



CITY OF PALO ALTO OFFICE OF THE CITY AUDITOR

July 23, 2012

The Honorable City Council
Palo Alto, California

Policy and Services Committee Recommendation to Accept the Policy for Administering the Employee Ethics Hotline

The City Auditor's Office recommends acceptance of the Policy for Administering the Employee Ethics Hotline. At its meeting on June 12, 2012, the Policy and Services Committee approved and unanimously recommended the City Council accept the report. The Policy and Services Committee minutes are included in this packet.

Respectfully submitted,

Jim Pelletier
City Auditor

Department Head: Jim Pelletier, City Auditor



City Employee Fraud, Waste, and Abuse Hotline Administration Policy

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CITY OF PALO ALTO*Fraud, Waste, and Abuse Hotline Administration Policy***1. Objective**

The primary objective of the City of Palo Alto Fraud, Waste, or Abuse Hotline (“Hotline”) is to provide an anonymous mechanism for employees to report fraud, waste, or abuse by City employees.

City employees who have specific information that other City employees have engaged in fraud, waste, or abuse are encouraged to report such information through the normal chain of command which includes their immediate supervisor, manager, department head, Human Resources, and the City Manager’s Office (CMO). However, there may be certain circumstances where an employee believes it is necessary to remain anonymous. The Hotline provides an anonymous method of reporting such incidents over the phone to a third-party interviewer or via an anonymous web form. The City believes that anonymity is a last resort and should only be used after other reporting methods have been attempted or when the employee has a reasonable good faith belief that it is necessary. All reports made regarding fraud, waste, or abuse should be made seriously and with due professional care.

2. Structure

The Hotline is hosted by an independent, third-party provider (vendor) contracted by the City. The vendor provides the option for callers to provide information over the Hotline anonymously. The vendor issues an Incident Report for each call and submits the Incident Reports for review and referral. The vendor provides offsite hotline coverage 24/7/365 and live interviewers who obtain the information deemed necessary to verify and process the complaints. This information is then transcribed into an Incident Report, housed in a case management system.

3. Hotline Review Committee

The Hotline Review Committee (“Committee”) is composed of the following members or their designees: the City Auditor, the City Manager, and the City Attorney. The Committee meets as needed to review all activity related to the Hotline. The objectives of the Committee are to review all Incident Reports, determine whether an Incident Report should be investigated, assign Incident Reports to the appropriate department or unit for investigation, ensure that Incident Reports that are assigned for investigation are adequately investigated, and address any trends in activity or weaknesses in City policies requiring corrective action to be taken. Duplicate reports or reports that do not suggest fraud, waste, or abuse may be closed without further investigation.

4. Case Management

The online case management system allows for all Hotline reports to be recorded, updated and tracked in one centralized system to ensure that all reports are addressed appropriately and that the outcomes are consistent. All Incident Reports are maintained in the secured case management system and are periodically updated with the status of the investigation by the specified department case management users and the OCA. Case management users include staff of the OCA who act as administrators of the case management system, and one or more members of management from each department who will

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be assigned to respond to incidents within their departments. User access is limited to cases assigned to them.

Additionally, the CMO will be provided certain administrative functions in the case management system in order to create a check-and-balances system to ensure that the OCA is not investigating reports that could be a conflict of interest for OCA employees.

5. Case Dissemination

After a call has been entered as an Incident Report and logged into the case management system by the vendor, the report is sent electronically to the appropriate contacts at the OCA for preliminary review within 24 hours. The OCA will triage the report to determine if immediate action may be necessary. If immediate action appears necessary, the OCA will contact the Hotline Review Committee who will decide whether to initiate an investigation. Incident Reports requiring immediate action include those involving possible fraud, waste, or abuse by City executives, or other incidents based on the judgment of the Hotline Review Committee. All other cases will be referred to the Hotline Review Committee in their scheduled meetings.

If an Incident Report involves one or more members of the Hotline Review Committee, those individuals shall be excluded from any decisions or activities related to the review and/or investigation of that Incident Report. If this occurs, a Senior Performance Auditor, Assistant City Manager, and/or Senior Assistant City Attorney, if needed, will act as members of the Hotline Review Committee to ensure there are a minimum of two officials providing oversight of the review and investigation of the Incident Report.

