based on our review of Workplace Investigations, we were able to identify the following gaps within the processes and protocols reviewed:

- The City of El Paso does not have a Code of Conduct for elected officials.
- Department Heads make the final determination for discipline action and enter into settlement agreements to reduce discipline without regard to recommendations provided by HR personnel and the City Attorney's Office.
- There is no centralized comprehensive reporting mechanism for tracking complaints. The investigations log maintained by Central HR is not inclusive of all investigations conducted.
- Deficiencies were noted with procedures for assigning "high-level" investigations and documentation requirements for proposed formal discipline recommendations.
- There is no process in place for incidents involving Limited English Proficient (LEP) employees.
- There is no formal training program for Human Resources personnel conducting investigations.

If you have any questions please feel free to contact me at extension 21365.

cc: Financial Oversight and Audit Committee
Karla Nieman, City Attorney
Robert Cortinas, Chief Financial Officer
Linda Thomas, Human Resources Director