



**OFFICE OF INSPECTOR GENERAL**  
*City of Albuquerque*

Melissa Santistevan  
Inspector General

P.O. Box 1293, Suite 5025  
Albuquerque, New Mexico 87103  
Telephone: (505) 768-3150  
Fax: (505) 768-3158

**Informative Investigation Case Synopsis**

**FILE NO:** 23-0038-C

**SUBJECT MATTER:** Alleged retaliation by adding on-call duties, removal from meetings, and pulling a critical position due to the employee’s participation in a previous investigation.

**STATUS:** Final

**INVESTIGATOR:** M. Santistevan

DocuSigned by:  
*Melissa R. Santistevan*  
363279ECC77574DA  
\_\_\_\_\_  
**MELISSA SANTISTEVAN**  
**INSPECTOR GENERAL**  
**OFFICE OF INSPECTOR GENERAL**

August 24, 2023  
**Date of Completion**

DocuSigned by:  
*Edmund E. Perea*  
0E28BFBCEFA7A43F  
\_\_\_\_\_  
**EDMUND E. PEREA, ESQ**  
**ACCOUNTABILITY IN GOVERNMENT**  
**OVERSIGHT COMMITTEE CHAIRPERSON**

October 25, 2023  
**Date of Approval**

**DISTRIBUTION:**

- Honorable Mayor**
- President City Council**
- Chief Administrative Officer**
- City Councilors**
- Director Council Services**
- City Attorney**
- Department Director**
- Members, Accountability and Government Oversight Committee**
- File**

## TABLE OF CONTENTS

	Page
EXECUTIVE SUMMARY	1
ABBREVIATIONS	2
INTRODUCTION	2
SCOPE AND METHODOLOGY	2
INVESTIGATION	3

## **EXECUTIVE SUMMARY**

The City of Albuquerque Office of Inspector General conducts investigations, inspections, evaluations, and reviews in accordance with AIG standards.

City Ordinance 2-17-2 states the Inspector General's goals are to (1) Conduct investigations, inspections, evaluations, and reviews 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) Carry out the activities of the Office of Inspector General through independence in both fact and appearance, investigation and interdiction; and (4) Propose ways to increase the city's legal, fiscal and ethical accountability to ensure that tax payers' dollars are spent in a manner consistent with the highest standards of local governments.

On April 28, 2023, the Office of Inspector General (OIG) received a complaint alleging retaliation by adding on-call duties, removal from meetings, and pulling a critical position due to the employee's participation in a previous investigation. The OIG determined that the allegations contained elements of harassment or retaliation and that it was appropriate for the OIG to conduct a fact-finding investigation. The purpose of the investigation was to substantiate or not substantiate, through the collection of sufficient evidence, the allegations of retaliation by adding on-call duties, removal from meetings, and pulling a critical position due to the employee's participation in a previous investigation.

The OIG could not substantiate the allegations of retaliation by adding on-call duties, removal from meetings, and pulling a critical position due to the employee's participation in a previous investigation.

## **ABBREVIATIONS**

CITY: City of Albuquerque  
E1: City Director  
E2: Deputy Director  
E3: City Employee  
E4: City Employee  
OIG: Office of Inspector General

## **INTRODUCTION**

The mission of the Office of Inspector General (OIG) is to promote a culture of integrity, accountability, and transparency throughout the City of Albuquerque in order to safeguard and preserve public trust. Investigations, inspections, evaluations, and reviews are conducted in accordance with AIG Standards.

### **Complaint**

Alleged retaliation by adding on-call duties, removal from meetings, and pulling a critical position due to the employee's participation in a previous investigation.

### **Background**

The City created a new department in July 2022 and reallocated divisions to the new department. The Department experienced challenges and the transition resulted in disruption to several divisions. Employees described that these disruptions and the associated changes are creating an unhealthy environment.

In March 2023, the OIG received a complaint and initiated an investigation into a matter affecting the newly created department. In April 2023, the OIG became aware that there were concerns of possible retaliation against the participants in the investigation. The OIG's report intentionally excluded participant interviews in an attempt to protect the anonymity of those participating in the investigation. In late April 2023, the first of five retaliation complaints due to the investigation were filed with the OIG. On May 1, 2023, the OIG released the investigation.

## **SCOPE AND METHODOLOGY**

Scope: Events surrounding the change in the on-call list for the period July 1, 2022 to April 28, 2023.

The methodology consisted of:

Assess complaint allegation

- Obtain and review evidence in support of the allegation
- Prepare an investigation work plan
- Review the Inspector General Ordinance, Article 17
- Review the Code of Conduct, 301
- Review Whistleblower Policy, Article 7
- Research employee information for those identified
- Collect evidence or statements to corroborate the events
- Contact the Legal Department to identify pending litigation that would prohibit OIG from investigating
- Contact Risk Management to identify pending litigation that would prohibit OIG from investigating
- Write report

This report was developed based on information from interviews, inspections, observations, and the OIG's review of selected documentation and records available during the investigation.

## **INVESTIGATION**

Allegation 1: Alleged retaliation by adding on-call duties, removal from meetings, and pulling a critical position due to the employee's participation in a previous investigation.