Because the members of the Hotline Review Committee are appointed by the City Council, the Hotline will not accept incidents involving members of the City Council. Employees reporting these types of complaints will be referred to the California Fair Political Practices Commission, the District Attorney's Office, or other appropriate outside agency, depending upon the nature of the complaint.

Each department will have one or more dedicated contacts who will receive the Incident Report from the Hotline Review Committee, disseminate it to the appropriate staff within their department, and access the Report in the case management system to either assign it to another user in their department to manage the case or make updates as to the case disposition themselves. The dedicated department contact will complete the preliminary case closure before the Hotline Review Committee reviews and formally closes an Incident Report.

As the Hotline Administrator, the OCA will be responsible for:

- Monitoring of all Incident Reports referred to other departments or units for investigation, and their outcomes,
- Conducting an independent investigation of reported incidents when appropriate,
- Monitoring the timeliness of department responses based on timeframes established by the Hotline Review Committee, and
- Closing Incident Reports after the final review of the Hotline Review Committee.

CITY OF PALO ALTO*Fraud, Waste, and Abuse Hotline Administration Policy***6. Escalation**

An incident is designated for escalation if there is an imminent or significant threat of actual harm to employees, customers, or operations. When a report is designated for escalation by the vendor, they shall immediately call the appropriate designated contact(s) provided by the City. Escalation contacts include the members of the Hotline Review Committee and their designees.

7. Reporting

The case management system allows for customized reporting of incidents reported to the Hotline. Users may sort information and run reports on cases assigned to them, and administrators may create reports on case dispositions, status, corrective action taken, and other trends. The OCA will provide a quarterly summary report of complaints received by the Hotline to the City Council as an Information Item. The form and content of the quarterly report shall be at the discretion of the City Auditor, will be presented to and reviewed by the Hotline Review Committee, and will generally include the following:

- The number of reports made to the Hotline,
- The general types of complaints received,
- Any trends in the types of complaints received, and
- Any corrective action taken by City management as a result of a complaint received.

8. Prohibition Against Retaliation

No department or employee shall take any adverse action or retaliate against any employee for making a report to the Hotline (except as provided in "Filing of Malicious Complaints," below). Additionally, no reprisal shall be taken against any employee who participates in any manner in the investigation and disposition of a Hotline Incident Report.

This Prohibition Against Retaliation is a statement of City policy. It is not intended to and shall not create a private right of action enforceable in state or federal court on behalf of any person, against the City or any employee, for equitable relief or damages.

9. Terms and Definitions

Under California law, the term, "fraud, waste, or abuse" means:

Any activity by a local agency or employee that is undertaken in the performance of the employee's official duties, including activities deemed to be outside the scope of his or her employment, that:

- Is in violation of any local, state, or federal law or regulation relating to:
 - Corruption,
 - Malfeasance,
 - Bribery,
 - Theft of government property,
 - Fraudulent claims,

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- Fraud,
 - Coercion,
 - Conversion,
 - Malicious prosecution,
 - Misuse of government property, or
 - Willful omission to perform duty,
- Is economically wasteful, or
 - Involves gross misconduct.

10. Security of Incident Reports and Associated Reports, Working Papers, and Other Related Documents

- Incident Reports, associated reports, working papers, and other documents referring to or describing Incident Reports, which are received either through the Hotline, by mail, or e-mail shall remain confidential to the extent allowed by law.
- Incident Reports and associated case numbers shall only be provided to individuals who are responsible and essential for conducting the investigation or reviewing of the Incident Report. These individuals are required to hold such information in confidence, to the extent allowed by law.
- The confidentiality of all Incident Reports, associated reports, working papers, and other documents shall be maintained at all times by the City Auditor and investigating/reviewing departments, who shall take such measures as they determine are reasonable and necessary to maintain the confidentiality of such information and documents, to the extent allowed by law.
- City Staff responsible for reviewing/investigating Incident Reports can make investigative disclosures of information contained in an Incident Report to the extent necessary for obtaining additional information relevant to the investigation.
- The Hotline Review Committee is authorized to determine the distribution or release of any Incident Reports, associated reports, working papers, other documents and correspondence associated thereto, in accordance with the California Public Records Act and other applicable law.
- The City Council may, at their discretion, authorize the release of information relative to substantiated incident reports.

