



OFFICE OF INSPECTOR GENERAL

City of Albuquerque

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Report of Review

FILE NO: OIG 16-204

DATE: March 16, 2017

SUBJECT: Review of I-9 Form Process

STATUS: Closed

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Introduction:

On February 4, 2016, the Office of the Attorney General (AG), State of New Mexico (NM), referred a complaint to the Office of Inspector General (OIG), City of Albuquerque (CABQ) that was initially received from an Albuquerque Police Department (APD) employee. A review of the complaint disclosed the APD employee alleged CABQ was missing his I-9 form.

The AG referral included information indicating the APD employee learned from his supervisor that his I-9 form was missing from his personnel file. The employee had indicated that he had been employed by CABQ for 18 years, and he knew that he had completed an I-9 form during the hiring process.

In the complaint, the APD employee stated that he contacted the City's Department of Human Resources (HR) to determine the circumstances leading to the disappearance of the I-9 Form. According to the APD employee, an HR representative contacted him and stated that HR was "working on several possible scenarios" (addressed in detail later in this report). The APD employee stated that he asked the HR representative if it was possible for someone in the office to steal I-9 forms and asked if he should be concerned about identity theft. The HR representative assured him that the I-9 forms were in a secure vault and only certain people had access to this vault.

According to the APD employee, there were other employees whose I-9 forms were missing as well. He knew this due to an email that his supervisor sent to him originating from the APD Payroll and Personnel Office. The email advised him that he was on a list of City personnel for which I-9 Forms were missing. The forwarded email contained the names of other APD employees within his command area. The APD employee requested that the Office of Attorney General review this matter on behalf of all the City employees whose I-9 forms disappeared from a secure vault from within the main City Hall building.

Background:

The I-9 form is an "Employment Eligibility Verification" form, and is required by federal law to be completed by all employers and employees. The form contains sensitive personally identifying information, to include date of birth, Social Security Number, full name and address.

Scope and Methodology:

The review included meeting and interviewing HR personnel; a review of relevant documents, a tour of the HR vault area where I-9 forms are stored, and a review of HR file room policies.

Review of United States Citizenship and Immigration Services Website (USCIS):

According to USCIS, all employers must complete and retain I-9 forms for every person they hire for employment on or after November 6, 1986, in the United States as long as the person works for pay or other type of compensation. Federal law requires employers to verify the identity and employment authorization of new employees.

Interview and response to interrogatories:

On February 10, 2016, a meeting was held with the HR Director and a manager. The meeting disclosed a self-audit was conducted in September of 2015, which revealed 850 I-9 forms were missing:

- 261 were missing for employees hired on or before 2002;
- 445 were missing for employees hired between 2003 and 2007; and
- 144 were missing for employees hired between 2008 and September 2015.

HR leadership provided the following information in response to several written questions:

In the past, incomplete I-9 forms were sent to the department HR Coordinators to gather information and complete the form. I-9 forms returned to the departments were not tracked. This is no longer HRD's practice. It was believed that some I-9 forms were never returned to HR.

HR also gave other possible reasons for the missing I-9 forms:

- Prior to 2008, APD held its own "New Employee Orientation (NEO)," and the practice was to not collect I-9 forms for rehires
 - The original may have been sent for destruction resulting in no I-9 for that rehire
 - All APD hires now go through CABQ HR central Human Resources New Hire Orientation
- Summer/Seasonal-hire NEOs are held on many dates at many different locations
 - The NEOs are conducted by their department personnel
 - There are groups of a hundred or more, with as many as 700, which are processed at one time
 - It is possible that some I-9 forms may not have been submitted during one of these peak periods
 - The HR Records Specialist now validates I-9 forms to sign-in rosters and new hire reports
- Misfiled I-9 forms:
 - Misfiling between temporary and regular employee I-9 binders
 - Incomplete I-9 forms sent back to HR Coordinators and not returned

- Misfiling due to name changes
- Forms stuck together

I-9 forms are stored in a vault room in the HR Records Office. There is one Records Specialist assigned to oversee the vault room whose duties include granting vault room access, retrieving and filing documents. Along with the Records Specialist, seven Employment Division personnel have access to the I-9 forms and three HR Labor/Employee Relations personnel have access to the files, but cannot remove items without signing them out. HR stated that the vault is locked each night and when the Records Specialist is not available. The vault cannot be opened by anyone, except designated HR personnel.

Note: OIG visited the vault room and verified that controls were in place.

HR also has an I-9 Records/Retention guide with steps for record procedures, reverification for rehires, and retention. There is also a guide for temporary, seasonal and student employees.

