



REPORT TO AUDIT COMMITTEE

915 I Street, Sacramento, CA 95814-2604

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Staff

December 11, 2012

Honorable Members of the Audit Committee

Title: *City Auditor's Whistleblower Hotline Activity Report*

Location/Council District: Citywide

Recommendation: Accept the *City Auditor's Whistleblower Hotline Activity Report* and forward to City Council for approval.

Contact: Jorge Oseguera, City Auditor 808-7270

Presenters: Jorge Oseguera

Department: Office of the City Auditor

Division:

Organization No: 01001201

Description/Analysis

Issue: According to City Code Chapter 2.18, the City Council should be kept apprised of the City Auditor's work. The Audit Committee shall receive, review, and forward to the full Council the City Auditor's updates and reports. This report documents the Auditor's Office Whistleblower Hotline related activity for most of Calendar Year 2012.

Policy Considerations: The City Auditor's presentation of the *City Auditor's Whistleblower Hotline Activity Report* is consistent with the Mayor and City Council's intent to have an independent audit function for the City of Sacramento.

Environmental Considerations: None.

Sustainability Considerations: None.

Rationale for Recommendation: This staff report provides the Audit Committee with information that may be used to meet its responsibility to provide oversight and supervision of the City Auditor. The report makes 1 recommendation to clarify the Auditor's authority to commence investigative or performance audits immediately when high-risk incidents or issues are discovered.

Financial Considerations: The costs associated with this report were funded out of the City Auditor's 2011-12 budget.

Emerging Small Business Development (ESBD): No goods or services are being purchased as a result of this report.

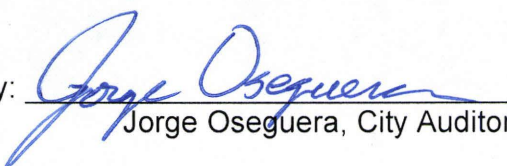
Respectfully Submitted by: 
Jorge Oseguera, City Auditor

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City Auditor's Whistleblower Hotline Activity Report (January – October 2012)



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Office of the City Auditor
December, 2012

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Whistleblower Program Background

City Council directed the City Auditor to establish a Whistleblower Program

In February 2012, the City Auditor published the *Assessment for Establishing a Whistleblower Hotline*. This report presented whistleblower hotline best practices, other cities' whistleblower program information, estimated costs to establish a program for the City of Sacramento, and City employee survey results about potential fraud, waste, and abuse in Sacramento.

In March, City Council directed the City Auditor to establish a Whistleblower Hotline Program to allow City employees and members of the public to report potential fraud, waste, and abuse without the fear of retaliation. In October 2012, the City Manager posted the City Policy related to the program "Policy: Whistleblower Protection AP-1002" and the City Auditor posted the "Whistleblower Hotline Procedures."

According to the Association of Certified Fraud Examiners' (ACFE) 2012 Report to the Nations on Occupational Fraud and Abuse, a typical organization is estimated to lose 5 percent of its annual revenues to fraud. The ACFE defines occupational fraud as "the use of one's occupation for personal enrichment through the deliberate misuse or misapplication of the employing organization's resources or assets."

If the City of Sacramento's loss due to fraud were in line with ACFE estimates for a typical organization, the loss to the General and enterprise funds would equal about \$30.3 million per year. The City's actual loss from fraud is unknown. However, the ACFE study found that receiving tips is the most frequent way fraud is detected, and that the cost and duration of fraud activity was less in organizations with whistleblower hotlines.

The ACFE recommends that employers set up whistleblower hotlines to allow employees to anonymously report possible fraud. Other large cities in California have hotlines that allow for anonymous reporting of fraud, waste, and abuse. Some California cities with whistleblower hotlines are Long Beach, Los Angeles, Oakland, San Diego, and San Francisco. In 2009, state law went into effect that enabled local government auditors to establish whistleblower hotlines with whistleblower protections.

We surveyed City employees anonymously as part of the *Assessment for Establishing a Whistleblower Hotline* to seek employees' views on establishing a hotline. More than 580 employees responded to the survey. Given the responses, there appeared to be strong interest and support for establishing a whistleblower hotline. Many employees (326) indicated that, during their career at the City, they have had at least one concern about fraud, waste, or abuse. For those who had concerns, many said they had not reported the concerns because they feared retaliation or did not know who to report the concern to.

