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**Report of Oversight**

Date: March 24, 2017

Subject: Oversight of the Administrative Investigation of the Alleged Albuquerque Police Department Video Tampering

Status: Closed

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## **Introduction:**

This is a two-part report, which addresses both the oversight of the selection process for a vendor to conduct an administrative investigation and information pertaining to the oversight of the administrative investigation.

Specifically, Part One of this report provides details pertaining to the Office of Inspector General's (OIG), City of Albuquerque (CABQ), oversight role of the vendor selection process. On November 29, 2016, the OIG proactively contacted the City Attorney by email with an offer to provide independent oversight of the vendor selection process. The City Attorney accepted that offer, as well as the offer of the Office of Internal Audit to also be a part of the independent oversight effort of the selection process. The OIG did not produce a separate report for the oversight of the selection process; therefore, a summary of that oversight effort is included in this report.

Part Two of this report provides the results of the oversight of the administrative investigation of the alleged tampering of video's at the Albuquerque Police Department (APD), as alleged by Mr. Reynaldo Chavez, in an affidavit dated October 28, 2016. Council Resolution 16-138 (R16-138) required the OIG to oversee the investigation. The allegations in the affidavit included matters beyond the scope of the administrative investigation. OIG oversight focused on ensuring the vendor delivered the service required in the contract and on ensuring the City facilitated access to personnel, systems and documents, so the vendor could fully comply with the contract.

The content of this report is limited to observations made during both the vendor selection process and the administrative investigation process. Part Two provides more details, to include summarizations of observations made at the in-person meeting between Elijah Ltd, Chicago, IL, (Elijah) and APD, and eight telephonic meetings between the City Attorney and Elijah. To be clear, the purpose of the oversight and this report was not to address results of the outside investigation, as that was included in the investigative report published by Elijah.

## **Background:**

Mr. Reynaldo Chavez, former Property and Evidence Custodian, Albuquerque Police Department (APD), provided an affidavit to the State of New Mexico, Second Judicial Court, in which he alleged that APD personnel had accessed digital evidence and altered or deleted video's associated with two officer-involved shooting investigations.

The City of Albuquerque decided to award a contract to a vendor to conduct an independent administrative investigation of allegations made by Chavez. Additionally, the Albuquerque City Council passed R16-138 on December 19, 2016 and it was signed by Mayor Richard J. Berry on December 30, 2016. The Resolution required the Inspector General:

“...to be part of the team overseeing and working with the chosen independent investigator that conducts any investigation relating to lapel video evidence tampering within the Albuquerque Police Department. The Inspector General and the Director of Council Services, or their designees, shall attend and participate in all meetings and

briefings by the City Attorney and/or third party investigators that are otherwise offered or provided to the Albuquerque Police Department and City Administration.

### **Part One -- Oversight of Vendor Selection Process:**

As addressed in the Introduction, the OIG provided oversight of the vendor selection process. The oversight effort was in partnership with the Office of Internal Audit, and was done as the result of a proactive offer to the City Attorney's Office. The purpose of the oversight was twofold:

1. To ensure that the process was done with transparency and in compliance with City procurement rules.
2. To provide some assistance in ensuring that the pool of possible vendors did not include companies that would have the appearance or actual conflict of interest with the City.

In concert with other participants in the selection and oversight process, the OIG performed vetting of potential vendors. The vetting included a review of the Federal General Services Administration's "System for Award Management" (SAM) web site, to ensure none of the vendors had been suspended or debarred by the Federal Government. Additionally, all vendors were reviewed with City databases to ensure they had not had previous contracts with the City. Finally, a recommendation was made to prioritize out-of-state vendors to minimize the likelihood of "conflicts of interest" with City employees through familial relationships or friendships. The objective was to minimize the risk of the appearance or actual conflict of interest or favoritism, and to strengthen the actual and perceived independency of the vendor and resulting investigation.

The OIG was present at all meetings held regarding the vendor selection process, but did not participate in the actual selection of the vendor, beyond providing the vetting results and recommendation of an out-of-state vendor.

Eide Bailly was initially selected, but the State Auditor's Office advised the firm had been restricted from doing some audits for the State due to issues under a State contract. For this reason, the City Attorney elected to terminate the contract. Elijah was selected as the new vendor on February 10, 2017, following the termination of the contract with Eide Bailly.

## **Part Two – Oversight of the Administrative Investigation:**

### **Scope and Methodology:**

The scope of the oversight was based upon the language of R16-138, therefore, the OIG remained closely engaged with City and outside investigators to ensure full visibility of all communication and interactions between the City and Elijah throughout the course of the investigation.

