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Report of Investigation

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SUBJECT: Animal Welfare Department (Possible Retaliation)

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INVESTIGATOR: JoVonne O'Connell

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Executive Summary

The Office of the Inspector General (OIG) for the City of Albuquerque (COA), NM, conducted an investigation into possible retaliation and the termination of an Animal Welfare Department (AWD) employee (AWD-1). The investigation was self-initiated by the OIG based on information received that employees who had cooperated with a previous OIG investigation into AWD were being suspended or demoted or were being placed on Performance Improvement Plans (PIP). The OIG learned that AWD-1 was placed on a PIP and terminated in November, 2017.

The investigation revealed that AWD-1, who worked in the AWD Foster Program for nearly six years, had no record of having prior issues or disciplinary actions during the time at AWD. Feedback from fellow AWD employees and those who fostered AWD animals was all positive as it pertained to AWD-1's work at AWD.

However, AWD-1 was placed on a PIP in July, 2017, with feedback from AWD's former Director and AWD's Assistant Director (AD) that the Foster Program was not successful and was not meeting expectations. AWD-1 was tasked with expanding the program and was provided a list of various things to do to get more animals into the foster program. AWD-1 reached out to individuals in Human Resources (HR), as well as the Human Rights Office (HRO) to express concerns and confusion about the negative feedback she received from AWD Management, and the timing of the PIP.

The investigation revealed that the AWD's Interim Director (ID) and recently hired HR representative believed that, upon review of the history, AWD-1 termination was justified. The ID and the HR representative cited insubordination of AWD-1 when it came to doing what was asked in the PIP. Review of AWD-1's personnel files revealed that there wasn't a record of prior disciplinary actions. Additionally, there weren't any annual performance reviews on file. The investigation disclosed that AWD-1 was an unclassified employee, and, therefore "at will," which meant performance reviews were not required, and termination could occur at any time and for any reason.

Introduction:

The Office of Inspector General (OIG) self-initiated an investigation into possible retaliation occurring at the Animal Welfare Department (AWD) in response to employees cooperating with a recent OIG investigation into practices at AWD.

Background:

In the spring of 2017, the OIG conducted an investigation concerning AWD's handling of dogs with serious behavioral issues, as well as concerns that the Director and AD for AWD showed a disregard for public safety. The OIG also explored concerns of there being a lack of communication flow from the leadership level and a lack of understanding by the Director and AD of sheltering "best practices" promulgated by professional organizations.

In September, 2017, the OIG became aware of employees who were involved in bringing forth concerns that AWD staff was experiencing suspensions and demotions with pay cuts or were being placed on Performance Improvement Plans (PIP). Upon further discussions with employees, the OIG learned that the suspensions turned out to be "working suspensions" with pay. Those employees who had been demoted with a decrease in salary had sought and retained legal counsel to explore their options. The OIG learned that one employee (AWD-1) was placed on a PIP on July 13, 2017, and their employment was terminated on November 17, 2017.

The year 2017 was an election year for the City of Albuquerque. A new administration took over on December 1, 2017. The AWD's Director position is an appointed position and as a result, on November 30, 2017, then Director, Paul Caster, served his last day as the AWD Director.

Scope and Methodology

The OIG investigation focused on the allegations asserted by current employees of AWD as previously described. The methodology consisted of reviewing relevant documents and interviewing witnesses that could provide information regarding the allegations. The following activities were conducted as part of the investigative process:

- Review of pertinent documents
- Interviews and meetings with various staff members
- Meeting with AWD's Interim Director and AWD's AD
- Coordinating with City Attorney's Office and the City's Human Rights Office
- Meeting with City Human Resources and AWD Human Resources
- Review of employee files
- Review of relevant City Ordinances and AWD policies and procedures

Ordinances:

The OIG reviewed the Albuquerque Code of Ordinances and found that the following related to this matter:

The Inspector General's Ordinance includes:

§ 2-17-12 PENALTY; COOPERATION; RETALIATION PROHIBITED.

(D) 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 his office.

The Merit System Ordinance includes:

§ 3-1-6 THE CLASSIFIED AND UNCLASSIFIED SERVICE.

(E) All employees, except as otherwise provided herein, in the classified service shall be entitled to all of the rights and benefits provided for by this article. All employees in the unclassified service shall be entitled to all of the rights and benefits to which classified employees are entitled except the benefits provided for in §§ 3-1-23, 3-1-24 and 3-1-25, and also such rights and benefits specifically contracted for in writing between the Chief Administrative Officer and an unclassified employee.