11. Custody of Investigation Documents

The City Auditor shall maintain custody of Incident Reports, associated reports, working papers, emails, and all other pertinent information regarding any investigations of Incident Reports. Other parties involved in the investigation shall also retain their own documentation. All such documents shall be retained and or disposed of in accordance with applicable document retention policies of the City.

12. Public Requests for Information Regarding All Incident Reports

All requests for information concerning any Incident Report shall be directed to the City Auditor for a response. The City Auditor, with the guidance of the Hotline Review Committee, shall respond to such

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requests as permissible and in accordance with applicable state law and City policy, rules and regulations.

Departments shall notify the City Auditor of any Public Records Act or other requests for information or documents regarding Incident Reports received through the City Auditor or the Hotline.

13. Filing of Malicious Complaints

The City will not tolerate malicious complaints. The processing of a complaint/concern requires staff time and attention regardless of its appropriateness. Complaints/concerns will not be considered malicious merely because they are determined to be unsubstantiated. A malicious complaint/concern is one that is made in bad faith or with knowledge that the complaint entirely lacks any factual basis. Malicious complaints may result in disciplinary action in accordance with applicable City policies and procedures, up to and including termination from employment.



CITY OF PALO ALTO OFFICE OF THE CITY AUDITOR

June 12, 2012

**The Honorable City Council
Attention: Policy & Services Committee
Palo Alto, California**

Policy for Administering the Employee Ethics Hotline

In accordance with the Fiscal Year (FY) 2012 Annual Audit Work Plan, the City Auditor's Office has contracted with EthicsPoint, Inc. to implement an employee-only fraud, waste and abuse hotline. In July 2011, the City Council approved the Auditor's Office implementation plan for an 18-month pilot program. The Auditor's Office will coordinate with the City Manager's Office and the City Attorney's Office in responding to complaints. The Auditor's Office will also provide the Policy and Services Committee with regular reports on the implementation of the hotline.

The City Auditor's Office recommends the Policy and Services Committee accepts and recommend to the City Council the City Employee Ethics Hotline Administration Policy.

Respectfully submitted,

Jim Pelletier
City Auditor

ATTACHMENTS:

- Attachment A: Ethics Hotline Administration Policy (PDF)

Department Head: Jim Pelletier, City Auditor



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POLICY AND SERVICES COMMITTEE

Special Meeting
June 12, 2012

Roll Call

Chairperson Holman called the meeting to order at 6:03 p.m. in the Council Conference Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Espinosa, Holman (Chair), Klein, Schmid

Absent: None

Agenda Items

1. Policy for Administering the Employee Ethics Hotline

City Auditor, Jim Pelletier introduced the City Employee Fraud, Waste, or Abuse Hotline Administration Policy and asked the Policy and Services Committee to accept and recommend the policy to the full Council. He stated that the policy was developed to provide a framework for administering the hotline. The objective of the hotline is to add an anonymous route that employees can take to report problems within the City. Administration through a third party vendor will maintain anonymity. One of the key components is the establishment of the Hotline Review Committee (Committee) that is comprised of the City Auditor, the City Attorney, and the City Manager. The Committee will be responsible for reviewing every case that comes through the hotline. The vendor would provide a case management system to allow for real time monitoring and case tracking. The case escalation section described how immediate notification from the vendor would be possible in certain circumstances. Reporting should remain as limited as possible to support the integrity of the hotline by maintaining the anonymity and confidentiality to the extent required by law. The general type of reporting that would be disclosed in quarterly reports to Council include number of reports made, the

type of reports received, any trends in the types of complaints, and type of corrective action taken. State law addressed whistleblower protection as discussed in section eight. The recommended policy would be limited to fraud, waste, and abuse as defined by California law. Other types of calls outside these definitions may be received, reviewed by the Hotline Review Committee, and ultimately acted upon if necessary. Sections 10, 11, and 12 describe how Staff will maintain control of the information and documentation related to the hotline. The City would not tolerate malicious complaints and would investigate any such complaints.