1. The OIG was present at all teleconference status meetings between the City Attorney and Elijah.
2. The OIG was present at a meeting between Elijah and APD.
3. The OIG was copied on all email communications between Elijah and City of Albuquerque Government Offices, to include the City Attorney and APD.

Furthermore, the oversight focused on the administrative investigative process from the initiation to the completion. The oversight process included a review of the City Contract awarded to Elijah, with specific emphasis on the Scope of Services.

### **Review of Contract:**

On February 10, 2017, a contract was awarded to Elijah, for “computer security and forensic services.” Specifically, the “Scope of Services” section of the contract states:

In connection with allegations raised in the affidavit of Reynaldo Chavez, dated October 28, 2016, and filed in *Danny Hawkes, Mary Alice Hawkes and Angela Hawkes, as the Personal Representatives of the Estate of Mary Hawkes vs. City of Albuquerque*, No. D-202-CV-2016-01373, regarding the security and usage of the Evidence.com cloud-based platform used to store officer lapel camera videos, the Contractor shall examine system security, and whether and to what extent certain videos utilized as evidence in specific officer-involved shooting cases were altered.

The Scope also required Elijah to perform the following activities:

#### **A. Independent Analysis of Evidence.com System**

- (1) Analysis of system functionality for purposes of assessing chain of custody process for officer lapel camera recordings, including independent review of website, documentation, interviews, and related materials.
- (2) Analysis of allegations in Chavez affidavit relating to chain of custody issues and Evidence.com functionality.

(3) If any are located during the course of the system analysis related to the allegations in the Chavez affidavit, identification of any chain of custody vulnerabilities regarding the security and usage of Evidence.com.

**B. Independent Analysis of Videos from Specified Officer Involved Shootings**

(1) Analysis of videos from two specified officer-involved shootings to determine whether: (i) the original videos were properly uploaded to and maintained on Evidence.com; (ii) evidence exists that the original videos were edited; (iii) evidence exists that versions of the videos other than the originals were edited, and if so, whether such edits were appropriate or designed to inappropriately obfuscate.

(2) Analysis associated audit logs.

(3) Analysis of allegations in Chavez affidavit relating to alleged improper alterations of videos from specified officer involved shootings.

**C. Hold periodic meetings with the City, as needed.**

**D. Issue final report on findings to the City by March 10, 2017. The final report will be made publicly available.**

(Note: The Contract required all services to be completed by March 31, 2017, assuming the City's cooperation in giving Elijah access to needed information and resources, as require in the Scope of Services.)

**Chronology of Activities:**

February 15, 2017: OIG conveyed via email, City R16-138 requirements to Elijah and requested to be included in all meetings and communications with CABQ personnel regarding their investigation. Andy Reisman acknowledged the request and affirmed that Elijah will support the request.

February 16, 2017: Reisman advised by email that APD will establish a "read-only" account on Evidence.com, which will allow them to access and review the system, videos and logs. They also will receive TASER materials provided to APD regarding system usage. He had a discussion with APD personnel regarding the scope of work in the contract, which included the allegations made by Chavez in his affidavit. He also noted that APD was cooperative.

February 20, 2017: Elijah (Matthew Feilen, Computer Forensic Examiner) communicated through an email with APD personnel (courtesy copied OIG), that Elijah would need to review the APD's Evidence.com administrative account capabilities, which would require an on-site visit enabling the observation of account access and use of capabilities.

February 21, 2017: OIG participated in a teleconference meeting held at City Attorney's office between City Attorney, Director of Council Services and Elijah (Reisman), to discuss the direction of the administrative investigation.

February 23, 2017: OIG attended a meeting at APD between Elijah (Feilen) and an APD Detective to review the TASER International (TASER) Evidence.com system.

The following is a summary of observations and information obtained during the oversight of the meeting between Feilen and the APD Detective:

Specifically, the review of the evidence storage system was conducted as part of the external administrative investigation, which was conducted in response to allegations made by former APD Records Custodian, Mr. Reynaldo Chavez, that members of APD altered and deleted videos that were associated with certain incidents involving APD police officers.

Feilen provided input to the APD Detective regarding what needed to be reviewed within the Evidence.Com system. The APD Detective had an administrative account, which allowed him to perform certain processes that Feilen could not do with his "read only" access. Specifically, Feilen needed to review logs from The APD Detective's "Point of View", which could only be accomplished by the APD Detective when he was "logged" into the system. The APD Detective enabled Feilen to review the logs and also printed logs for him to keep.

Per Feilen's request, the APD Detective researched files for the two investigations included in Chavez' affidavit (APD officer involved shootings of Mary Hawkes and Jeremy Robertson), to determine if videos were deleted.

The APD Detective was able to contact the Property and Evidence Technician, who had oversight of the logs at the time of deletion, and was able to provide limited information.

