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Report of Investigation

FILE NO: 22-0208-C

SUBJECT MATTER: Alleged violations of laws, regulations, policies and procedures for conducting non-City business on City time

STATUS: Final

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May 18, 2023
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June 28, 2023
Date of Approval

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EXECUTIVE SUMMARY

The Office of Inspector General (OIG) received a complaint alleging that a City employee (E1) operates a private business out of their residence, doing motorcycle repair on City time. The complainant states that E1 provided motorcycle repair for the complainant (C1), and business allegedly was conducted during E1's City work hours. E1 allegedly stated several times E1 does as E1 wants during City work hours. C1 stated E1 worked on C1's motorcycle during City work hours and E1 indicated that is why E1 has their work computer at home. C1 stated that information for E1's business is online on Facebook.

According to City Ordinance 2-17-2, the Inspector General's goals are to (1) Conduct investigations in an efficient, impartial, equitable, and objective manner; (2) Prevent and detect fraud, waste, and abuse in city activities including all city contracts and partnerships; (3) Deter criminal activity through independence in fact and appearance, investigation and interdiction; and (4) Propose ways to increase the city's legal, fiscal and ethical accountability to insure that tax payers' dollars are spent in a manner consistent with the highest standards of local governments.

The OIG determined that the allegations contained elements of potential fraud, waste, or abuse and that it was appropriate for the OIG to conduct a fact-finding investigation. The purpose of the investigation was to collect evidence to substantiate or not substantiate the allegation that E1 was conducting non-City business during City time.

As a result of the investigation, the OIG is not able to substantiate the allegation that E1 has a motorcycle repair business. The OIG is also not able to substantiate the allegation that E1 is working on motorcycles during E1's City work hours.

ABBREVIATIONS

City: City of Albuquerque
C1: Complainant
E1: City Employee
OIG: Office of Inspector General
S1: Supervisor 1
S2: Supervisor 2

SCOPE AND METHODOLOGY

Scope: Information and documents related to E1 from October 1, 2022 through January 31, 2023.

The methodology consisted of:

- Review information provided by the complainant
- Review the job description for subject
- Review the schedule and timecards for subject
- Review employee file for subject
- Review Personnel Rules and Regulations 310. Employment Outside the City Service
- Review social media pages for the subject and the subject's alleged business
- Research to see if the subject's business is registered
- Conduct information-gathering interviews

INVESTIGATION

Background

The Office of Inspector General (OIG) received a complaint alleging that a City employee (E1) operates a private business out of their residence, doing motorcycle repair on City time. The complainant (C1) states E1 provided motorcycle repair for the complainant, and business allegedly was conducted during E1's City work hours. E1 allegedly stated several times E1 does as E1 wants during City work hours. C1 stated E1 worked on C1's motorcycle during City work hours and E1 indicated that is why E1 has their work computer at home. C1 stated that information for E1's business is online on Facebook.

When the OIG spoke with C1, C1 shared that their motorcycle had broken down sometime in October, 2022. C1 stated that C1 tried contacting towing companies and then contacted E1 to ask if E1 had a trailer to transport C1's motorcycle. C1 knew E1 from working with E1 during a seasonal job. C1's motorcycle was transported to E1's residence where E1 was going to take a look at the motorcycle.

C1 stated that a couple of months went by when C1 went to check on their motorcycle. Before C1 went to pick up their motorcycle, C1 asked E1 what time E1 is done with work. According to C1,

E1 responded with something along the lines of “Don’t worry about when you come, I do what I want.” C1 stated that E1 worked out of E1’s garage. C1 stated that E1’s garage was in disarray and there were several other motorcycles in there. C1 indicated when they went to pick up their motorcycle from E1, they brought somebody from Thunderbird Harley Davidson with them. According to C1, their motorcycle was “wedged” in E1’s garage and was scratched, torn apart, and appeared as though it has been dropped. C1 stated that parts had been removed and had been replaced with after-market parts.