Council Member Espinosa asked if the policy addressed concerns that were raised by the City Manager's Office during the preliminary discussions of how the hotline would function.

City Manager, Jim Keene said yes. He said the City Attorney's Office and City Auditor's Office worked with the City Manager's Office on the policy and the mechanics of it. No Staff had been added to manage this initiative. He said if any viable complaints were received through the hotline, then it would be successful. If Staff investigates many complaints with no merit then the process should be reviewed with Council.

Council Member Espinosa asked what would happen if the hotline received more complaints than the Committee could handle in four months.

Mr. Keene said the Committee would handle it. The Committee would work collaboratively to decide whether Council should be consulted for a resolution.

Council Member Klein referred to section one of the policy. He was concerned about encouraging employees to report fraud, waste, or abuse to the City Auditor's Office. He thought it would be out of the line of command.

Mr. Pelletier replied that the goal was to provide an alternative reporting route in case Staff did not want to go through their chain of command. Employees would be encouraged to come forth and talk to someone before a situation was escalated.

Council Member Klein said he would be troubled if there were many people that went to the City Auditor's Office instead of their supervisor or the City Manager's Office to report a complaint.

Mr. Pelletier agreed. He said some employees may not feel comfortable going through the chain of command, or some might even feel like their job is at risk if they take that approach.

Council Member Klein asked if there were other instances where the City Auditor's Office would be used as an option for employees to report complaints.

Mr. Pelletier replied yes. He did not have specific data relating to other cities available. The process was meant to be another route for reporting beyond the chain of command if employees did not feel comfortable.

Mr. Keene added that Staff worked hard to address concerns regarding roles. Mr. Pelletier stated that he understood Council Member Klein's point. He said the intent as for Staff to go through the chain of command unless an employee did not feel comfortable with that route. At that point they could go to the City Auditor's Office as an alternative route – just like the hotline was intended as an alternative route. Ultimately everything went through the Hotline Review Committee for review and action.

Mr. Keene said the point of establishing the hotline related to legislation that allowed the City Auditor's Office to manage the hotline as well as maintain that independence from the rest of the organization.

Council Member Klein said there were three alternatives: 1) leave the language as is and record the number of instances reported to the City Auditor, 2) eliminate the City Auditor's Office from the chain of command, or 3) change the language so it said "...or the Office of the City Auditor, but only in extraordinary circumstances

Mr. Keene responded that it would be clearer if to remove the language.

City Attorney, Molly Stump said the language provided another forum for employees to report complaints without anonymity. The language could be edited so that if employees would like to access the hotline process through the City Auditor's Office, but don't feel the need for anonymity, they could do so.

Council Member Klein said that would make for more significant re-writing of the policy.

Ms. Stump said the City Auditor could take direction from the Policy and Services Committee and handle that clerically.

Council Member Klein referred to the last paragraph of the policy. He asked how the Committee would be able to investigate a malicious complaint if the person remained anonymous.

Mr. Pelletier responded that in some cases they may not be able to.

Council Member Klein indicated that the very act of an investigation potentially harms whoever is being complained about. He asked how the City would handle a Staff

Member who filed a malicious complaint if there is no way to find out who filed it. He said this language may even discourage someone from reporting a complaint.

Ms. Stump said at some point in a substantial investigation information would be revealed. Someone might come forward to divulge more pertinent information. This proposed language was a strong statement against malicious complaints.

Council Member Klein said another sentence should be added that addressed malicious complaints. The City would not break the wall of anonymity, but evidence could be developed from other sources as to who the complainant is.

Mr. Keene said he understood the intent, but it sounded as if the anonymity piece could not be full proof. The reaction was to think there were other ways to discover the identity of a complainant.

Ms. Stump said it would be a very rare circumstance where city leaders would feel it would be appropriate to launch an investigation as to who made a complaint.

Mr. Keene said there could be more meaningful conversation if malicious complaints were received. People's reputations could be easily damaged, and that must be respected.