Auditor's role and responsibilities

The City Auditor is the City's independent auditor who reports directly to the Mayor and City Council. Council approves the Auditor's annual audit plan and has historically added audits to the plan when needed.

State law sets requirements for establishing and running a whistleblower hotline, but local auditors have discretion in how to operate their programs. California Government Code Section 53087.6 allows local governments to create whistleblower hotlines.

The following includes key points of this Government Code section and how it pertains to the City of Sacramento:

- The City Auditor shall obtain approval from City Council before establishing a whistleblower hotline. This approval was obtained by Council in March 2012.
- The hotline is used to receive calls from people who have information regarding fraud, waste, or abuse.
- The City Auditor may refer calls received on the hotline to the appropriate government authority for review and investigation.
- During the initial review of calls received, the City Auditor (or the appropriate government authority to whom the call is referred) shall hold in confidence information disclosed through the hotline. This includes the identities of the callers disclosing information and the people identified by the callers.
- Upon receiving specific information that an employee has engaged in an improper government activity, the City Auditor may conduct an investigative audit.
- The identity of the people providing information that initiated the investigative audit shall not be disclosed without their written permission, unless the disclosures are to law enforcement agencies that are conducting criminal investigations.
- The investigative audit shall be kept confidential except to issue a report of an investigation that had been substantiated or to release findings from completed investigations that are deemed necessary to serve the interests of the public.
- The identities of individuals reporting the improper government activities and the subject employees investigated shall be kept confidential.
- However, the City Auditor may provide a substantiated audit report and other information (including subject employee identities) to appointing authorities for disciplinary purposes.

Whistleblower Program implementation

While Council has directed the City Auditor to implement the Whistleblower Program, and the Government Code specifies the parameters in which the program can operate, we realized that the program could benefit from a clarification. Specifically, state law allows for investigative audits to begin after whistleblower complaints are received. However, neither state law nor the Sacramento City Code explicitly provide the City Auditor with the authority to investigate potential fraud, waste, and abuse that members of the Office of the City Auditor might discover through audit work or in ways other than through whistleblower tips.

Some information learned may require immediate reviews and be related to sensitive topics. However, the current structure does not specify the Auditor’s authority to engage in investigative or performance audits that are not directly related to whistleblower tips or part of the annual audit plans.

In line with Council’s direction to establish a whistleblower hotline to reduce the City’s overall risk and the City Auditor’s function to investigate fraud, waste, and abuse, we recommend that City Council authorize the City Auditor to commence investigative or performance audits when high-risk incidents or issues are discovered.

RECCOMENDATION

We recommend the City Council:

1. Authorize the City Auditor to commence performance or investigative audits when the Auditor determines that a high risk to the City or a City program exists.

Whistleblower procedures target high-risk complaints

Due to the limited number of staff members in the Office of the City Auditor and the Office’s chief responsibility to conduct performance audits in accordance with the Council-approved Audit Plan, conducting full investigations of all complaints is not feasible. Instead, the City Auditor has adopted a risk-based approach to investigate whistleblower complaints.

As part of the program’s intake process, we rank complaints by risk and focus investigative efforts on those that represent the greatest risk to the City. The following shows how we generally classify types of complaints based on risk:

High Priority

Some reasons why allegations may be considered high priority are that they could include a safety concern, loss¹ to the City of more than \$75,000, criminal activity resulting in a loss of at least \$400, high-level involvement, collusion of multiple wrongdoers, major department-wide issue, or need for immediate action to stop a potential major issue. Addressing these items could take priority over other investigations and audits – at the City Auditor’s discretion.

Medium Priority

Allegations in this category could include a loss to the City of more than \$25,000, abuse of authority, medium-to low-level employee involvement, minor department-wide issues, or patterns of small problems that could become serious when summed. Some medium-priority items could be referred to departments for their reviews.

Low Priority

Allegations in this category could include a loss to the City of less than \$25,000, isolated instances of time abuse, wasteful practices that would lead to limited gains in efficiencies if corrected, or allegations that lack credibility and evidence. The office would aim to investigate items in this list, but may not do so because of limited resources. However, if the same or similar issues were reported multiple times – low-

¹ Loss could entail actual or potential loss of money, waste, or inefficiencies.

priority items may become more of a priority. Additionally, some low-priority complaints could be referred to departments for their reviews.

