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Report to Mayor and City Council

Wednesday, June 08, 2016

Discussion

SUBJECT:

REPORT ON FRAUD HOTLINE INVESTIGATION AND OPTIONS FOR UPDATING THE FRAUD HOTLINE AND DEVELOPING A FRAUD, WASTE, AND ABUSE POLICY (CITY COUNCIL)

I. SUMMARY

At a City Council meeting in October, 2015, then-Councilwoman Lula Davis-Holmes informed the Council and the public that she had received copies of some anonymous complaints made about her through the City's fraud hotline. This event raised questions about who had disclosed the information to the Councilwoman and whether such person had done anything improper in disclosing the information. This event also raised further questions about whether the hotline was functioning as intended and whether it needed to be restructured to better serve its intended purpose.

Since the receipt of the complaint, the allegations against the Mayor Pro Tem have been investigated and resolved.

In response to this event, the City hired a private investigator to investigate who had disclosed the confidential report to the Mayor Pro Tem. Following the investigation, the investigator concluded that "the preponderance of the evidence is inconclusive." Consequently, there has been no determination of who disclosed the report to the Mayor

Pro Tem.

Another issue, however, arose during the course of the investigation concerning the truth of City Treasurer Monica Cooper's testimony during the investigation. Following the full investigation, the investigator concluded: "The preponderance of the evidence shows that Ms. Monica Cooper made false and/or misleading statements during the course of an official administrative investigation." Before making his conclusion, the investigator gave Ms. Cooper an opportunity to meet with him to explain inconsistencies in her prior statements, admit or deny culpability, and clarify or put into context information that had come to light in investigation, but Ms. Cooper declined the meeting.

A review of the City's fraud hotline ("hotline") has raised questions and concerns that the hotline is not currently working as intended, and consequently should be updated. Recommendations for updating the hotline and creating a Fraud, Waste, and Abuse policy appear below in Section B of the "Analysis" below.

II. RECOMMENDATION

- A. PROVIDE Ms. Cooper with a copy of Mr. Vanacek's Investigative Report and set a public hearing during the next City Council meeting to give Ms. Cooper an opportunity to respond to the conclusions of the investigative report, and then take responsive action including a possible censure, relieving Ms. Cooper of her supervision of the fraud hotline, or any other action the Council deems appropriate.
- B. INSTRUCT City staff to prepare a Fraud, Waste, and Abuse policy, incorporating the policies recommended by staff or other policies that Council deems appropriate, and to present the proposed policy for City Council approval at a later date to effectuate a more effective Fraud Hotline.
- C. DIRECT staff to review the City's website - specifically, the pages concerning the Fraud Hotline - and to prepare to make updates that will implement the changes in the revised policy, improve the visibility of the hotline, and help potential reporters to file appropriate reports.

D. ALTERNATIVES

- A. TAKE no action in response to the investigative report, or take other actions that the Council deems appropriate.
- B. DO NOT make any changes to current fraud hotline and fraud hotline policy.

C. BACKGROUND

A. Report of the Investigation

The City received a complaint against Mayor Pro Tem Davis-Holmes through the Fraud Hotline on October 19, 2015. The main complaints alleged that then Councilwoman Davis-Holmes had failed to pay her business license for a property management business she owns and had ordered staff to cover up parking restriction signs in order to provide

overflow parking for a church event. Since the receipt of the complaint, the allegations have been investigated and resolved. The Mayor Pro Tem had paid her business license fee and the full cost to cover up the parking signs had also been invoiced and paid.

Mayor Pro Tem Davis-Holmes received a copy of the Fraud Hotline Complaint a day after the complaint came into the City, which is a violation of the Fraud Hotline protocol. She publically raised the complaint at the City Council meeting of October 20, 2015. It is unknown if the Mayor Pro Tem knew that her receipt of the complaint violated the Fraud Hotline procedures, however the Fraud Hotline Complaint process has been in effect for a number of years and prior to her election to the City Council, the Mayor Pro Tem was a management level City of Carson employee. It is also unknown if the Mayor Pro Tem received the complaint anonymously.

Since the alleged breach of the investigative protocol potentially involved City staff, it was determined that the City should retain an independent investigator to conduct the investigation. Private investigator George Vanacek was retained to conduct the investigation. The investigation involved interviews with staff in various City departments and everyone involved in the oversight of the Fraud Hotline at the time. The Investigator could not determine who gave the copy of the anonymous complaint to the Mayor Pro Tem.

