



AUDITOR GENERAL'S REPORT ACTION REQUIRED

Protecting Whistleblowers from Retribution

Date:	January 24, 2011
To:	Audit Committee
From:	Auditor General
Wards:	All
Reference Number:	

SUMMARY

The Auditor General's Office received a complaint, through its operation of the City's Fraud and Waste Hotline Program, involving allegations of retribution in contravention of the City's Fraud Prevention Policy. The complainant, who had been terminated without cause, alleged that the termination was related to a complaint made to the Auditor General's Office. Given the nature and sensitivity of the retribution complaint, the Auditor General escalated the matter directly to the City Manager for his review and attention.

Our Office coordinated the investigation and the resolution of this complaint in consultation with the Executive Director of Human Resources and the City Solicitor's Office.

The complaint of retribution has been substantiated and the employee's termination has since been rescinded.

In a separate letter to management, the Auditor General requested that the City Manager review the Auditor General's finding of retribution with relevant management staff and take appropriate action.

RECOMMENDATIONS

The Auditor General recommends that:

1. The City Manager, in consultation with the City Solicitor and Executive Director, Human Resources, take immediate action to provide guidance and reinforce staff's awareness of the Whistleblower Protection provisions in the Fraud Prevention Policy.

2. The City Manager be required to add to the Fraud Prevention Policy specific details relating to the consequences of non-compliance with the policy, in particular, contravention of the Whistleblower Protection provision.
3. The City Manager give consideration to directing management to notify the City Manager of instances where proposed action against an employee may contravene the Whistleblower Protection afforded under the Fraud Prevention Policy.

Financial Impact

The implementation of the recommendations in this report may mitigate the risk of retribution by management who take unwarranted action against employees who report complaints of fraud, waste or misuse involving City resources. Retribution against employees who report complaints exposes the City to risk of loss in case of dispute by those employees.

The extent of any potential cost savings resulting from implementing the recommendation in this report is not determinable at this time.

DECISION HISTORY

The City's Fraud Prevention Policy formalized the duty of all employees to report complaints or allegations of wrongdoing involving City resources and includes "Whistleblower Protection," recognizing the importance of protecting those who report allegations from subsequent reprisals.

The City's Fraud Prevention Policy includes:

"9. Whistleblower Protection:

No person covered by this policy shall:

- *Dismiss or threaten to dismiss an employee;*
- *Discipline or suspend or threaten to discipline or suspend an employee;*
- *Impose any penalty upon an employee; or*
- *Intimidate or coerce an employee;*

because the employee has acted in accordance with the requirements of the policy."

The Auditor General has previously reported on the importance of "Whistleblower Protection" in the 2006 and 2009 annual Fraud and Waste Hotline reports.

The 2006 report entitled "Annual Report on the Status of Fraud and Related Matters, Including the Operation of the Fraud and Waste Hotline Program" included a recommendation to provide guidance and training related to Whistleblower Protection. The City Manager implemented training entitled, Mission, Values and Ethics of the Toronto Public Service, although it does not provide specific guidance on Whistleblower Protection or retribution.

The Auditor General has made a separate recommendation in its 2010 Annual Hotline Report to address the need for ethics training to include guidance on what may constitute retribution and the importance of protecting those who report complaints.

COMMENTS

Complaint of Retribution

The Auditor General's Office received a complaint through its operation of the City's Fraud and Waste Hotline Program involving allegations of retribution against an employee by a Division, in contravention of the City's Fraud Prevention Policy. The allegation of retribution stems from a complaint made to the Auditor General's Office which resulted in the employee being terminated without cause.

Divisional management consulted with City Legal Services and Human Resources prior to proceeding with the termination of the employee, despite the obvious risk that the termination would be considered retribution against the employee who made a complaint to the Fraud and Waste Hotline.

Given the nature and sensitivity of the retribution complaint, the Auditor General escalated the matter directly to the City Manager for his review and attention. Our Office coordinated the investigation and resolution of the complaint with the Executive Director of Human Resources and the City Solicitor's Office.

The employee's termination has since been rescinded. The Auditor General has issued a confidential management letter to the City Manager outlining his significant concerns relating to the finding of retribution.

Whistleblower Protection

The real or perceived risk of retribution against a person who reports allegations of wrongdoing against a colleague, superior or a City vendor is a decisive reason for many to remain silent.

In Canada various provincial and federal statutes include specific Whistleblowing Protection effectively recognizing the importance of protecting the "Whistleblower" or person reporting allegations of wrongdoing.

How the City manages the risk of retribution and protects Whistleblowers remains an area of on-going concern for the Auditor General's Office, as it has the potential to significantly compromise the integrity of the Fraud and Waste Hotline Program.

CONCLUSION

The strength of the City's Whistleblower Protection is tested in cases such as this one, where the employee was terminated without cause for making a complaint and reporting concerns through the City's Fraud and Waste Hotline.

While the Auditor General's Office is responsible for the operation of the City's Hotline Program, set-up as a centralized facility for reporting complaints, management is responsible for ensuring employees may report allegations of wrongdoing without retribution or reprisal. Failure to do so compromises the effectiveness of the City's Hotline Program as the fear of retribution will deter people from reporting allegations of wrongdoing against a colleague, manager or a City vendor.

The issues identified in this report are particularly disconcerting because without the intervention of the Auditor General's Office, a Whistleblower would have been terminated.

The Auditor General has discussed this matter on a number of occasions with the City Manager. It is important that all staff be made aware that any retribution against a Whistleblower will not be tolerated. When instances of Whistleblower retribution have been proven, it is important that action be taken against those staff who have been a party to the retribution.

The importance of protecting those who report wrongdoing should be conveyed to City employees, through policy, training and good leadership with a view to fostering a positive ethics culture at the City that recognizes the value of reporting wrongdoing.

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SIGNATURE

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