

# Audit of the City's Harassment, Discrimination, and Retaliation Investigation Practices

**AUSTIN, TEXAS**

*March 27, 2017*



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## **OBJECTIVE**

This audit was initiated following a City Council resolution in order to review investigations of alleged discrimination, harassment and retaliation filed between 2010 and 2015; to examine investigatory procedures and standards applied in these cases; to report on investigatory practices used in other cities and other entities; and, if needed, to provide recommendations to processes and protocols for anti-discrimination investigations.

## **BACKGROUND**

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Human Resources functions within the City of Austin are performed both in a centralized and a decentralized manner. While some functions are the responsibility of the Human Resources Department (HRD), each department also has responsibility for handling many human resources functions directly.

HRD includes an Employee Relations Division (ERD) with six human resources professionals (five of whom are assigned to conduct investigations) and a Manager. They are responsible for investigating employee complaints of improper conduct or treatment, among other HR duties. The investigations range from general employee misconduct to complaints of discrimination, harassment, and retaliation. ERD investigators follow defined internal investigation practices to guide their work activities. Various guidance documents, including internal City of Austin Administrative Bulletins and recommended practices of the United States Equal Employment Opportunity Commission (EEOC), are available to provide additional direction and guidance in conducting employee investigations. Legal advice from the Law Department is sought as necessary in the performance of their duties.

Key regulations that the City must comply with include, but are not limited to, the following:

- City of Austin Personnel Policies,
- City of Austin Municipal Civil Service Rules,
- State of Texas Statutes covering Discrimination, Harassment, and Retaliation, and
- United States Federal Regulations including U.S. Equal Opportunity Commission Regulations, the Civil Rights Act of 1991, and the Age Discrimination in Employment Act.

The current investigation process is outlined in the following table:



As shown below, the number of investigations related to discrimination, harassment, or retaliation has increased as a percentage of the total personnel investigations conducted over the last three years. Many investigations contain more than one complaint that is investigated. This can include multiple complaints of discrimination, harassment, or retaliation or complaints of other types. The following table outlines the number of complaints by specific type.

Complaint Type	2013*	2014	2015	2016
Harassment	18	38	59	71
Discrimination	7	23	28	15
Retaliation	16	17	20	14
<b>Total DHR Complaints</b>	<b>41</b>	<b>78</b>	<b>107</b>	<b>100</b>
<b>Total Personnel Complaints</b>	<b>155</b>	<b>268</b>	<b>404</b>	<b>317</b>
<b>DHR Complaints as % of Total</b>	<b>26%</b>	<b>29%</b>	<b>26%</b>	<b>32%</b>

\* 2013 contains only partial data, as the centralized tracking database was implemented effective October 1, 2013.

The majority of personnel-related complaints handled annually by the City are in categories other than discrimination, harassment, and retaliation – such as general employee misconduct, misuse of city resources, time and attendance violations, etc. However, the percentage of investigations focused on discrimination, harassment and retaliation is trending upward. While the total number of investigations related to discrimination, harassment, and retaliation have increased over the last three years, the total number of personnel-related investigations has been more constant and is trending downward.

Determining the actual number of investigations, by type for each of the last five years, with a high degree of accuracy is not possible based upon the manner in which records and data has been maintained. These numbers represent all cases that have been entered into the centralized tracking database and we believe is a fair representation of the number of cases conducted and investigated. While our review of file maintenance activities identified no cases where an investigation was not entered into the database, there is no way to be entirely sure that all cases were appropriately entered since no comprehensive listing of complaints is maintained.

## **RESULTS**

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### **Summary of Findings**

The City of Austin has a basic structure to conduct investigations of the harassment, discrimination, and retaliation. That includes staff in the City's central HR department and in various operational departments, policies and procedures, a system that captures the results of investigations, and working files showing appropriate and relevant information that supported conclusions for cases. However, we noted several areas where improvements could be implemented to provide a “best in class” investigatory process within the City. Those areas include: utilization of the tracking system, investigatory process guidance and documentation, training, and the staffing model.

**Finding 1: Based upon reviewed sample files, investigation files were generally found to contain relevant and appropriate information and supported the conclusion reached; however, documentation was not maintained in a consistent manner within the files.**

**Investigation files were found to contain relevant and appropriate documentation reflective of a comprehensive investigation and supported the investigatory conclusions reached. Key**

elements we looked for during the file reviews, based on best practices for investigative files, included documentation of:

- the complaint filed,
- relevant policies and procedures,
- complainant and respondent interview notes,
- interview notes from witnesses (including all witnesses referenced by the complainant),
- documentation evidence (videos, emails, or other documentation acquired during the investigation),
- prior disciplinary actions for the respondent (if applicable),
- a letter of determination regarding the investigation, and
- any remedial action required for sustained findings (if applicable).