### **Authority:**

Article 17: Inspector General Ordinance

301. Code of Conduct

Article 7: Whistleblower Policy

### **Evidence:**

Emails

On-call logs

Job description

### **Analysis:**

In conducting our investigation, the OIG considered the following facts as a basis for our analysis. Evidence: The OIG obtained the on-call list dated May 12, 2022, an updated on-call list effective July 7, 2022, and the updated on-call list dated January 23, 2023 and they revealed that E4 was the only departmental employee reflected on the on-call list for this specific site. E4 was not included in the on-call list effective July 7, 2022 for other City sites. The on-call list for all other City sites

was manned by four (4) City employees on a rotating weekly basis. The on-call list for other City sites was updated on January 23, 2023 to replace one of the employees with E4.

The OIG determined the employee was replaced in the on-call list due to a voluntary termination of employment.

The OIG reviewed emails that revealed E4 was advised of an updated on-call list on January 23, 2023, to be effective January 28, 2023. On March 31, 2023, another employee requested a modification to the on-call list to avoid another employee having to be on-call for two consecutive weeks. The modification of the list was approved and accommodated. An updated on-call list was sent out on April 3, 2023 and E4 requested to be removed from the on-call list due to an increase in workload and the fact that E4 is the only employee on-call for one specific site. On April 27, 2023, E3 replied stating that E4 could not be removed from the on-call rotation list as there was not enough personnel to fill in for E4's absence. E4 was advised not to contact other staff to hand over calls received.

The OIG was made aware of a meeting that occurred on May 10, 2023, whereby E4 was to begin reporting to E3. E3, in an attempt to be fair, was to have other employees added to the on-call list for the one site where E4 was the sole departmental employee.

The OIG inquired with E4 who expressed concern that changes were being implemented without consideration of other responsibilities. E4 was concerned that the added duties and the removal of E4 from meetings were the result of their participation in the OIG investigation. E4 indicated that a meeting was held between E1, E2, E3, and E4 and that the meeting resulted in positive steps forward.

The OIG inquired with E3 who stated that E2 advised E3 to make the change to the on-call schedule. E3 indicated that they were trying to obtain full coverage and that there was no other intent behind the change.

Definitions and Ordinances: Retaliation, as defined by the City of Albuquerque's Central Human Resource Labor/Relations Office is "Any action a reasonable employee would believe, is intended to discourage protected activity".

The provisions of Article 17, the City's Code of Conduct, and Article 7 were considered during the OIG's analysis of the applicability of improper governmental actions that are alleged to have resulted in harassment or retaliation.

Article 17 provides the Office of Inspector General the authority to prevent and deter fraud, waste, and abuse through investigations or inspections. Section 2-17-12 (A) states all city officials, employees, and contractors shall promptly notify the Inspector General of an instance of theft or other disappearance of cash, check, or property, misfeasance or nonfeasance, defalcation, and improper governmental actions as defined in the Whistleblower Ordinance and non-compliance with federal and state law, city ordinances and city regulations of which they are aware.

Section 2-17-12 (D), (E), and (F) state: No person shall retaliate against, punish or penalize any other person for complaining to, cooperating with or assisting the Inspector General in the performance of the office. Each and every violation of this article is a criminal violation subject to the provisions of §1-1-99 ROA 1994. Any official or employee who violates the Inspector General Ordinance may be subject to discipline as may be specified in the Merit System Ordinance or any applicable collective bargaining agreement.

The OIG considered the above definition and sections of Article 17 as they relate to the allegation and found the updated on-call list was initiated in January 2023, prior to the initiation of the OIG investigation, therefore the investigation could not be a cause for retaliation.

Section 301.3 Standards of Conduct states “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 coworkers and the community.”

Section 301.17 Supervision of Employees states “Employees with supervisory duties or responsibilities shall, in all instances, ensure that all supervisory actions comply with the provisions of the Merit System Ordinance, Labor-Management Relations Ordinance, Personnel Rules and regulations, applicable legislation, and relevant judicial/administrative decisions.”

The OIG could not find evidence to support that the change to the on-call schedule violated the City’s Code of Conduct. The OIG did consider the perception of making a change for one employee and not other employees but the evidence revealed that this was being addressed via the May 10, 2023 meeting.

Article 7, section 3-7-2 Findings and Intent states “the public health, safety, and welfare are better protected by instituting a procedure for reporting improper governmental action, encouraging such reporting and protecting those who properly report such action from retaliation. Proper reporting will provide the opportunity to minimize any adverse impacts of improper governmental actions.

Article 7, section 3-7-3 defines retaliation or retaliatory action as any disciplinary action taken because (1) an employee lawfully disclosed information or filed an allowable complaint pursuant to this article, (2) an employee testified or assisted or is scheduled to testify or assist in any investigation, action or proceeding relating to the lawful disclosure of information by another employee pursuant to this article, or (3) the supervisor who imposed the disciplinary action believed the employee receiving the disciplinary action was involved in the activities described in parts (1) and (2) of this paragraph and such belief was the primary reason for the disciplinary action.

The OIG considered whether there were violations of Article 7 as they relate to the allegation but was unable to establish retaliation under Article 7 as the update to the on-call list was initiated

prior to the inception of the OIG investigation. The OIG noted that additional concerns were addressed by E3 through subsequent meetings.

**Conclusion:** The OIG could not substantiate the allegations of retaliation by adding on-call duties, removal from meetings, and pulling a critical position due to the employee's participation in a previous investigation.