C1 stated that all business between C1 and E1 was conducted during the week, during the day. C1 also stated that E1 has access to the City computer and as a function of E1’s position, can do surveillance on license plates. E1 allegedly also uses the City computer and programs to run vehicle identification numbers (VINs) for E1’s motorcycle business.

Allegation: E1 is operating a private business during City work time.

Authority:

301.3 Standards of Conduct

Employees shall in all instances maintain their conduct at the highest personal and professional standards in order to promote public confidence and trust in the City and public institutions and in a manner that merits the respect and cooperation of co-workers and the community.

310. Employment Outside the City Service

All employees must obtain the written permission of the department director and concurrence of the Human Resources Director allowing them to engage in outside employment. No employee who is receiving Workers' Compensation total disability payments, hardship leave or donated leave shall engage in outside employment.

Employees who are unable to return to their current position or waiting to be reassigned by the Human Resources Department may engage in outside employment with the concurrence of the Human Resources Department.

310.1 Authorization Required for Outside Employment

The department director and the Human Resources Director will assure the following provisions are met:

- A. The duties or services of the proposed outside employment will not create a conflict of interest for the employee or assigned subordinates while serving in an official capacity with the City; and
- B. There is no conflict between the employee's official duties with the City and the proposed outside employment; and
- C. The proposed outside employment will not defame, embarrass or discredit the City; and
- D. The employee has a satisfactory work record and there is a reasonable assumption that it will continue if approved; and

- E. The employee's sick leave usage, excluding FMLA absences, does not reflect abuse; and
- F. The Human Resources Director may authorize other provisions as necessary.

310.2 Approval of Outside Employment

Outside employment may be authorized for a period up to one (1) year and must be approved on a year-to-year basis. Requests must be submitted prior to engaging in outside employment and renewed in January of each year.

Employees approved for outside employment may not work more than a total of sixty (60) hours per week for City service and outside employment combined. City employees performing work for the City outside their normal duties may not be considered an independent contractor and all such work shall be paid through the normal payroll process.

310.3 Rescission of Outside Employment Approval

The department director with the concurrence of the Human Resources Director may rescind the authorization for outside employment if such employment has a negative impact on the employee's job performance. This action is not subject to a grievance.

Analysis:

Review of Information Provided by C1

The OIG reviewed a copy of a police report filed by C1, citing criminal damage to C1's motorcycle by E1. The report was filed on December 13, 2022, at 12:17 PM and states the date of the incident as December 13, 2022, which was a Tuesday. "Time Started" was listed as 8:30 AM; "Time Ended" was listed as 11:30 AM. In the police report, C1 states that when C1 went to pick up their motorcycle at E1's residence, C1 noticed that their motorcycle had been dropped as the handlebars, mirror, exhaust, tank, fender, and forks were damaged on the right side. The police report states that E1 was on the phone at this time and refused to terminate the phone call. C1 began taking pictures of the damage. According to the police report, E1 handed C1 a box with two fuel pumps and a broken harness with the wires cut. E1 stated C1's motorcycle was not fixed and when C1 confronted E1 about the scratches and damage, E1 waived C1 off, staying on the phone.

The OIG reviewed three (3) photos that were provided by C1. The photos were of a motorcycle: one photo was of a wheel; one photo was of the backside of the right-side mirror, which had scratches; one photo was of the right handlebar, which appeared to have a possible tear in the rubber. Per the file info, these three (3) photos were taken on December 13, 2022 and do not appear to have been taken inside E1's garage. In addition, there were no photos or information provided, such as license plate and/or VIN, to verify these photos were of C1's motorcycle.