We reviewed over 80 investigations to ascertain the level of documentation maintained, the completeness of documentation, and the organization of investigation files. Overall, investigation files were generally found to contain relevant and appropriate documentation reflective of a comprehensive investigation and supporting the conclusion reached. The documentation identified as most frequently missing was documentation that debriefings occurred.

Importantly, during the file reviews, auditors did not note any concerns regarding the outcomes or findings reached in the reviewed investigations. Additionally, there was no evidence that the findings were impacted by the limitations of the investigative process outlined in this report, which reflect more administrative and managerial aspects of the investigatory process rather than substantive issues related to the accuracy of the investigations.

**The City does not provide guidance for standard file management practices.** Best practice organizations have adopted an administrative policy and/or provided training to their investigators regarding appropriate file maintenance. Typically, administrative policies covering this would include the following elements:

- a checklist of the information to be contained within the file, and a general template outlining the order that documentation should be organized in;
- a requirement that all investigation files contain signed copies of final warning, disciplinary actions or other communications to the respondent; and
- a requirement that investigation files must be maintained in accordance with the adopted file retention policies of the City and Department and reiterating the retention requirements for both City and State laws, to ensure that files are maintained for a

sufficient period of time to be available, as needed, for legal actions or disciplinary appeal periods.

There is not a defined and consistent approach to maintaining investigative files within ERD or in departments. This makes individual file reviews more difficult and cumbersome as information is not located in a consistent location or order within the files.

**Not all departments maintained files for the time period covered by this audit.** While most departments had investigation files available for the time period under review (2010 through 2015), it was not possible to determine if all files were available for review due to inconsistent practices regarding retention of investigation files. One notable example was the Police Department where investigations files older than 2 years had been destroyed, in accordance with their approved retention schedule, and were no longer available for review.

**Finding 2: The City does not have sufficient guidance for personnel investigations, including defined roles and responsibilities, timeframes, and reporting requirements.**

**There are multiple avenues for individuals to file complaints.** The City of Austin has provided multiple avenues for employees to report complaints regarding alleged discrimination, harassment, or retaliation. The City should be commended on providing multiple avenues for reporting complaints, as this provides employees the ability to choose the method of reporting their complaint to whomever they feel most comfortable discussing the complaint.

The avenues are:

- Employees may report their concerns to their immediate supervisors.
- If an employee does not feel comfortable discussing the matter with their supervisor, they may report their concerns up the management chain, including the department Assistant Director and Director.
- Employees also have the option to report their concerns to the Employee Relations Division of the Human Resources Department or to the Human Resources Department Director.
- Concerns related to legal compliance may be reported to the City of Austin Law Department.
- Employees may also choose to report issues to the City Auditor by calling the City Auditor Hot Line. This may be done anonymously.

**City's procedures for recording complaints and notification are not in line with best practices.**

The City's limited formalized records on received complaints present a risk that complaints may not be addressed properly or in a timely manner. Complaints received through the Auditor's Hotline are forwarded to the appropriate entity for follow-through and are tracked by ERD with a requested response back to the City Auditor regarding the outcome. Other communities and best practices require that all complaints are reported to the appropriate investigative body within a specified time period – for example, within 24 hours of receipt.

Best practices also dictate that an organization should have a comprehensive tracking mechanism to effectively manage investigations. A single formalized approach to tracking complaints is not utilized when a complaint is filed with either ERD or the employee's department. HRD maintains an internal log of all received complaints and investigations; however, each department maintains separate tracking mechanisms for complaints that they received directly. The lack of a single tracking mechanism makes it difficult, if not impossible, to know at any given time the number and status of complaints. This can be addressed through a policy requirement that all complaints are entered into the AIM system upon receipt, and modification of the AIM system to provide immediate email notification to all relevant individuals (e.g. a complaint entered at the departmental level should immediately trigger an email notification to relevant ERD staff). In accordance with the City's applicable administrative bulletin, ERD is notified when complaints are received at the departmental level. However, there is no established timeframe for making this notification nor is any tracking in place to monitor when this notification occurs.

