



OFFICE OF INSPECTOR GENERAL
City of Albuquerque

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Investigative Informative Case Synopsis

FILE NO: 24-0007-C // 24-0013-C

SUBJECT MATTER: Allegation of abuse of power by a City Director through a temporary upgrade being given outside of City Policy

STATUS: Final

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June 17, 2024
Date of Completion

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July 11, 2024
Date of Completion

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August 28, 2024
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**

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EXECUTIVE SUMMARY

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 City of Albuquerque Office of Inspector General (OIG) conducts investigations, inspections, evaluations, and reviews following AIG standards.

On January 8, 2024, the OIG received two (2) allegations stating that a Department Director (D1) with the City of Albuquerque (City), violated City Personnel Rules and Regulations 702.1: Temporary Upgrade for Management, Executive and Information Systems Series Pay Plans, by awarding a temporary upgrade to a City employee (E1) without the position being vacant for forty-five (45) workdays.

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.

Fraud is the knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Waste is the thoughtless or careless expenditure, mismanagement, or abuse of resources to the detriment of the City. Abuse is the use of resources or exercise of authority contrary to rule or policy, or knowingly inconsistent with any established mission or objectives for the resource, or the position held by the person exercising the authority. Abuse does not necessarily involve fraud or illegal acts.

The purpose of the investigation was to collect evidence to substantiate or not substantiate the allegation of abuse of power by D1 violating 702.1 from granting a temporary upgrade to E1 before the position had been vacant for the requisite forty-five (45) days.

The OIG could not substantiate that D1 violated 702.1 by granting a temporary upgrade to E1 without the position being vacant for the requisite forty-five (45) days as the 702: Temporary Payroll Upgrades, allows the HR Director to grant a temporary upgrade to be awarded due to a business necessity and upon a recommendation of the Department Director.

ABBREVIATIONS

A1:	Administrator
City:	City of Albuquerque
D1:	Department Director
HR:	Human Resources Department
E1:	City Employee
OIG:	Office of Inspector General

INTRODUCTION

The mission of the Office of Inspector General (OIG) is to provide independent and objective insight, oversight, and foresight in promoting integrity, efficiency, overall effectiveness, accountability, and transparency in government to safeguard and preserve public trust. The City of Albuquerque OIG conducts investigations, inspections, evaluations, and reviews following AIG standards.

SCOPE AND METHODOLOGY

Scope:

Evidence identified during the investigation on the temporary upgrade of E1 from the following methodologies:

- Review of E1 pay stubs to verify temporary pay upgrade
- Review of City policies and procedures
- Review of pertinent City employee records for E1

This report was developed based on information from the OIG's review of selected documentation and records provided during the investigation.

INVESTIGATION

Complaint:

A Department Director (D1) with the City of Albuquerque (City), violated City Personnel Rules and Regulations 702.1: Temporary Upgrade for Management, Executive and Information Systems Series Pay Plans, by promoting a City employee (E1) to a vacant position via a temporary upgrade before the requisite forty-five (45) days had passed as defined by 702.1.

Authority:

301.1: Duty to the Public (March 5, 2005)

“The City of Albuquerque is a public service institution. In carrying out their assigned duties and responsibilities, employees must always remember their first obligation is to the general public’s safety and well-being. This obligation must be carried out within the framework of federal, state and local laws.

Employees shall serve the public with respect, concern, courtesy and responsiveness, recognizing service to the public is the reason for their employment. Telephone calls, correspondence or other communications should be answered promptly or referred to appropriate individuals for timely action.

It is recognized it is not always possible to fulfill all of the requests of the general public, however, employees are required to handle all requests and inquiries courteously, fairly, impartially, efficiently and effectively.”

702.1: Temporary Payroll Upgrades

“Under certain circumstances employees may be temporarily upgraded to a position graded higher than the one they currently occupy. Temporary payroll upgrading should not be used for periods of less than eight (8) hours per day (Exception: employees who are required to work less than 8 hours due to standard hours of operation). Temporary upgrade will not be granted if other personnel of equal or higher grades in a department are available to provide adequate coverage. Conditions for payroll upgrading may include the absence of an employee from regular duty or for work performed outside of the employee’s classification due to a business necessity and with the recommendation of the Department Director whether or not a vacant position exists.