C1 provided screenshots of texts between C1 and E1, which reveal the following:

- Text messages dated Saturday, October 15, 2022 at 4:14 PM and 4:21 PM from C1 to E1 states “On our way”.
- Text message dated Tuesday, October 25, 2022 (screenshot did not include timestamp) from C1 to E1 states “Hey my friend how’s my bike did you take off with it”. It is unknown if E1 replied.
- Text message dated Saturday, November 5, 2022 at 10:10 AM from C1 to E1 states “More than rest any news on my bike”. E1 replies to C1 at 10:11 AM “Working on it today”.
- Text message (date unknown) at 11:52 AM from C1 to E1 states “owe you” (screenshot of full message was not provided). E1 replies to C1 at 11:52 AM “I’ll try. Still have the tank off”. C1 replies to E1 “No hurry” (screenshot did not include timestamp)
- Text message (date unknown) at 3:54 PM from E1 to C1 states “Received the new fuel pump/regulator today. Bike will be done sat”. C1 replies to E1 (date unknown) at 4:14 PM “Cool! Let me know what time Saturday and how much and I’ll bring you cash”. E1 replies to C1 at 4:18 PM “One billion dollars! :) i’ll let you know”.
- Text message dated Saturday, November 12, 2022 at 8:50 AM from C1 to E1 states “Hey (E1) what time do I pick up my bike and how much do I bring”. E1 replies to C1 at 8:51 AM “Ill give you a call as soon as i finish”

Business Registration

The OIG conducted a business search on the New Mexico Secretary of State Corporations and Business Services website, but no information was found relating to E1’s alleged business. The OIG also conducted a business information search on the City of Albuquerque’s Business Registration & Information Search website, but no information was found relating to E1’s alleged business.

Review of Employee File

The OIG reviewed E1’s employee file which revealed E1 has held the same position with the City since 2006. A review of E1’s employee file also reveals there have been no Performance Evaluations for E1 since August 23, 2016. There was also no Outside Employment Form for E1’s alleged motorcycle business.

Review of Timesheet

The OIG reviewed E1’s timecard in the Kronos timekeeping system, which revealed that E1 works a flex schedule of Monday through Friday with one day off every other week.

Review of VPN Logs

The OIG reviewed the VPN logs for E1. The VPN logs reveal that E1's logins to VPN were sporadic. E1 logged into VPN on only one date in October 2022; three (3) dates in November 2022; three (3) dates in December 2022; and did not log into VPN at all in January 2023.

Review of Badge Swipe Reports

The OIG reviewed the badge swipes for E1. The badge swipe reports reveal that there is no consistent pattern to when E1 accesses entrances to City Hall. The badge swipe reports also reveal occasions where E1 shows swipe activity at Pino Yard.

Review of Social Media

The OIG researched social media and did find a Facebook account for E1's alleged motorcycle business. The category is listed as "Motorcycle repair centre". The "page" states "Motorcycle Repair Shop". Intro/Bio states "Motorcycle Repair Shop. Trusted mechanic and reasonable prices." There was also a Gmail address listed and a phone number that matches up with E1's work cell phone number. The most recent post was dated September 26, 2022. The OIG also found a personal Facebook account for E1. E1's personal social media account appeared to be a more active account. There were numerous posts with various photos of motorcycles or motorcycle parts. The way some posts were written gave the impression that the motorcycle featured in the post may have belonged to someone else and was repaired by E1. Other posts did not give any indication one way or the other whether the motorcycle featured in the post belonged to E1 or to someone else.

Interview of S1

The OIG interviewed S1, who stated that E1 works a hybrid schedule. S1 did not know the specifics of E1's schedule, as E1 reports directly to S2 and therefore, S2 would have that information. S1 stated that E1 does not have a consistent schedule of when E1 reports to City Hall. E1 does a lot of offsite work with the Smart Cities effort. E1 is often out in the field or at Pino Yard. S1 commented that if an employee has business to attend to at Pino Yard, management is not going to require the employee to report to City Hall first, especially if the employee is not hourly. S1 pointed out that E1 is not hourly and is not required to clock in.