**Policies are not clear regarding the assignment of investigations related to discrimination, harassment, and retaliation.** Given the importance of complaints alleging discrimination, harassment, or retaliation, the organization would benefit by requiring that these cases be investigated by the central HR staff investigators and not the individual departments. These types of complaints are typically ones where the respondent has been subject to prior investigations for similar conduct or where the perception of a potential conflict of interest may arise if handled by a departmental investigator.

Additionally, in other organizations where departments have extensive independent authority to manage internal operations, including disciplinary action, it is common for the central HR function to monitor all completed investigations where a finding was substantiated. This monitoring ensures that timely and appropriate remedial and disciplinary action is implemented. In cases where a timely remedial action is not implemented, notification is made to the appropriate executive for intervention with the relevant department.



The City’s policies do not provide clear criteria on who will conduct these investigations or who will serve as the primary investigator. ERD staff stated that they make a determination based upon their professional judgement regarding the complexity of the complaints, the skill-set of the departmental HR staff, workload, and prior complaints received by the complainant and/or prior complaints against the respondent.

While no specific concerns were identified in the case reviews of inappropriate handling of prior complaints, the adoption of at least a base set of criteria for determining who conducts the investigation could ensure consistency across departments. As of now, there is only an informal guideline that investigations will be conducted by ERD staff when it involves an executive of the City.

The following table provides a sample approach that the City could consider as criteria for assignment of complaint investigation.

<b>Complaint Type</b>	<b>Respondent</b>	<b>Department</b>	<b>Central</b>
Harassment	Staff	✓	
	Senior Mgmt/ Executive		✓
Discrimination	Staff	✓	
	Senior Mgmt/ Executive		✓
Retaliation	Staff		✓
	Senior Mgmt/ Executive		✓
All types	Respondent subject to prior		✓

**Performance standards are lacking to monitor timeliness of the investigation process.** Well managed investigation processes typically have adopted performance metrics and standards that are utilized to manage the overall investigation process. At the present time, there are no adopted performance metrics utilized within the City of Austin to measure the timeliness of the investigation process. Common metrics utilized by other entities include tracking the time to:

- notify the appropriate investigative body,
- record the complaint in the system,
- assign a principal investigator, and
- complete the initial investigation.

The establishment of performance standards for key elements of the investigation process could enable the City to better evaluate performance in the future, ensure that all appropriate

individuals are notified in a timely manner of a new complaint, and monitor the timeliness of the investigation process.

A review of the investigations conducted within the City shows that, investigations were completed in 3 – 4 months. While this timeframe is generally acceptable, there are many cases that extended beyond 6 months.

**The City does not utilize reports to assess the timing of investigation completion or manage workload.** Well managed investigation processes utilize periodic reports that are developed and distributed to key executives, including the City Manager, Assistant City Managers, and Department Directors (at least for the data related to their department cases), that outline the number of current cases by type, the status of the investigation, the findings and the length of time the investigation took to complete. This information should be routinely distributed to ensure all key management personnel have an understanding of the cases occurring within the organization and for on-going use to analyze trends to determine future policy modifications, training, or other organizational actions that are needed. At the present time, this is not being conducted by HRD.

**Finding 3: The City does not have a proactive training program for all employees covering discrimination, harassment, or retaliation; the level of training of investigators is inconsistent.**

**Individuals assigned as investigators are not consistently trained.** Throughout the audit, a recurring theme was identified through interviews of ERD staff and departmental HR staff - the lack of a defined training program related to employee investigations. There are no specific requirements (other than those outlined in job descriptions) for staff within ERD or at the departmental level to ensure investigators have relevant training on an ongoing basis prior to conducting investigations. This concern is greater for staff at the operating department level – where individuals are hired to perform a wide variety of duties and conducting investigations is often seen as only a small component of their duties.

Training on harassment, discrimination, and retaliation policies is provided at a high-level during the on-boarding and new employee orientation, and as a component of management / supervisory training that is provided to personnel enrolled in these training programs. However, there is no training program on conducting investigations internally in the City or requirement that all employees receive training on a periodic and on-going basis.

To ensure consistency among investigators, and to maintain skill sets, high performing organizations provide an investigations training program for all individuals who are assigned to conduct investigations. If implemented, this could bring the City in alignment with best practices. 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. At the present time, management reports that limited external training is provided to ERD staff due to time and budget constraints.

The following table outlines the training provided to investigators in the comparable entities that participated in our survey.