The Whistleblower Ordinance includes:

§ 3-7-8 RETALIATION.

(A) *Retaliation prohibited.* Elected city officials and city employees are prohibited from taking retaliatory action against an employee because the employee participated in an action protected under this article.

(B) *Discipline.* It shall be a defense to any discipline that the disciplinary action was initiated in retaliation of the employee having filed an allowable complaint or participated in an action protected pursuant to this article.

Interview of AWD-1:

On November 20, 2017, the OIG telephonically interviewed AWD-1, whose employment was terminated on November 17, 2017.

She informed the OIG that she had been placed on a PIP in July 2017. According to her, the PIP was not titled and was basically a list of things she was instructed to do. However, she indicated that the PIP had no deadline. She also indicated there had been no follow-up or discussions regarding the PIP. She also indicated there wasn't any intermittent feedback from her leadership between the initiation of the PIP and the termination.

AWD-1 stated that she had suggested to the former AWD Director and to the AD that they speak with AWD's Senior Veterinarian, as well as the other veterinarians, so they might get a better understanding of what she did in her job capacity; however, she didn't believe this was ever done.

AWD-1 stated that the former Director and the AD had complaints that the Foster Program was not working and had not been managed correctly. However, she stated that there was no communication (or at least very limited communication) from AWD management as to what was meant by these comments and what was desired and expected. AWD-1 indicated that she requested feedback from the former Director and the AD, but did not receive any. She stated that she had already been doing some of the things she was asked to do in the PIP for "quite some time." She stated that the former Director and the AD also wanted her to keep a log or diary of what she did on a daily basis. AWD-1 indicated that she kept a log as instructed, but that the former Director and the AD never provided comments or feedback on the log. The former Director and the AD also wanted her to start a foster program that was specifically for Pit Bulls. She did not understand why there should be a foster program that was geared towards one specific breed, and felt that if a foster program was created for one breed, then there should be programs specifically for all breeds.

AWD-1 expressed that the former Director and the AD kept "piling on work," and she felt like they were setting her up to fail. She commented that she never had any issues like this with a previous AWD director. AWD-1 stated she contacted both the City's HR Director and the City's HRO to inform them of her concerns and to express that she felt harassed and retaliated against. She indicated that the HRO officer seemed concerned; however, she felt that HR did not really care or maybe their "hands were tied." She stated that AWD's new HR person did not really seem interested in looking into the issues either. AWD-1 stated that the AD and the former Director then informed her that she was not allowed to communicate with City HR or with the HRO.

At first, AWD-1 was not sure how the former Director and the AD knew she reached out to City HR and to the HRO. She thought that perhaps the HR Director had reached out and informed them. However, she mentioned that she had also heard that the former Director and the AD were accessing the email accounts of those employees who had cooperated with the previous OIG investigation. She stated that as a City employee with a City email account, she realized that she had no expectation of privacy; however, from what was heard "around" AWD, the AD was using the information found in the emails as "watercooler fodder," and she did not believe that was appropriate.

Documents Provided by AWD-1:

AWD-1 provided the OIG with a document she titled: "AWD Foster Program Support from AWD Staff, Rescue Partners, and Foster Families." The document was comprised of 30 pages of statements from AWD staff members, rescue partners and AWD foster families regarding how they felt about AWD-1 and the Foster Program, and the management of that program.

AWD-1 indicated that she sent an email to these individuals asking for their comments about the program. She said she had been placed on a PIP. She also said that she learned that the AWD Foster Program, and work within the management of the program, did not have value at the shelter. She included an excerpt from the PIP in which the former Director stated that:

Overall this program is not delivering what I'd expected even after removing the volunteer coordination duties. This is the one area AWD can expand the most and will have the most dramatic impact on our animal's lives. It would make me very proud to hear ASPCA honoring AWD's foster program for being forward looking and innovative. I believe this could be the case if adequate effort is placed on the program and how best to help this Department succeed. Use this performance enhancement plan as an opportunity to grow and improve your value to the AWD, our staff, volunteers and animals, and the city.

AWD-1 did not indicate what date the email was sent, but the comments received were from July and August 2017. The comments were positive and supportive, and many expressed disbelief or disappointment that AWD management did not feel that the Foster Program was successful and that AWD-1 was not doing a good job.