S1 admitted there is no type of log kept or any way to track when E1 is out in the field and when E1 is working at home. S1 also stated that E1's job involves doing a lot of physical work and E1 will not always be doing work on a computer. Because of this, often times E1 does not log into the City's VPN. S1 stated that management is not "extreme trackers" of employees. Rather, management will look at the productiveness of an employee.

S1 stated that E1's productivity has been excellent. S1 stated that anytime they call E1, be it day, night, weekend, or holiday, S1 has never had an issue getting in touch with E1. E1 has a flex schedule in which E1 is off one day every other week. S1 stated that if they need E1 for anything on these flex days, S1 has never had an issue with getting ahold of E1 if needed.

S1 stated they had no knowledge of E1 having a motorcycle repair business.

Interview of S2

The OIG interviewed S2, who stated that E1 is one of the implementers for the Smart Cities project. E1 works with one other individual who is the project manager. Some of E1's job duties involve putting up various cameras around the City and working on Automated License Plate Readers (ALPR). E1 also tends to the cameras whenever certain issues arise. S2 stated that although E1 works with license plate readers, E1 would not have the ability to run vehicle identification numbers (VINs).

S2 stated that where E1 reports to work really depends. Some days E1 will be out in the field. Instead of E1 having to report to work at City Hall and then go out on location, S2 stated that E1 can go straight from E1's home to wherever their location out in the field may be for that day. S2 explained that this saves time, saves gas, and is better for the environment. S2 does not believe that E1 has a City vehicle. S2 could not recall if E1 was issued a City cell phone. S2 stated that there is the option to work from home so there is the potential for E1 to remote work. S2 stated that they tend to be fairly flexible with remote schedules, as it depends on where they are at with projects.

As far as E1 being required to log into VPN during the works days, S2 stated this would depend on what E1 is doing as well as the nature of the work on any given day. S2 also mentioned that E1 has a flex day, although S2 could not recall what day that was.

S2 was not aware of E1 having a motorcycle repair business. S2 stated that if E1 has a flex day during the week, then that would be a time that E1 is not at work. S2 was unaware if E1 completed an outside employment form.

Interview of E1

The OIG interviewed E1. E1 stated that E1 works for the Smart Cities group, which E1 stated is not an official division and is not on an organization chart. E1 stated that they go all over the City and talk to constituents, other departments, citizens, and groups to try and find out how the Smart Cities group can make the City better and how can this be done in a smart way. E1 explained that E1 meets with many vendors, and takes care of equipment that has been installed by those vendors. E1 commented that E1 is incredibly busy and does not have time in the day for anything else. E1 stated that E1 takes vacation days (personal leave) if E1 has personal business.

E1 stated that they worked on the License Plate Reader (LPR) cameras for the police department; E1 was in charge of this project and in getting those cameras deployed. E1 stated that they still maintain those to this day. E1 explained that even though E1 works on these LPRs, E1 cannot run license plates, nor can E1 run VINs.

E1 stated that E1 uses E1's own vehicle for work projects and is not paid for mileage. E1 also uses E1's own tools and their own shop in their garage for their position. E1 stated that they build Automated License Plate Reader (ALPR) boxes as part of their job. This includes drilling, cutting, and doing things that could be misconstrued if an outsider were to see it. S2 has commented that they need to get E1 a place outside of E1's garage that E1 can use as a shop. However, the City does not have a machine shop for E1 to work out of.

E1 stated that they do have an office located at City Hall, which is where E1 comes for meetings. E1 also works with an intern once a week on a project. E1 stated that E1 also has space at Pino Yard and spends quite a bit of time there. E1 also mentioned that E1 is often called out to attend to various things during non-scheduled work hours. E1 stated that they have one flex day off every other week and they are off on weekends. However, E1 stated that even on E1's flex day, there is no rest. There are standing weekly meetings that take place on the day of the week that E1 has their flex day, and E1 stated that they still attend these meetings every week. If a camera goes down, E1 attends to it, even if the camera goes down outside of E1's scheduled work hours. Poles have been knocked down by citizens' cars, and E1 stated they have had to respond to these types of situations on weekends. E1 stated that they easily work over forty (40) hours per week on City projects. E1 tracks the work that they do in their calendar, their phone logs, and the task list that they keep.