City	EEOC Course	Private Course	On-the-Job Training	Experience Required
Austin, TX	*	*	X	X
Denver, CO	X	X	X	
Fort Worth, TX		X	X	X
Jacksonville, FL			X	X
Oklahoma City, OK		X	X	
San Jose, CA	X	X	X	X

As shown, while there is no single “standard” of training, and most entities rely on on-the-job training or prior experience - most entities are requiring or encouraging their staff to have additional investigator training through either the EEOC or private courses.

There are numerous national certification programs available. The following table outlines a few of the resources available for consideration by the City:

Representative Training Programs Related to Workplace Investigations
<p><b>EEOC</b> – The federal agency responsible for enforcing employment discrimination laws provides a Training Institute with a variety of training programs including seminars, conferences and on-site training programs. Additional details can be viewed at: <a href="http://www.eetraining.eeoc.gov">http://www.eetraining.eeoc.gov</a></p>
<p><b>Cornell University</b>, through its ILR School, provides an Advanced Employee Relations and Investigations Certificate program that has modules veering conducting internal investigations, investigatory note taking and reports, harassment prevention, and other relevant topics. Additional details can be viewed at: <a href="https://www.ilr.cornell.edu/human-capital-development/certificates/advanced-employee-relations-and-investigations-certificate">https://www.ilr.cornell.edu/human-capital-development/certificates/advanced-employee-relations-and-investigations-certificate</a></p>
<p>Association of Workplace Investigators (<a href="http://www.aowi.org">http://www.aowi.org</a>) conducts an assessment-based certificate program consisting of four days of training.</p>
<p>Institute for Applied Management &amp; Law, Inc. (<a href="https://www.iaml.com/public-seminars/certificate-conducting-lawful-investigations-seminar">https://www.iaml.com/public-seminars/certificate-conducting-lawful-investigations-seminar</a>) provides a Certificate in Conducting Lawful Workplace Investigations Seminar.</p>

Additional training resources are available from national professional associations including International Public Management Association for Human Resources (IPMA-HR) and Society for Human Resources Management (SHRM).

Many “best in class” municipal entities, and many private companies, who place a strong emphasis on being proactive and development of a workplace free from bias, require that all employees attend this type of training periodically throughout their employment and not only upon initial hire or as part of a promotion to a supervisor / managerial position. While the comparative survey conducted did not show a requirement for recurring training for most of the entities participating, the notable exception is Oklahoma City which requires annual training for all supervisory employees covering discrimination, harassment and retaliation.

The City of Austin does not currently require that all employees participate in a training program covering discrimination, harassment, and retaliation on any defined schedule. This lack

of training limits the ability of the City to be proactive in handling these issues and is a missed opportunity to expand on prevention efforts. Many opportunities exist to address this deficiency through either internally developed courses or procurement from external training providers. Many organizations of this size are utilizing online webinar training programs that include a required exam upon completion to enable more efficient provision of this training to all employees given the number of locations and schedules that must be considered for an organization the size of the City of Austin.

The City of Albuquerque, New Mexico provides several sexual harassment courses (one for employees and one for supervisor / managers) through Global Classroom (<http://www.globalclassroom.us/>) a resource that provides for online access to course materials and courses range from ½ to an hour in duration for a cost of \$15 per attendee. This approach provides one example of a cost-effective method for deploying a comprehensive training effort for all employees through the use of technology.

**Finding 4: The City is not effectively utilizing technology to manage and track investigatory complaints which limits the City's management and oversight abilities.**

The City of Austin implemented the Administrative Investigatory Management (AIM) system to record investigations related to harassment, discrimination, and retaliation by modifying software already in use by the Austin Police Department Internal Affairs Unit. Per training sessions and emails from ERD to HR liaisons in the departments, departments were requested to enter into the AIM system all investigations completed since October 1, 2013 and going forward all investigations upon completion. The purpose was to enable consistent tracking of cases and the results of investigations. Our review of the data within the system found that departments are generally in compliance with this directive.

Best practices indicate that an organization could utilize an investigation case management system to:

- enter complaints at the time of receipt (by whomever initially receives the complaint);
- provide immediate notification to the appropriate investigative group upon entry of a complaint;
- monitor and track status of investigations;
- maintain complete and accurate data;
- monitor the workload; and

- enable real-time reporting.