HR has transitioned from paper I-9 forms to electronic forms. In July 2015, “NEOGOV HR Software Onboarding System” (NEOGOV Onboarding System) was implemented for regular employees that allowed employee information to be inputted during the new hire orientation process. Paper I-9 forms will only be used for summer, seasonal, and student hires.

The HR self-audit identified there were missing I-9 forms which caused the department to contact the City employee who filed the complaint with the Office of Attorney General. During that time period the I-9 forms were shredded after 3 years due to the policy understanding at the time.

Since the implementation of the NEOGOV Onboarding system in July 2015, I-9 forms are assigned as a check list item to be completed electronically. I-9 forms are reviewed in the New Employee Orientation for completion and supporting documentation is attached. I-9 forms and supporting documentation are now stored in the NEOGOV Onboarding system for all regular employees.

HR stated that all Employment Division personnel participated in a discussion of the I-9 form self-audit findings and a review of possible rationale for the missing forms. All employees with access to the vault were reminded of the procedures for accessing documentation in the vault.

Review of Documents:

The OIG received documents from HR which included an “Interoffice Memorandum” (memorandum) dated April 29, 2002, with the subject of “Record Retention for I-9s.” In the memorandum, a previous HR Manager detailed a meeting she had with her staff.

The memorandum stated that HR’s practice (which dated back at least ten years) had been to retain I-9 forms for three years after an employee’s date of hire and I-9 forms outside the retention schedule needed to be shredded. This practice came in to question in 2002 during HR’s redesign and implementation of the personnel recordkeeping system. The HR Manager had

concerns regarding the statement in the U.S. Department of Justice's Immigration and Naturalization Service (INS) handbook¹ which stated "Retain the Form I-9 for three years after the date the person begins work or one year after the person's employment is terminated, whichever is later." An email dated April 17, 2002, reflected the HR Manager contacted an INS employee regarding the retention period for I-9 forms. The HR Manager's understanding was that employers were required to keep the I-9 form on file for three years or one year after termination, whichever was later. The INS employee's response specified that I-9 forms needed to be retained for a maximum of four years. The HR Manager contacted the Department of Labor and was told that an I-9 form has to be on file for all active employees.

Due to the conflicting statements on proper retention requirements, the HR Manager contacted the CABQ City Attorney's Office. The City Attorney advised that a note to the file should be written and that an I-9 form should be captured for all City employees as time and resources permit.

In the April 29, 2002, memorandum, the HR manager stated, "Effective immediately I have instructed staff to maintain an I-9 for all active employees. The I-9s will also be maintained for terminated employees for 1 year after they have been terminated."

In a note to file, "City of Albuquerque I-9 Forms", dated May 11, 2007, the HRD Manager wrote a memo attesting to details pertaining to the I-9 form retention. This memo was written as a historical account of the I-9 forms for the HR Manager's successor due to the HR Manager's resignation.

In particular, HR pointed out bullet number nine in this memo which stated:

- An HR Analyst was assigned, under my direction, the specific task of working directly with departments to capture Form I-9 for identified employees.

According to HR, there was no indication of the actual collection of destroyed I-9 forms until the memo of 2007. HR stated that the current HR staff was unaware of the outcome of the effort.

Mr. Hector Chichoni wrote in an online "Society for Human Resource Management" article titled "I-9 Retention: How and What to Keep", dated February 1, 2011, that "Employers must retain completed Forms I-9 for all employees for 3 years after the date they hire an employee or 1 year after the date employment terminated, whichever is later."

A review of the U.S. Citizenship and Immigration Services handbook regarding the current I-9 form retention requirements indicated: "Employers must retain an employee's completed form I-9 for as long as the individual works for the employer. Once the individual's employment has terminated, the employer must determine how long after termination the Form I-9 must be retained, which is either three years after the date of hire, or one year after the date employment is terminated, whichever is later."

¹ The United States Immigration and Naturalization Service (INS) ceased to exist under that name in 2003. Functions were transferred to the U.S. Citizenship and Immigration Services within the newly created Department of Homeland Security.

Observations:

Based on HR's correspondence beginning in 2002, it appears there was confusion in interpreting the I-9 form retention policy from the U.S. Department of Justice's Immigration and Naturalization Service hand book; both CABQ and INS (USCIS) personnel misinterpreted the retention requirements. The USCIS handbook has since been updated and includes language that clarifies the retention requirements of I-9 forms.

Assessment:

The OIG has determined that HR has rectified their previous year's problems regarding I-9 form retention. Paper I-9 forms are in a secured location and are properly safeguarded.

The OIG would like to thank HR leadership for their cooperation in this review.