E1 stated they do not have a set or official remote schedule and did not sign any sort of telework agreement. E1 also stated that usually, the only time they have to sign into VPN is to approve their time in the Kronos timekeeping system.

E1 stated that E1 has had outside employment in the past and completed an Outside Employment Form during those times E1 did have outside employment. E1 stated that they currently do not have outside employment and they do not have a motorcycle repair business.

E1 admitted they have a hobby and shared that they have fifty (50) motorcycles in their backyard. E1 stated these are all their own motorcycles, and the work E1 does is on their own motorcycles. E1 acknowledged that they understand the optics and that if someone on the outside were to see E1's garage open and see motorcycles inside and E1 working, an outsider may be inclined to believe E1 is not doing their City job.

E1 informed the OIG that there is another individual who lives in Rio Rancho who had the same name as E1's alleged motorcycle repair business. E1 stated that people thought E1 was this person

because E1 has a hobby where E1 works on motorcycles. However, E1 stated there is no business or business license, nor does E1 advertise. E1 indicated that E1's alleged business and business name had even turned into a joke of sorts because of E1's name and because of E1's motorcycle hobby.

E1 admitted that they have a personal Facebook account and that they also had a Facebook account for the alleged motorcycle business. E1 stated that initially, E1 wanted something that was separate from E1's personal Facebook page, where E1 could post about their hobby and their motorcycles they were working on. E1 stated they did not want to flood their personal Facebook page with motorcycles. E1 also thought it would be funny to open a Facebook account for this alleged motorcycle business. However, according to E1 the joke with regard to E1 having a motorcycle business got out of hand and E1 closed the Facebook account that was for the alleged motorcycle business.

E1 stated that people had asked him in the past if he could work on their motorcycles, to which E1 stated E1 would tell these individuals that E1 did not have time. E1 acknowledged that he had worked on a friend's motorcycle, which is what led to this whole "fiasco", according to E1. E1 thought they were helping a friend out. E1 explained that when this friend, who was C1, asked E1 to help out with C1's motorcycle which had broken down, E1 stated that E1 explained to C1 that E1 did not have a trailer and E1 suggested that C1 find a way to have the motorcycle towed to Harley Davidson. E1 stated that C1 insisted and asked if E1 could at least take a look at C1's motorcycle and tell C1 what the issue might be, and C1 asked E1 when E1 might be able to do this. E1 stated that they told C1 that they much prefer that C1 take the motorcycle to Harley Davidson, but E1 also told C1 that they could only look at C1's motorcycle on the weekends and on E1's flex day every other week. E1 admitted that two months went by without E1 ever looking at C1's motorcycle. E1 pointed out that if E1 had a motorcycle repair business, then not looking at a customer's motorcycle for two months would be bad business.

E1 stated that they finally took a look at C1's motorcycle sometime in December. E1 stated that they told C1 that E1 could not figure out what was wrong with the motorcycle, but if C1 wanted, E1 could continue working to see what might be wrong and would order parts. C1 asked E1 how much C1 should pay E1, to which E1 stated they told C1 "Nothing." E1 stated that C1 came over the following weekend and asked E1 how things were going with C1's motorcycle and what E1 was doing with it. According to E1, E1 told C1 "I've got to be honest, I have not touched it." E1 stated that they felt bad, and C1 told E1 that they brought E1 a six-pack of beer. E1 pointed out that if E1 had a business, why would E1 accept beer as a form of payment?