The utilization of AIM is not in line with best practices in several areas. For example:

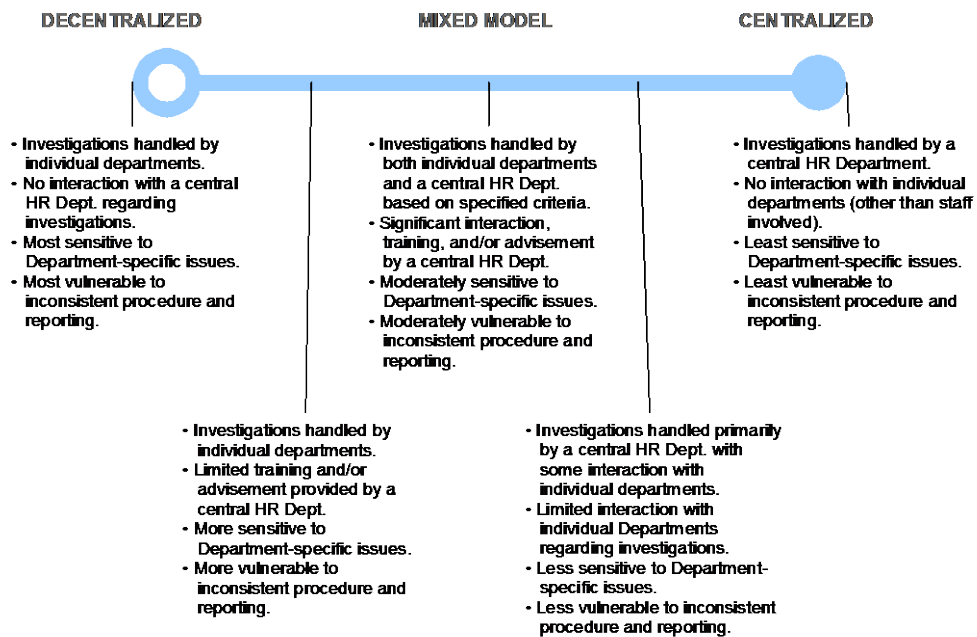
- AIM is not utilized as a case management system but simply as a data repository system. Information is not usually entered into the AIM system until an investigation is fully completed. This prevents the City from knowing at any particular point in time, how many cases are currently active by department, by complaint type, or by complainant or respondent.
- The data within AIM includes some “bad data” including duplicative complaints, non-complaints, or investigations that were not conducted. This data prevents easy and accurate reporting on investigations by department, complainant, respondent, etc.
- Standard reports to provide performance data regarding investigations are not routinely developed or disseminated. Report development is highly manual – as data must be “cleaned up” before reports can be developed and utilized. This results in a lack of confidence in the accuracy of the data, and leads to reports taking significant time to develop. Standard reports are not available for printing “on demand” by staff within ERD nor departments, eliminating their ability to effectively manage investigation caseloads or conduct trend analysis on investigation data.

One other notable difference between the City of Austin and comparable entities is that all other entities included in the comparative survey have a more robust Human Resources Management System (HRMS) in place within their Human Resources Department. The following table outlines the systems that are in place. The use of HRMS systems are fundamental to the conduct of HR services.

City	Comprehensive Human Resource Management System
Austin, TX	None
Denver, CO	Workday
Fort Worth, TX	PeopleSoft (Oracle) supplemented with Taleo (Oracle) for Talent Management
Jacksonville, FL	PeopleSoft (Oracle)
Oklahoma City, OK	PeopleSoft (Oracle)
San Jose, CA	PeopleSoft (Oracle)

**Finding 5: The current staffing and organizational structure, where ERD staff have duties in addition to conducting investigations, may impact the City’s ability to complete investigations in the most timely and objective manner.**

Currently, HRD investigators are investigating personnel complaints citywide, but they are not dedicated to investigations and also provide other general HR support to departments. To demonstrate the range of typical approaches utilized in handling investigations, the following graphic demonstrates the varying level of centralization versus decentralization of the conduct of employee investigations.



Overall, a centralized approach to conducting discrimination, harassment, and retaliation investigations typically provides a greater level of consistency and objectivity across the organization and is least sensitive to department-specific issues.

The City of Austin’s ERD staff conduct a large portion of discrimination, harassment, and retaliation cases, but some cases are handled by the departmental staff (generally with ERD staff as co-investigators). In addition to conducting investigations, each of the ERD staff are assigned a group of department to whom they serve as the department’s liaison to HRD. In this role, the ERD staff provide a variety of support to the departments including: investigations, general HR policy and procedure advice, support on discipline and general employee relations issues, etc.