Feilen affirmed that he only had "read only" access to Evidence.com files and said The APD Detective had given him only limited access to the files. He said that he didn't want or need full access from his Chicago, IL, location. However, he traveled to Albuquerque because he needed to ensure that he was able to obtain every log possible for both cases (Hawkes and Robinson). He said that the administrative files provided by The APD Detective matched with the files he was able to view from his Chicago location.

Feilen said TASER will be providing him with cameras that are the same type that were used during the Hawkes and Robinson incidents; these are considered to be 2014 era cameras. He advised that he will test these cameras once he receives them, which he described would be an attempt to "break" them, meaning he will find out what happens when trying to access and alter video. He said that he will not need to review videos that were made for the courts and media.

Feilen advised he will test features that protect video from the time it is recorded to the time it is uploaded, which includes hash marks.

Feilen said that while Elijah was initially intending on completing the investigation by March 10, 2017, it may take a few days more to complete the process. He said the review of deletions may extend the testing by a few days.

February 28, 2017: OIG participated in a teleconference meeting involving City Attorney, Director of Council Services and Elijah (Feilen), to discuss the progress of the administrative investigation and facts determined to date from the investigation.

February 28, 2017: APD provided Elijah with documents needed to complete the investigation.

March 8, 2017: OIG participated in a teleconference meeting involving City Attorney and Elijah (Reisman and Feilen). Feilen summarized the activity completed to date and Reisman estimated completion date to be March 17, 2017.

March 10, 2017: OIG participated in a meeting involving City Attorney and Director of Council Services. The purpose of the meeting was to discuss various topics incorporated into the administrative investigation, to include discussions about video file deletions from a policy and capability perspective, as well as system vulnerabilities.

March 13, 2017: OIG participated in a teleconference meeting involving City Attorney, Director of Council Services and Elijah (Reisman and Feilen). The purpose of the meeting was to discuss the progress of the administrative investigation and facts determined to date from the investigation.

March 16, 2017: OIG participated in a teleconference meeting involving City Attorney and Elijah (Reisman and Feilen). The purpose of the meeting was to discuss the content and format of the investigation report.

March 20, 2017: OIG participated in teleconference meeting involving City Attorney, Director of Council Services and Elijah (Reisman and Feilen). The purpose of the meeting was to discuss and review content of a draft report, with the goal of clarifying content and language and to consider anticipated questions. Elijah anticipated their investigation and final report should be completed within one day.

March 22, 2017: OIG participated in a teleconference meeting involving the City Attorney and Elijah (Reisman). The purpose of the meeting was to review the revised draft report, which included a discussion on providing some clarification on topics and correcting typographical errors. Additionally, Elijah affirmed to the OIG that all CABQ personnel were supportive throughout the investigative process and ensured Elijah had access to all personnel and resources to properly fulfill the Contract Scope of Services.

March 22, 2017: OIG participated in a final teleconference meeting involving the City Attorney, Director of Council Services and Elijah (Reisman). The purpose of the meeting was to conduct a final review and discuss some opportunities for clarification to the investigative report prior to finalization.

**Review of Elijah Investigative Report:**

On March 24, 2017, the OIG reviewed the final report published by Elijah that documented their investigative activity, to include results of examinations of the Evidence.com system and specific allegations pertaining to the alterations and deletions of video per the Chavez affidavit. The outside investigation focused only on the technological aspects with regard to Evidence.com and TASER Axon Flex, Axon Flex 2, Axon Body and Axon Body 2 cameras that pertained to the Chavez affidavit and did not incorporate interviews of individuals, with the exception of one on-site meeting and several telephonic meetings with the APD Detective that administers Evidence.com for APD. The report was comprehensive and addressed all requirements contained within the Scope of Services of the Contract with the City of Albuquerque.

**Observations:**

Based upon information obtained during the oversight of the investigation process, the following observations were made:

1. All City Departments responded to requests by Elijah for documents, access to data, and other information required so that Elijah could fulfill the terms of the contract.
2. Elijah advised that TASER was supportive of all requests to obtain data, information, and use of cameras for examination purposes.
3. Elijah's investigation focused on the scope of the contract (included earlier in this report), which was based upon Chavez' allegations in his affidavit. The investigation sufficiently addressed all aspects of the scope.

**Assessment:**

Based on the observations of Elijah's investigative activity (during visit to APD), discussions at all telephonic meetings between the City and Elijah, as well as all email communications, it is the OIG's assessment that the independent investigation by Elijah was conducted thoroughly, objectively and complied with the Contract Scope of Services. Additionally, Elijah had the full support of all CABQ personnel, enabling the successful completion of their investigation and final report.