However, during the course of the investigation, the Investigator determined from comparing witness statements that the City Treasurer had given conflicting testimony. For example, two City staff members indicated that Ms. Cooper had shown them copies of the complaint prior to the City Council meeting where the Mayor Pro Tem discussed the report.

It was determined that the City Treasurer should be re-interviewed in order to provide her with the opportunity to expand upon or clarify the other witnesses' statements. She was contacted by phone and e-mail and refused to be re-interviewed. The Investigator has concluded that there is substantial evidence that Ms. Cooper violated the Fraud Hotline protocol and may have given the copy of the complaint the Mayor Pro Tem. It is unclear if the Mayor Pro Tem knew who gave her the complaint and she was not interviewed formally during this investigation.

B. Current Fraud Hotline Protocol

The current Fraud Hotline was established by the former City Treasurer and the investigation protocol was adopted by the City Council on December 21, 2004. The current fraud hotline is governed by two memos drafted in 2005 (attached as Exhibit 1). Though these memos provide some guidance for the hotline, there is evidence that they are not being followed. Although an official SMP was started, little progress was made toward completing it.

The protocol relies on a third party company to receive the complaint. The company explains to the complaining party that their complaint is to be kept anonymous, however they may be contacted by an investigator as part of follow-up actions.

The third party administrator forwards the complaint to the City Treasurer, the Assistant City Manager and the City Controller. The complaint is supposed to be forwarded to the

Captain of the Carson Sheriff's Station and the City Attorney. However, during the course of this review it was determined that the City Attorney was not receiving copies of the complaints and it was determined that the prior Sheriff's Captain (who had since been promoted) was receiving the complaints. Last year it was determined by management to only refer allegations of possible criminal misconduct to the Sheriff's Captain.

For service requests, Carson also has a website called "City Service Request" where users can make a service request, ask for additional information, or report a problem.

Analysis

The City Council may investigate allegations of misconduct by City officials to determine if corrective or disciplinary actions are justified. The City Council recently completed an investigation concerning the behavior of the former City Clerk, Mr. Jim Dear. This investigation concluded that Mr. Dear's actions and behavior warranted action by the City Council in order to protect the integrity of the City as well as the safety of the employees. Mr. Dear refused to provide rebuttal or participate in the censure hearing and left the City Council with few choices other than to adopt the censure resolutions and to remove staff from his direct supervision to protect staff.

While the allegations made against Ms. Cooper are unrelated to those made against Mr. Dear, and are of a different nature, staff nonetheless recommend that the City conduct a hearing to determine if Ms. Cooper's actions have violated the City's Code of Ethics (CMC 2450), and, if so, what disciplinary actions should be taken. Such actions could include a censure or the permanent removal of Ms. Cooper from oversight of the Fraud Hotline. Ms. Cooper has already been temporarily removed from her role in overseeing the Fraud Hotline. If the Council decides to conduct such a hearing, Ms. Cooper should immediately receive a copy of the Investigative Report so that she can be informed about the allegations made against her.

Suggested Revisions to the Fraud Hotline

A review of the City's fraud hotline has raised questions about whether the hotline is working as intended. There are a few primary areas of concern:

- The hotline is sometimes used for reporting issues which the City may not have jurisdiction over and as such it can be turned into a political tool rather than a mechanism for reporting actual fraud;
- The hotline is being used to report other non-fraud issues such as maintenance or "fix-it" issues, and personnel issues; and
- The hotline also currently lacks a comprehensive Fraud, Waste, and Abuse Policy to govern the use of the hotline and the investigation of hotline reports.

In light of these concerns and the fact the City currently lacks a comprehensive policy that governs the hotline, staff recommends that the City authorize the creation of a comprehensive Fraud, Waste, and Abuse Policy. Such a policy would need to address the following issues:

1. Confidentiality and Anonymity

Government Code § 53087.6, which authorizes the creation of a whistleblower hotline by an elected city auditor or controller, contains requirements regarding confidentiality which related to the issue of anonymity:

- Subsection (c) - The content of the Incident Report, the identity of the caller, and the party(ies) identified by the caller shall all be kept confidential during the initial review of the Incident Report.
- Subsection (e)(1) - The identity of the caller shall not be disclosed without the written permission of that person, unless the disclosure is to a law enforcement agency that is conducting a criminal investigation.
- Subsection (e)(2) - Any investigative audit shall be kept confidential, except to issue any report of an investigation that has been substantiated, or to release any findings of a completed investigation deemed necessary to serve the interests of the public. Even in these cases, however, the identity of the caller(s) and the employee(s) involved shall be kept confidential.
- Subsection (e)(3) - Notwithstanding (e)(2), a copy of a substantiated report with the name of the employee(s) involved may be provided to appropriate authorities for disciplinary purposes. The substantiated audit report, any subsequent investigatory materials or information, and the disposition of any resulting disciplinary proceedings are subject to the confidentiality provisions of applicable local, state, and federal statutes, rules, and regulations.

