

Investigation into Allegations of Reprisal for Reporting a Conflict of Interest

Date: June 19, 2024
To: Audit Committee
From: Auditor General
Wards: All

SUMMARY

This report provides the results of an investigation into an allegation of reprisal from a City of Toronto employee in the Municipal Licensing and Standards Division. The employee claimed they were facing reprisal by management for disclosing a conflict of interest to the Fraud and Waste Hotline.

In accordance with the Toronto Public Service By-law, Chapter 192, the Auditor General's Office (AGO) has the responsibility to investigate reprisal, in consultation with the City Manager or designate. Reprisal investigations are complex, and therefore the Auditor General initiated an investigation into the allegations.

Under the *City of Toronto Act*, the Auditor General is also responsible for assisting City Council in holding itself and City administrators accountable for the quality of stewardship over public funds and for achievement of value for money in City operations. Ensuring that employees can come forward in a safe environment to report potential wrongdoing is a key internal control that helps to safeguard City assets and ensure value for money.

Based on the work performed, the Auditor General has concluded that the employee was not subjected to reprisal for reporting a conflict of interest to the Fraud and Waste Hotline. No further action is recommended with respect to the alleged reprisal.

With regards to the conflict of interest allegation, the Auditor General has concluded that the allegation is substantiated, including a violation of a related section in the Toronto Municipal Code. We have made two recommendations to strengthen the process for reporting and documenting conflicts of interest within the Division to supplement the overarching Conflict of Interest and Confidentiality provisions.

RECOMMENDATIONS

The Auditor General recommends that:

1. City Council request the Executive Director, Municipal Licensing and Standards, in consultation with the Chief People Officer, to develop and implement a framework for Municipal Licensing and Standards staff when declaring conflicts of interest to ensure that there is a standardized process that includes:

- a. conflict of interest declarations are completed in writing;
- b. the appropriate people are notified of the conflict so that proper controls are in place to mitigate and manage the conflict appropriately; and
- c. the documentation is stored in a central location.

2. City Council request the Executive Director, Municipal Licensing and Standards, to ensure staff members have an up-to-date and clear understanding of the Divisional conflict of interest policy and procedure requirements, as well as providing periodic refresher training.

FINANCIAL IMPACT

There is no financial impact associated with this report.

DECISION HISTORY

The Toronto Public Service By-law, Chapter 192, in force as of December 31, 2015, requires that employees immediately report wrongdoing that has occurred. The By-law requires the Auditor General in consultation with the City Manager, to investigate allegations of reprisal.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.EX42.3>

COMMENTS

Disclosure of Wrongdoing and Reprisal Protection

The Toronto Public Service By-law, Chapter 192, requires that employees immediately report wrongdoing that has occurred. Wrongdoing includes the "mismanagement of City resources or assets in a wilful, intentional, or negligent manner that contravenes a City policy or direction by Council", "violations of the City's Conflict of Interest provisions," and/or "breach of public trust".

An employee who reports wrongdoing or reprisal in good faith is not to suffer any retribution, regardless of whether the allegation they reported is found to be substantiated or not.

Reprisal is any measure taken or threatened as a direct result of disclosing or being suspected of disclosing an allegation of wrongdoing. Reprisal can include disciplinary measures, demotion, suspension, intimidation or harassment, or any punitive measure that adversely affects the employee's employment or working conditions, including termination.

The Auditor General, in consultation with the City Manager, is required to investigate allegations of reprisal.

A robust whistleblowing program is one of the strongest mechanisms available for uncovering wrongdoing. Through the operation of the Fraud and Waste Hotline, there are many benefits to the City in having an effective whistleblowing program, most importantly being the early detection and/or prevention of fraud and wrongdoing. Other non-quantifiable benefits are strengthened internal controls, improved policies, and procedures, and increased operational efficiencies.

However, a whistleblowing program is only effective if employees feel their job is not in jeopardy when they report suspected wrongdoing. Reprisal protection helps to ensure employees feel safe when reporting potential wrongdoing. Thus, for the Fraud and Waste Hotline Program to function effectively, there must be no reprisal from reporting suspected wrongdoing.

The Auditor General takes all allegations of reprisal seriously. Reprisal allegations take a great deal of time to investigate because of the complexities – by nature, retaliation is often difficult to prove. Although reprisal was not found in this case, there are many benefits of a reprisal investigation, one of which is closure for those involved. Reprisal investigations also help to retain public confidence; if there was no reprisal the public needs to know that, and if there was reprisal, the public needs to feel confident that the City is committed to taking appropriate steps to address the allegations.

Conflict of Interest Allegation

With regards to the conflict of interest allegation, the Auditor General has concluded that the allegation is substantiated, including a violation of a related section in the Toronto Municipal Code. During our work, we observed that the Municipal Licensing and Standards Division does not have an internal conflict of interest policy that would support the Conflict of Interest and Confidentiality provisions of the Toronto Public Service By-law. We have therefore made two recommendations to strengthen the process for reporting and documenting conflicts of interest, along with training.

Furthermore, we have issued a management letter with specific details on the findings of our investigation, including an additional recommendation, for Municipal Licensing and Standards Division's consideration.

CONTACT

Sean MacIntosh, Director, Forensic Unit, Auditor General's Office
Tel: 416-392-8460, Email: Sean.MacIntosh@toronto.ca

Jennifer Carriere, Senior Manager, Forensic Unit, Auditor General's Office
Tel: 416-338-1020, Email: Jennifer.Carriere@toronto.ca

SIGNATURE

Tara Anderson
Auditor General

ATTACHMENTS

Attachment 1: Management's Response to the Auditor General's Report Entitled:
"Investigation into Allegations of Reprisal for Reporting a Conflict of Interest"