**Current staff allocated to harassment, discrimination, and retaliation in HRD may be insufficient to effectively handle the investigations.** In evaluating staffing from other entities, the following staffing allocations were received from the participants:

City	Staff Assigned to Personnel Investigations	Citywide FTEs
Austin, TX	5	13,365
Denver, CO	2	10,986
Fort Worth, TX	3	6,453
Houston	6.5	20,507
Jacksonville, FL	4	7,110
Oklahoma City, OK	2	4,743
San Jose, CA	8	5,945

According to the comparative survey, other cities dedicated staff to Employee Relations functions typically had fewer HR liaison / generalist duties and had a greater focus on conducting investigations. For example, in Fort Worth, employee relations-focused functions (investigations, trainings, and policy) are the primary tasks of the three central HR staff. Note that Fort Worth has less than half of the total employees compared to Austin. In Austin, according to staff, half of their work is investigation of complaints. In 2015, ERD processed over 400 complaints, 107 of which were harassment, discrimination, or retaliation. Staff report being overwhelmed by the current workload.

**The working relationship ERD has with other departments may create the perception of a lack of objectivity in conducting investigations.** In evaluating the approach utilized in other communities, the following table outlines the location of individuals within the municipal organization typically responsible for handling / conducting discrimination, harassment, or retaliation or other major employee investigations.

City	Department Handling Personnel Investigations
Austin, TX	Human Resources Department
Denver, CO	Office of Human Resources
Fort Worth, TX	Human Resources Department
Houston, TX	Office of the Inspector General
Jacksonville, FL	Employee Services or the Equal Opportunity
Oklahoma City, OK	Personnel Department
San Jose, CA	City Manager’s Office

As shown, three of the six comparable entities also provide investigation support from within the Human Resources Department. The other three had investigations handled by units



located in Equal Opportunity, the City Manager's Office, or the Office of the Inspector General. These locations typically provide the perception of a more independent and "arm's length" investigation than when it is located within Human Resources. Also, best practice organizations have found that the investigation process is viewed more objectively and conducted more efficiently through the use of dedicated investigators in a centralized location.

For the City of Austin, because ERD staff provide support to their assigned departments on a variety of HR issues, they often develop a strong working relationship with the department's HR staff, supervisors, managers, and executives. This can create the appearance of a lack of objectivity since the ERD staff member is often viewed as a representative of "department management" rather than an independent and objective third party. In addition to the appearance of objectivity, timeliness of employee investigations is impacted by competing demands for the ERD staff members' time and deadlines for the completion of other assigned duties.

## **RECOMMENDATIONS**

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**1. A case management system (AIM or another system integrated with an HRMS) should be utilized to:**

- **actively manage cases and not used solely as a data repository, and**
- **develop performance reports outlining number of active cases and performance statistics (number of active cases by department, age, sex and race, type of complaint, finding, etc.; sustained cases by type; time to conduct investigation, etc.)**

**2. The HR Director should develop and implement a policy that covers the:**

- **process for timely notification to ERD of all complaints filed,**
- **criteria and the process for assignment of the principal investigator in ERD or the Department within a defined timeframe,**
- **responsibilities of the principal investigator to maintain files in the case management system from the start of the investigation including appropriate complaint categorization that supports reporting functionality,**
- **requirements for maintaining investigation files, including templates and checklists outlining the type of information that should be maintained in all investigation files, and the order in which documentation should be arranged within the investigation file, and**
- **responsibility for ensuring accuracy of data entered in the case management system to the principal investigator.**

**3. The HR Director should run periodic reports from the case management system to:**

- **communicate with stakeholders,**
- **manage the investigation process,**
- **review city-wide trends,**
- **evaluate consistency of investigation process,**
- **monitor personnel actions taken by departments, and**
- **evaluate whether additional policy changes or training is required.**

**4. The City Manager should formally require all departments:**

- **follow the adopted investigation process, and**

- **implement timely personnel actions in accordance with the City's Employee Relations policy.**
- 5. The City should review existing records retention policies and provide training to all HR staff throughout the City to:**
- **ensure that all investigation files are maintained for the appropriate periods of time, and**
  - **ensure compliance with legal requirements (state and city).**
- 6. The HRD Director should develop a comprehensive training program that provides:**
- **Initial training requirements or certifications for ERD staff and departmental HR staff assigned as investigators,**
  - **Periodic training for ERD staff and departmental investigatory staff,**
  - **Periodic training course to all City employees that covers discrimination, harassment, and retaliation and the City's policies, and**
  - **Advanced courses covering discrimination, harassment, and retaliation for supervisory and managerial employees.**
- 7. The HRD Director should evaluate alternative organizational structures for conducting investigations that provides for dedicated investigators and evaluate the current staffing allocations.**

**APPENDIX A**

**SCOPE, METHODOLOGY AND AUDIT STANDARDS**

**Scope**

The scope of the review was 2010-2015.