Mr. Pelletier agreed. He stated that was a risk of having an anonymous hotline. The opposing risk was a fraudulent or abusive act that was untouched because an employee did not have an anonymous way to report a complaint. It was a matter of weighing those risks against one another and the larger risk was missing a potential fraud that could go unnoticed for years and snowball into something unmanageable.

Council Member Schmid asked about the timeline to start fielding complaints.

Mr. Pelletier responded that the hotline could be launched once the full Council approved this policy.

Council Member Schmid referred to section two. He asked if interviewers who field hotline complaints question other City Staff for more information.

Mr. Pelletier answered no. He said a caller would give a case number and asked to follow up a certain amount of days later. Follow up questions would be input into the case management system so when the caller called back, the interviewer could ask those questions.

Council Member Schmid confirmed the goal of the hotline was for the use of City Staff only. He asked how they would know if the person calling was in fact a city employee.

Mr. Pelletier replied that that was a limitation of an anonymous system. There would be no method to confirm that the caller was truly an employee.

Council Member Schmid confirmed that quarterly reports would be presented as Informational Items to the Council with a listing of each type of report during that period. He said, referring to a clause in section eight of the policy: "This Prohibition against Retaliation is a statement of City policy. It is not intended to and shall not create a private right of action..." He asked if "It" referred to City policy or Prohibition against Retaliation.

Ms. Stump responded that Prohibition against Retaliation was not intended to create a basis for suing the City. This language allowed the City to avoid that possibility.

Council Member Schmid referred to section nine. He asked what "Conversion" meant under Terms and Definitions.

Ms. Stump replied that the definition was taken directly from State law.

Council Member Schmid referring to section nine asked if being "Economically wasteful" was illegal.

Ms. Stump said California law defined fraud, waste, and abuse in exactly those terms. The idea was to give employees guidance as to what the program was intended to include and not include.

Council Member Schmid referred to section ten, bullet three. He asked if the confidentiality held in a criminal act.

Ms. Stump said if there was criminal prosecution involved, certain parts of the report could become public. There would be a variety of roles that govern the outcome.

Council Member Schmid referring to section ten, bullet five, asked if the report would become public through the Public Records Act.

Ms. Stump replied that it would depend on the nature of the records, what records were being sought, and the status of the item.

Council Member Schmid referred to section twelve: "All requests for information concerning any Incident Report shall be directed to the City Auditor for a response." He asked for clarification on this statement.

Mr. Pelletier said ultimately all decisions would be made by the Hotline Review

Committee. The City Auditor's Office held an administrative role in that regard.

Mr. Keene said this was designed to refer repeatedly so that it was clear that the manager of the hotline was the City Auditor.

Council Member Klein asked about harassment. He thought it was covered under the hotline but did not see anything mentioned in the policy.

Ms. Stump said harassment would fall under "gross misconduct".

Council Member Klein asked what the City's policy is regarding harassment.

Mr. Pelletier responded there could be no control over the type of calls that might come in. If the Hotline Review Committee decided not to review an item, they could forward it on to the appropriate department/person.

Council Member Klein said most harassment claims will not be anonymous. He asked if they thought it would be good to include language stating harassment was covered.

Ms. Stump replied the Hotline Review Committee would work that out over time. As items were reviewed they may recommend language changes to the policy.

Mr. Keene stated he did not like the anonymity issue. There was as much risk for mischief as there was for catching the embezzler. He said he also had concerns with the definitions of fraud, waste, and abuse. He said a complaint would be more powerful if it was not anonymous. If many complaints were filed by people fearful of retaliation, an organizational/cultural issue would be apparent.

Chair Holman said she was glad this was moving forward. She asked if harassment and discrimination should be added to the policy. She said the purpose of this needed to be clear to the employee. She did not know if "gross misconduct" would be interpreted by everyone as harassment or discrimination.

Ms. Stump said one practice when managing a diverse group of employees regarding harassment and discrimination was to provide multiple avenues for people to come forward when they had a complaint. If there was an issue, the City wanted to know about it as soon as possible. Either way, it would sort its way out. The City had other policies to report cases like this.

Chair Holman stated the feeling of anonymity did not seem to apply to harassment or discrimination.

Mr. Keene said other channels existed for employees to remain anonymous aside from

the hotline.