E1 stated that another couple of weeks passed, and at that point, C1 became really upset. E1 stated that they told C1 that if C1 has lost confidence in E1, then C1 should now contact Harley Davidson and have them pick up C1's motorcycle, as that is what E1 suggested C1 do in the first place. E1 stated that C1 did come over, along with someone from Harley Davidson. E1 stated that E1 was on the phone on a work call when C1 came over. E1 stated that while E1 was on the phone, C1

began yelling and taking pictures of C1's motorcycle. E1 stated that C1 had the motorcycle towed off and then later sent E1 a message stating that E1 ruined C1's motorcycle and that E1 had dropped C1's motorcycle. According to E1, C1 also told E1 to contact E1's insurance company and that C1 was going to sue E1 and would contact the City and have E1 fired. E1 told C1 that they did not drop C1's motorcycle. E1 was sorry that they could not fix C1's motorcycle, but that E1 had told C1 to take it to Harley Davidson in the first place. E1 stated that C1 also sent photos of a motorcycle, but according to E1, the photos were not of C1's motorcycle and the background of the photos was not E1's garage.

E1 stated they offered to go over to Harley Davidson to take a look at C1's motorcycle. E1 stated when E1 got there, they were told that C1 had told the mechanic that under no circumstances was E1 allowed to look at C1's motorcycle. E1 questioned that if C1 was going to sue E1 for damaging C1's motorcycle, then why couldn't E1 look at it and why couldn't E1 have their insurance company look at it?

E1 stated they are not going to deny that they have worked on other people's motorcycles. However, E1 stated that these have been for people that he knows and that other than having people pay for whatever motorcycle parts they may need, E1 stated that E1 does not take any payment for doing the work. In addition, E1 stated that they do not work on motorcycles during City work time. E1 commented that if E1 indeed had a business, E1 is poor at it and would not make people happy. E1 added that E1 has even told people "You're not going to be happy because I can only work on weekends and every other Wednesday. And that's why I recommend you don't use me."

E1 stated that E1 loves working on their own bikes and likes the fact that they can take their time and not have anybody breathing down their neck asking when their bike is going to be done. E1 pointed out that many of the motorcycles that were posted online were likely photos of E1's own personal bikes. E1 stated there were very few motorcycles that were going back to somebody else after being worked on.

Allegation Conclusion: The OIG was not able to substantiate the allegation that E1 has a motorcycle repair business. The OIG was also not able to substantiate the allegation that E1 is working on motorcycles during E1's City work hours.

Further investigation or inquiry into the abuse of time may be necessary to identify the pervasiveness of the issue throughout the City.

OBSERVATIONS AND RECOMMENDATIONS

Observation 1: E1 does not have a set schedule of when E1 is working remotely and there is no record of when E1 is working from home, when E1 is out in the field, and when E1 is in the office. This has the potential to give the appearance that E1 is doing non-City activities during City work hours.

Recommendation 1: The Department should consider working with E1 to come up with a way to log when E1 is working remotely or out in the field.

Management Response: *The work undertaken by E1 varies based on project requirements, locations involved, and external events. The supervisor of E1 is in day-to-day communication with E1 and is aware of the employee's location. We are looking at ways in which this information can be better recorded.*

Observation 2: E1's position involves constructing, drilling, cutting, and doing work out in the field. E1 shared that E1 uses their own tools, their own garage, and their own vehicle, and is not reimbursed for mileage.

Recommendation 2: The Department should consider providing a space for E1 to work out of where E1 can do their construction. The Department should also consider providing the necessary tools for E1, as well as a City vehicle. Providing these lessens the appearance that E1 is doing non-City activities during City work hours.

Management Response: *DTI will work with E1 and the supervisor to identify and obtain necessary tools and space required and ensure that City policy is followed. The Department will work with E1 to determine whether a City vehicle is appropriate.*

AGO Statement: The Accountability in Government Oversight (AGO) Committee requested a follow-up from the Department Director regarding the observations made by the OIG. The Director acknowledged the request and will provide the information to the OIG for presentation to the Committee.