**Methodology**

To accomplish the audit objectives, the project team:

- conducted project initiations with OCA staff to review the scope of services and areas of inquiry;
- interviewed members of the City of Austin's Human Resources Department to understand general policies and procedures applicable to the areas under review;
- interviewed each staff member in the Employee Relations Division who conducts employee investigations to discuss protocols, policies and procedures, training, timeframes, and technology utilization;
- interviewed representative staff members from each City Department who conduct human resources activities / conduct investigations at the departmental level;
- reviewed relevant city policies related to discrimination, harassment, and retaliation and the investigation process;
- reviewed other relevant Human Resources policies and procedures;
- conducted reviews of prior investigation files maintained by ERD and departmental staff to evaluate the completeness and thoroughness of the files and records;
- selected and surveyed peer cities about the processes utilized relative to similar investigations<sup>1</sup>;
- reviewed practices utilized by EEOC and other entities; and

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<sup>1</sup> Cities includes Fort Worth and Houston from Texas, along with the following national cities: Denver, CO; Jacksonville, FL; Oklahoma City, OK; and San Jose, CA. While Houston declined to participate, publically available information was utilized where available.

- developed recommended improvements to processes and protocols for anti-discrimination investigations to provide a more consistent, timely, and predictable result throughout the organization.

## **Audit Standards**


We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## MANAGEMENT RESPONSE



### MEMORANDUM

**TO:** Corrie Stokes, City Auditor

**FROM:** Joya Hayes, Director of Human Resources and Civil Service 

**DATE:** March 24, 2017

**SUBJECT:** Management Response: Audit of the City's Harassment, Discrimination, and Retaliation Investigation Practices

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The purpose of this memorandum is to provide a management response to the Audit of the City's Harassment, Discrimination, and Retaliation Investigation Practices. The Human Resources Department (HRD) has reviewed the audit completed by Matrix Consulting Group. HRD concurs with the recommendations contained within the report, and attached are the specific management responses to each finding.

Human Resources staff remains committed to providing a fair, objective, and balanced investigation process that serves all employees. While there are areas where staff perform well, there are areas where improvements could be implemented to provide a best in class investigatory process within the City.

We appreciate the time and effort dedicated to this audit and the feedback it provides. We look forward to continually improving our process and results in this area.

If you need additional information, please do not hesitate to contact me.

Attachment: HRD Itemized Audit Response

cc: Mark Washington, Assistant City Manager

## **RECOMMENDATIONS and MANAGEMENT RESPONSE**

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1. A case management system (AIM or another system integrated with an HRIS) should be utilized to:
  - manage cases and not used solely as a data repository, and
  - develop performance reports outlining number of active cases and performance statistics (number of active cases by department, age, sex and race, type of allegation, finding, etc.; sustained cases by type; time to conduct investigation, etc.)

**Management Response:**

Concur

**Proposed Implementation Plan:**

HRD staff will evaluate the AIM on Target system capabilities and require staff working an investigation enter information at the onset of the investigation so ongoing investigations can be tracked and monitored. As noted in the audit findings, report generation is currently a manual intensive process. Staff will evaluate the potential to generate automated performance reports. As for integration with an HRIS, currently, the City does not have a modern day Human Capital Management System. Without a modern day system, integration cannot occur. HRD staff have worked on implementing a new HRIS; however, full funding has not been identified. Finally, HRD staff will also explore if other case management systems are better suited as a solution.

**Proposed Implementation Date:**

The evaluation of the AIM systems capability will be completed by May, 2017.

2. The HR Director should develop and implement a policy that covers:
  - process for timely notification to ERD of all allegations filed,
  - criteria and the process for assignment of the principal investigator in ERD or the Department within a defined timeframe,
  - responsibilities of the principal investigator to maintain files in the case management system from the start of the investigation including appropriate allegation categorization that supports reporting functionality,
  - maintaining investigation files, including templates and checklists outlining the type of information that should be maintained in all investigation files, and the order in which documentation should be arranged within the investigation file, and
  - assigning responsibility for ensuring accuracy of data entered in the case management system to the principal investigator.