AWD-1 also provided the OIG with a 26 page document titled: "AWD Foster Program History of Concerns." The document was organized into sections and included a background and a summary for each.

First section: included AWD-1's summary and timeline of her experiences at AWD and with the former Director and the AD.

Second section: AWD-1's proposal of a foster behavior plan for foster dogs. AWD-1 explained that per the AD's request to send more dogs to foster homes, including dogs with behavior issues or those in need of training, AWD-1 created a proposed "foster program expansion plan" and emailed this to the AD on April 6, 2017. AWD-1 indicated that she also emailed this proposed plan to the Volunteer Coordinator and to the Behavior Specialists, and requested feedback from everyone. AWD-1 indicated that she received "no comments, responses, or any requested data."

Third section: Titled: "Request for Help from Human Resources & Subsequent Retaliation." This included an email that AWD-1 sent to the City's HR Director asking for help and explaining the lack of communication and the troubles between herself and the AD.

Fourth section: Titled: "Performance Enhancement Plan & My Initial Comments after Review July 17, 2017."

Fifth section: Titled: "Performance Enhancement Plan & My First Response Submittal July 27, 2017."

Sixth section: Related to AWD-1's PIP and her meeting with the AD on August 2, 2017.

Coordination with the HRO:

The OIG met with the HRO in the City's Legal Department. AWD-1 had been in contact with him periodically since July 2017. He was aware of AWD-1's concerns given what had been occurring at AWD. He was also aware that she had been placed on a PIP and was aware that she was recently terminated. The HRO commented that he was surprised to learn of AWD-1 termination, especially given the fact that it occurred towards the end of November before the Director left the department and before the installation of the new City administration.

The HRO indicated that at one point, he had suggested that AWD-1 also meet with the City's HR Director. He said it was his understanding that AWD-1 had been told by the AWD AD and the former Director that she could not discuss her situation with anyone outside of AWD. The HRO pointed out that such information was wrong and that AWD-1 was free to speak with the HRO, the HR Director or anyone else.

The HRO shared emails that AWD-1 had sent to him and that AWD-1 had also provided to the OIG. In the emails AWD-1 expressed concerns about herself and other employees that believed they were harassed and retaliated against by the AD and former Director. She expressed concerns that the AD and former Director refused to work with her, other than to place her on a PIP.

She also said she believed the Foster Program was successful, but that AWD management wanted her to expand the program. She explained that some of the dogs that were encouraged to be sent to foster care had behavior issues. She wanted to be careful with these type of dogs and have the behavior specialists serve as a support team for the foster families as well, as she did not want any of the animals to cause problems in the foster homes, such as bites and destructiveness.

AWD-1 shared in her emails that she had been placed on a three-day suspension for sending a dog to a foster home, who then escaped from the home and went missing. AWD-1 felt as though she was caught in an impossible situation because she was told to send more dogs to foster homes, but felt she would be disciplined and suspended if anything went wrong, even though the foster families signed contracts accepting responsibility.

Coordination with the City Attorney's Office:

The OIG met with one of the Assistant City Attorneys to inquire about rights that unclassified employees may have. The OIG was informed that because unclassified employees were at will, their employment can be terminated for any reason, as long as the reason is not due to discrimination, retaliation or for being a whistleblower. The Assistant City Attorney also suggested reviewing the City's Whistleblower Ordinance (3-7-8), as well as the City Ordinance referencing "The Classified and Unclassified Service" (3-1-6, section E).

Meeting with AWD Interim Director:

On February 1, 2018, the OIG met with the Interim Director of AWD to provide a briefing of the OIG investigation and the issues involved. The Interim Director provided information he

thought was pertinent to the investigation.

The Interim Director mentioned that he had gathered information with regard to the restructuring issue at AWD. He believed the former AWD Director initiated this restructuring because of an audit that was done. However, the Interim Director indicated that, upon review, the restructuring had nothing to do with the audit. He commented that some of what contributed to the issues occurring at AWD was “the same people playing the same game.” He felt that there was clearly a power struggle and the “restructuring” was an opportunity for AWD upper management to gain more power.