Mr. Pelletier said there was a limitation to the hotline. The law provided the authorization for the City Auditor's Office to have a hotline for fraud, waste, and abuse. The recommendation was to limit this policy to that definition of fraud, waste, and abuse.

Chair Holman referred to section one: "City employees who have specific information that other City employees have engaged in fraud, waste, or abuse are encouraged to report such information to their immediate supervisor, manager, department head, Human Resources, the City Manager's Office (CMO), or the Office of the City Auditor (OCA)." She asked if "obligation" or "responsibility" would be better language than "encouraged".

Mr. Pelletier said they could consider that change, but the reason anonymity was established was to give Staff who did not feel comfortable another mechanism to report complaints. He did not want to discourage that. The City should provide training to Staff encouraging them to follow the chain of command, but if all else fails, the hotline is there for employees to report complaints.

Chair Holman raised the possibility of people feeling pressured if "encouraged" was replaced with "obligation or "responsibility". She asked about Staff training and launch information.

Mr. Pelletier responded that the Hotline Review Committee would determine these details.

Council Member Schmid asked if the script that the vendor would use would encourage Staff to attempt other means before contacting the hotline.

Mr. Pelletier said that was a great idea. He said the script was customizable and it could be written to encourage employees to follow the normal processes before making a complaint through the hotline.

Chair Holman asked about the Hotline Review Committee and whether complaints would be forwarded to the appropriate department or unit.

Mr. Pelletier said the purpose of the Hotline Review Committee was to determine who should follow up.

Ms. Stump added that should be the City Manager's decision.

Mr. Keene said instituting an anonymous hotline is one of a hundred streams of

communication in an organization.

Ms. Stump said in terms of deciding where the best place to investigate it was, most of the investigative ability is in the City Manager's realm. Mr. Keene would consult with the other two members of the Hotline Review Committee, but ultimately would be his decision.

Chair Holman said other people will be involved in the investigative review process. However, she did not see anywhere in the policy where confidentiality applied to the others that will be involved in the process.

Ms. Stump that goes to a level not described in this policy regarding what makes good investigative practice. It is already an established item within Human Resources and management. There are limits to promising people confidentiality and that is not a good practice to do so sometimes. It is important not to mislead people about that.

Mr. Pelletier said Chair Holman's concern was covered in section ten, bullet two: "Incident Reports and associated case numbers shall only be provided to individuals who are responsible and essential for conducting the investigation or reviewing of the Incident Report. These individuals are required to hold such information in confidence, to the extent allowed by law."

Chair Holman said she is concerned with people verbally disclosing information. Mr. Keene said this is one piece of an entire organization. We have many mechanisms for reporting.

Chair Holman said she understood that, but she wanted to be as clear as possible. She asked what could be added to the policy that might help a department head investigate a matter that had to do with a Human Resources issue for example.

Mr. Keene said this is a policy to administer and receive complaints. It is not a set up for discipline and investigative procedures.

Mr. Pelletier agreed and added Staff wanted to make sure to draw the line between the policy approved by Council versus general policies and procedures.

Chair Holman said it would make her feel comfortable if the Human Resources policy was referenced.

MOTION: Council Member Klein moved, seconded by Council Member Espinosa that the Policy and Services Committee accept and recommend the policy to the full Council, with the change to the language in section one stating that employees can approach the City Auditor directly with any non-anonymous complaints.

Council Member Klein said he was more concerned. If this was to work properly, it should be used very rarely. He would be very disappointed if the City had even a handful of complaints over the course of a year. He is reasonably satisfied with the language.

Council Member Espinosa clarified that Mr. Pelletier should reword section one to clarify chain of command issues. He also confirmed that the Hotline Review Committee will consider clarification of malicious complaints, harassment, and discrimination. This would become a policy, not an addition to the Motion.

Council Member Schmid said he supported the Motion. He said it was clear that the City Auditor, City Attorney, and City Manager had given this much consideration and he had confidence in the Hotline Review Committee. He recognized the heavy responsibility that fell upon the Committee Members.

Chair Holman said she is glad this is coming together with everyone on the same page. She agreed that this tool should be rarely used if handled properly.

MOTION PASSED 4-0.