In order to be eligible for a temporary upgrade, employees must possess the required licenses/certificates and experience in the applicable area sufficient to perform the duties of the upgraded position.

Only employees designated as safety sensitive may be temporarily upgraded to safety sensitive positions.

Requests must be in accordance with any applicable union contract.

Requests for temporary upgrades must be submitted in writing to Human Resources identifying the circumstances and why the request is being submitted. Requests for temporary upgrades are reviewed and approved by the Human Resources Director. Employees temporarily upgraded shall be compensated for actual hours worked.”

702.1: Temporary Upgrade for Management, Executive and Information Systems Series Pay Plans

“Employees in the M, E and I series pay plans may be temporarily upgraded to a higher position that has been vacant or from which the incumbent has been absent for a minimum of forty-five (45) workdays. Temporary upgrades for M series employees may last up to ninety (90) days.

Temporary upgrades for E and I series may last up to six (6) months.

Temporary upgrades may not exceed two (2) grades higher than the employee's current position classification. Employees meeting the qualifications for the temporary upgrade position will receive a one (1) step increase within their current grade for each grade they are upgraded, up to a maximum of two (2).

Employees not meeting all of the minimum qualifications of the upgrade position will only receive a one (1) step increase within their current grade.

Temporarily upgraded employees will perform the essential functions of the vacant position as well as their own regular duties.

Temporary upgrades cease when the vacant position is filled or when the absent employee returns, but no longer than ninety (90) days for M series or six (6) months for E and I series as stated above from the date the temporary upgrade is effective.”

§ 2-17-2 Findings; Purpose; Goals

“(D) The Inspector General's goals are to:

- (2) Prevent and detect fraud, waste, and abuse in city activities including all city contracts and partnerships;”

Evidence:

City of Albuquerque Human Resources Temporary Upgrade Form for E1
Inquiry with City HR

Analysis:

On January 8, 2024, the OIG received two (2) allegations stating that D1 violated City Personnel Rules and Regulations 702.1: Temporary Upgrade for Management, Executive and Information Systems Series Pay Plans, by awarding a temporary upgrade to E1 without the position being vacant for the requisite forty-five (45) days.

The OIG reviewed City Personnel Rules and Regulation 702.1 as defined above. The OIG requested temporary upgrade information from the City Human Resources Department (HR). The OIG reviewed the Temporary Upgrade Request Form and identified that the temporary upgrade given to E1 was effective January 13, 2024 with an end date of July 13, 2024. The OIG noted that D1 identified that the position had been vacant since December 30, 2023.

The OIG reviewed City Personnel Rules and Regulations 702: Temporary Payroll Upgrades and identified that forty-five (45) days had not passed, leading the OIG to identify an exception to City Personnel Rules and Regulations 702: Temporary Payroll Upgrades

The OIG verified an Interoffice Memorandum dated January 19, 2024, approved by A1, justifying business need, was included with the Temporary Upgrade Request Form for the position in

question, to include an explanation regarding the upgrade prior to the 45-day waiting period. An excerpt from the January 19, 2024 memo is as follows:

This is a critical position within the department and requires consistent and timely response to complaints and requests for accommodation; processes associated with these efforts have very strict regulatory and CBA requirements. With this key of a position, we are requesting this temporary upgrade to ensure that our department can fulfill performance and service expectations.

The OIG spoke with a HR employee who confirmed that the above-identified language would suffice as a business need as well as the exception that E1 was not released from probationary status before their normal probationary status date.

Conclusion:

Based on the evidence identified during the investigation, the OIG was not able to substantiate that D1 violated 702.1 Temporary Upgrade for Management, Executive and Information Systems Series Pay Plans, as the parent policy of 702: Temporary Payroll Upgrades was not violated as the deviation was an allowable exception supported by sufficient evidence.