He also mentioned that they were working on a settlement for two employees who were demoted and received a pay reduction. He reviewed the situation involving AWD-1, who had been terminated, and determined that her termination was justified due to insubordination. He explained that the employee had been placed on a PIP, and that there was defiance of this plan. He added that the AWD HR representative was a witness to the situation. He said that based on his review of the file and the plan, he would not reinstate AWD-1, as she had not followed instructions given to her. He did not believe it would be a good idea to reinstate her.

Meeting with AWD HR Representative

On February 1, 2018, the OIG met with the HR representative for AWD. She stated that she had been with AWD since August 22, 2017. She said that AWD-1 was required to attend weekly meetings to provide status updates on her PIP. She said that she, the former Director and the AD also attended these meetings. She explained that the former Director and the AD wanted AWD-1 to expand the foster program. She stated that a large percentage of the animals that went to foster homes were puppies, kittens and old dogs. One of the directives in the PIP was for AWD-1 to expand the foster program to include all other dogs instead of focusing on those that were too young or old.

The former Director and the AD had also directed AWD-1 to expand the Facebook page for the foster program. AWD-1 was supposed to produce a report for each meeting. However, the HR representative indicated that at every meeting AWD-1 reported that she did not have time to complete the assigned tasks. The HR representative pointed out that AWD-1 had been in charge of both the foster program and the volunteers, but that another AWD employee was put in charge of overseeing the volunteer program several months prior. Therefore, AWD-1’s time and focus could be spent solely on the foster program. The HR representative commented that because of this, AWD leadership could not understand why AWD-1 would not “have time” to complete the assigned tasks.

The representative discussed another situation in which the former Director wanted AWD-1 to complete an online webinar—it took her three weeks to complete it. The representative said it seemed AWD-1 made no effort with the PIP and did not care about the tasks the former Director assigned to her.

The OIG inquired about any prior disciplinary actions and annual performance reviews. The representative said she reviewed all of AWD-1’s personnel records and discovered there weren’t

any documents for the past couple of years for her or any employees. She added that 2014 was the last time period she found for any documents related to disciplinary actions. She also indicated that she checked with the main HR office and discovered there were very few records found for AWD employees.

There were no prior disciplinary actions found for AWD-1. The only disciplinary action found in AWD-1's file was from September, 2017. This was a "Decision to Discipline" (DTD) dated September 1, 2017. The DTD was the result of an internal investigation in which AWD-1 approved a dog to go to a foster home despite the dog having a bite history. The dog then escaped its foster home and was "at large." The DTD also cited that AWD-1 had refused to work with AWD's Adoption Counselors and Behavior Specialists. The DTD also required AWD-1 to be issued a three-day suspension to be served on three consecutive Thursdays, beginning September 21, 2017. The document also indicated that, per AWD-1 employment history, she had no prior disciplinary actions on file. AWD-1 signed this document on September 1, 2017.

On September 7, 2017, an "AMENDED Decision to Discipline" was issued to AWD-1. All the information in this document was the same as the original DTD with the exception of the discipline section. The amended document stated that AWD-1 would be issued a three-day suspension "with pay" to be served during the period of September 19 – 21, 2017. AWD-1 signed this document on September 7, 2017, but notated in parentheses that she acknowledged receipt and would consult with the City Attorney's Office.

A second copy of the September 7, 2017, "AMENDED Decision to Discipline" was also in the file. This copy was signed by the HR representative on September 8, 2017, on the signature line that stated "Witness Signature (If employee refuses to sign)."

Performance Improvement Plan:

The OIG reviewed the PIP that was given to AWD-1. The PIP was signed by both the AD and AWD-1 on July 13, 2017. AWD-1 did include a note below her signature stating "signed as acknowledge receipt will review." The PIP was a typed document that had no title or heading, no introduction, no explanation that described the document, and was not dated, other than with the signatures and accompanying dates on the reverse side. The PIP had a list of tasks "A" through "J" with detail about what should be accomplished with these tasks.

There was another copy of the PIP in the file that had "Updates," which were weekly comments typed in red below each lettered task. These comments were dated August 31, 2017, September 8, 2017, September 22, 2017, and September 29, 2017.

Review of AWD-1's Personnel File:

The OIG reviewed AWD-1's personnel file and discovered there was no documentation of prior disciplinary actions taken against AWD-1, nor any documentation of annual performance reviews.