**Management Response:**

Concur

**Proposed Implementation Plan:**

HRD will draft an investigation procedure to include the five recommendations in this section. HRD staff will require case entry into the AIM on Target system, or an alternate case management system, within a specified time from the onset of an investigation. Criteria will be established to support the assignment of a principal investigator, and that principal investigator will be responsible for maintaining orderly investigation files, including approved templates and checklists. This will support general consistency and quality of outcomes.

**Proposed Implementation Date:**

A draft procedure will be completed by May 2017.

3. The HR Director should run periodic reports from the case management system to:
- communicate with stakeholders,
  - manage the investigation process,
  - review city-wide trends,
  - evaluate consistency of investigation process,
  - monitor personnel actions taken by departments, and
  - evaluate whether additional policy changes or training is required.

**Management Response:**

Concur

**Proposed Implementation Plan:**

HRD staff will review reports and evaluate trends. This information can guide management in the communication, coordination, and follow-up activities. This review will highlight trends, allow for evaluation of consistency in the process, and further evaluate if any policy or procedure changes are needed. HRD staff has compared City investigation findings to the EEOC data, and this indicates HRD investigation findings of policy violations, from 2010-2016, of discrimination, harassment or retaliation were 14% versus EEOC findings of 3.9%.

**Proposed Implementation Date:**

Report development and generation is currently done manually. An evaluation of the AIM on Target systems capability to generate programmed/scheduled reports will be completed by May, 2017.

4. The City Manager should formally require all departments:
- follow the adopted investigation process, and
  - implement timely personnel actions in accordance with the City's Employee Relations policy.



**Management Response:**

Concur

**Proposed Implementation Plan:**

The audit report includes a finding that *“Investigation files were found to contain relevant and appropriate documentation reflective of a comprehensive investigation and supported the investigatory conclusions reached.”* HRD concurs with this finding, and maintains an ongoing commitment to continually improving our processes. HRD staff will draft an investigation procedure for review in May 2017.

**Proposed Implementation Date:**

Review and approval of the procedure will be completed by June 2017.

5. The City should review existing records retention policies, and provide training to all HR staff throughout the City, to:
- ensure that all investigation files are maintained for the appropriate periods of time, and
  - ensure compliance with legal requirements (state and city).

**Management Response:**

Concur

**Proposed Implementation Plan:**

Retention requirements will be included in the investigation procedure. The City’s Law Department and Office of the City Clerk staff will review all policy and procedures to ensure compliance. HRD staff will train department HR staff on investigation process and protocols after the investigation procedure is approved.

**Proposed Implementation Date:**

Training on the Investigation Procedure, including records retention requirements will be completed by July 2017.

6. The HRD Director should develop a comprehensive training program that provides:
- Initial training requirements or certifications for ERD staff and departmental HR staff assigned as investigators,
  - Periodic training for ERD staff and departmental HR staff investigatory staff,
  - Periodic training course to all City employees that covers discrimination, harassment, and retaliation and the City’s policies, and
  - Advanced courses covering discrimination, harassment and retaliation for supervisory and managerial employees.

**Management Response:**

Concur

**Proposed Implementation Plan:**

For investigators, the City has contracted with the Federal Equal Employment Opportunity Commission (EEOC) to provide training to staff conducting HR investigations. The first class occurred in late January 2017, and the second class is scheduled for March 2017. Options for periodic training for investigators will be evaluated.

For Employees, current training opportunities for employees include "Preventing Harassment and Creating a Respectful Work Environment." HRD is developing an online module that will providing training on discrimination, harassment, retaliation, and reporting policies.

For Supervisors and Managers, advanced courses covering discrimination, harassment and retaliation for supervisory and managerial employees are included in the supervisory, management and executive academies. A review of related content will be completed to ensure consistency and reinforcement of city policy and leadership expectations.

**Proposed Implementation Date:**

This will be ongoing, with the online module completed in the summer of 2017.

7. The HRD Director should evaluate alternative organizational structures for conducting investigations that provides for dedicated investigators and evaluate the current staffing allocations.

**Management Response:**

Concur

**Proposed Implementation Plan:**

The HR Director will evaluate other structures for conducting investigations. As noted in the Audit report, each model of investigation structure presents its own advantages and disadvantages. Staffing allocation and impact will be evaluated, consistent with the budget process and timelines; however, initial review of staffing needs indicate at least two additional staff members would be needed to allow for dedicated investigators.

**Proposed Implementation Date:**

Complete evaluation by July 2017