Status of investigations

More than half of complaints received have been investigated and closed

As noted above, City Council directed the City Auditor in March to establish a Whistleblower Hotline Program. However, the Office of the City Auditor began to receive whistleblower complaints earlier in the year. Many complaints were received towards the beginning of 2012 - around the time that we worked on and issued the *Assessment for Establishing a Whistleblower Hotline*.

A total of 19 complaints, covering 12 types of allegations, have been received. The following shows all Whistleblower Program complaints that were received by the Office of the City Auditor as of October 31, 2012.

Exhibit 1: Nineteen Complaints Have Been Reported

Types of Allegations	Number	Percent
Abuse of Position or Authority	3	16%
Contract Issue	2	11%
Theft	2	11%
Time Abuse	2	11%
Violate State/Fed Rules	2	11%
Wasteful Practice	2	11%
Bribes / Kickbacks	1	5%
Hiring Irregularities	1	5%
Improper Controls	1	5%
Information Request	1	5%
Miscategorized Expenses	1	5%
Reimbursement Abuse	1	5%

As explained in the background section, we classify complaints as high, medium, or low priority. More than three quarters of complaints were classified as high or medium, as shown below:

Exhibit 2: Most Complaints Represented High Or Medium Priorities

High	5	26%
Medium	10	53%
Low	4	21%

The following exhibit provides information about closed cases. We have closed 10 of the 19 complaints (53 percent). The reason for the closure is noted. For complaints that were substantiated, a summary of the disposition is included.

Exhibit 3: Two Complaints Have Been Substantiated And Three Were Referred To Departments

Log #	Primary Type of Allegation	Priority	Status	Reason for closure and disposition (if applicable)
2	Wasteful Practice	High	Closed	Unsubstantiated: per investigation
8	Contract Issue	High	Closed	Substantiated: We received a complaint that the Information Technology Department was considering entering into a sole-source contract with an entity that could have created a potential conflict of interest. We confirmed that a potential conflict of interest existed. To resolve the potential conflict, the department competitively bid the project.
13	Violate State/Fed Rules	High	Closed	Substantiated: We received a complaint that many supervisors had not completed state-mandated sexual harassment prevention training. As this represented a high-risk area, we performed a limited scope audit about the training. We found that about 16 percent of managers who were required to complete the training had not done so during the reporting period. A public audit report was published June 7, 2012. The report included eight recommendations and the Department of Human Resources, which runs the training program, generally agreed with the recommendations and is taking corrective actions.
6	Abuse of Position or Authority	Medium	Closed	Other investigation: According to the complainant, this issue was already under investigation by another City department. The complainant was not seeking a review by the Office of the City Auditor, but may in the future if the issue is not resolved.
10	Reimbursement Abuse	Medium	Closed	Unsubstantiated: per investigation
12	Violate State/Fed Rules	Medium	Closed	Referred: to department
19	Hiring Irregularities	Medium	Closed	Unsubstantiated: per investigation
7	Wasteful Practice	Low	Closed	Referred: to department
11	Theft	Low	Closed	Referred: to department
18	Information Request ²	Low	Closed	Information Provided: Not fraud, waste, or abuse complaint

² Not all information requests are logged as Whistleblower Program complaints. This item was included because the complainant specifically mentioned the Whistleblower Hotline during the call.

As shown in Exhibit 4, nine complaints are pending. The types of allegation and the priority classifications are shown below.

Exhibit 4: Two High-Priority Allegations Remain

Log #	Primary Type of Allegation	Priority	Status
1	Bribes / Kickbacks	High	Pending
4	Theft	High	Pending
3	Miscategorizing Expenses	Medium	Pending
5	Time Abuse	Medium	Pending
9	Contract Issue	Medium	Pending
14	Time Abuse	Medium	Pending
16	Improper Controls	Medium	Pending
17	Abuse of Position or Authority	Medium	Pending
15	Abuse of Position or Authority	Low	Pending

Future Whistleblower Program reports

This is the first report showing the status of the Whistleblower Program investigations. The City Auditor plans to report on the status of investigations every six months.

The Office of the City Auditor is currently soliciting bids to establish a third-party toll-free hotline that can accept whistleblower calls any time. Even after the hotline is active, members of the Auditor’s Office will continue to accept and investigate whistleblower complaints. Those who would like to make whistleblower complaints can contact any member of the Office of the City Auditor by mail, phone, e-mail, or in person:

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