In summary, the identity of the caller must be kept confidential (i.e., may not be disclosed) throughout the entire investigatory process, unless the caller gives written permission or unless the disclosure is to a law enforcement agency that is conducting a criminal investigation. Even when the findings of an investigation are released to the public, the identity of the caller still must be kept confidential.

As long as a caller's identity is kept confidential, the City may still require a caller to give his or her name to the intake operator - in other words, the City does not need to allow for anonymous reports, so long as the identity of the caller is kept confidential. Prohibiting anonymous reports could deter frivolous or malicious reports, and would also make it easier to follow up with reporters. Consequently, staff recommends that the City stop allowing anonymous reports, but make sure that the City simultaneously complies with all confidentiality requirements in California law.

2. Reports about Elected Officials

As the City does not have the power to discipline elected officials, it is not practical for the City to investigate reports made against elected officials that concern abuses of office. These reports would be better handled by the District Attorney (DA) or the California Fair Political Practices Commission (FPPC), which routinely investigate misconduct by public officials. This does not mean, however, that the City should not investigate *any* reports about elected officials. Reports about an official's conduct that may affect the well being of City employees - for example, harassment or retaliation - should continue to be investigated by the City, even if the City cannot take disciplinary actions against elected officials, because the City has an obligation to protect its employees. Consequently, staff recommends that the City continue to accept reports about public officials, but also make a clear policy that any report regarding abuse of office by an elected official will be immediately forwarded to an outside authority such as the DA or the FPPC, and will not be investigated by the City.

3. Oversight of the Hotline

On paper, Carson currently has a Fraud Prevention Committee comprised of the City Treasurer, City Attorney, Captain of the Carson Sheriff's Station, and Administrative Services General Manager. However, in practice, the Assistant City Manager is currently managing the hotline and receiving the incident reports. As part of the formation of a new Fraud, Waste, and Abuse policy, the Council should consider who it would like to oversee the fraud hotline and the enforcement of the Fraud, Waste, and Abuse policy. City staff recommend that the policy be revised to place the following people on the Fraud Prevention Committee: (i) the director of human resources (specialty in personnel issues), (ii) the assistant City Manager (specialty in the overall administration of the City), (iii) the Captain of the Carson Sheriff's Station (specialty in law enforcement), and (iv) the City Attorney (specialty in legal analysis).

4. Continue to Encourage Internal Reporting and Appropriate External Reporting

Employees should continue to be encouraged to report to supervisors about employment issues such as discrimination, retaliation, sexual harassment, substance abuse, and workplace violence or threats. Furthermore, the policy should encourage employees and members of the public to report appropriate matters to other public agencies, including law enforcement agencies.

5. Clarification of What Counts as Fraud

Many people only have a vague idea of what counts as fraud, so it would be helpful for the City to make this clear by giving examples of the kinds of things that should be reported and also of the kinds of things that do not count as fraud and should be addressed through other avenues.

6. Updates to Fraud Hotline Website

Finally, no matter how the hotline is structured, it must be readily available to users. It is likely that most people trying to find information about the fraud hotline will look online. However, it is currently very difficult to find the webpage for the fraud hotline. A Google search for "Carson fraud hotline" results in a page that no longer exists, and searching for "fraud hotline" in the search bar on the City's website yields no results. There is a Fraud

Hotline webpage but it is listed under the Human Resources tab, which is likely not the first place someone would look for it. No matter where it is, it needs to come up in a Google search and a Carson website search if people are going to be able to find it.

Consequently, staff recommends that any restructuring of the hotline include an update of the City's website to make the site more easily searchable, to make sure that the Fraud Hotline comes up in a Google search, and to make sure the hotline webpage sufficiently informs potential users of the proper way to use the hotline.

D. FISCAL IMPACT

None.

E. EXHIBITS

1. Memo - City of Carson Fraud Hotline, dated 2-3-05 and memo - Fraud Hotline Procedures, dated 10-12-05. (Pages 8 - 11)

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