The OIG met with the HR Manager, who accessed a Basic Annual Review for AWD-1 in the PeopleSoft database. This Basic Annual Review was the only one in the system and was initiated on September 28, 2017, by the AD, but was backdated to January 28, 2017. The review was to cover the timeframe of January 28, 2017, through January 27, 2018, with criteria and checkpoint dates as follows:

- Define Criteria: February 10, 2017
- Checkpoint 1: June 1, 2017
- Checkpoint 2: September 29, 2017
- Finalize Criteria: January 17, 2018

However, this Basic Annual Review was never completed, criteria was never defined or finalized, and nothing was completed for the checkpoints.

The HR Manager indicated that technically there was a policy that annual performance evaluations should be completed for City employees. However, there was some confusion regarding when the evaluations should be created and completed for each year. It was eventually decided that the review date would be the employee's anniversary date.

The HR Manager said that unclassified employees are "at will" and can have their employment terminated at any time, so they are not evaluated the same way as classified employees. He commented that there is a risk of liability if unclassified employees are treated in the same manner as classified employees. The HR Manager said it was the Legal Department that decided annual or intermittent performance evaluations were not necessary for unclassified employees. However, it was up to the discretion of each department whether they want to do annual or intermittent evaluations for unclassified employees.

The OIG reviewed the physical files of some other AWD employees who either reported directly to the AD, or were disciplined in some manner at approximately the same time that AWD-1 was placed on a PIP. A review of the records disclosed that there were no performance evaluations for most of these employees since 2008 or 2009. One employee's file did not show any record of a performance evaluation.

The OIG and HR Manager checked the PeopleSoft database for the Basic Annual Reviews. Of these employees who also reported directly to the AD, only one had a Basic Annual Review in the system. This Basic Annual Review was also initiated on September 28, 2017, by the AD. As was the case with AWD-1, the review for this employee was not backdated; however, similar to AWD-1's Basic Annual Review, nothing was filled in for this employee's review. The PeopleSoft system revealed that the Basic Annual Review was then transferred from the AD to the Interim Director on March 2, 2018.

Interview of AD:

On February 9, 2018, the OIG met with the AD of AWD to provide a briefing of the OIG investigation and the issues involved. The AD provided information she felt was pertinent to the

investigation, which she believed also provided clarity, correction and context to information conveyed to the OIG.

The AD stated she first met AWD-1 around February 7, 2017, which was the date AD began employment with AWD. According to the AD, AWD-1 sent an email to the former Chief Operations Officer (COO) with complaints. Allegedly AWD-1 requested a new supervisor, and she did not agree with the idea of sending adult dogs to foster homes. The AD indicated that she had spoken with AWD-1 several times. She said that in a municipal shelter, or any shelter that had fostered animals, there should be an all-encompassing foster program, to include medical and hospice, and for cats, dogs, or “whatever.” She said that AWD-1 refused to include adult dogs in the foster program, which was the shelter’s largest dog population.

The AD stated she used other foster programs she saw on the internet as examples to develop a possible foster program for AWD, but AWD-1 did not use those programs. The COO suggested that AWD-1 be put on a PIP. She was placed on a PIP on July 20, 2017, and included in the PIP was the requirement that she have a foster program for adult dogs. The AD indicated that as soon as AWD-1 received the PIP, she shared a section out of it with the volunteers and foster homes, stating that she was not appreciated at AWD and that the managers did not like her or her program. AWD-1 added that she thought the existing foster program was a wonderful program and that the volunteers and foster homes were part of the program.

The AD stated that every time they met with AWD-1 for the PIP, they reviewed a list of things that AWD-1 was supposed to do, but her response was that she did not have time or did not do certain things that she had been directed to do. The AD said AWD-1 was caught in the veterinary clinic area “chit-chatting” with people for lengthy amounts of time. The AD clarified that the meetings with AWD-1 included herself, the former AWD Director, and the HR representative for AWD.

The AD said the PIP was in place for three months, and when it was nearing the end, she said AWD leadership was in contact with the City Legal office regarding the situation; they let the attorney know where they were with the PIP. The AD stated she had printed the reports that AWD-1 was supposed to have printed for the meetings, and came across two dogs mentioned in the reports (Indaka, or “Indie,” and Zeke) that had been provided to foster homes. These dogs did not have a “SAFER” test done and were extremely aggressive. She said the dogs were supposed to be euthanized because they were so aggressive towards the AWD staff. The AD said instead AWD-1 allowed one of the staff members (AWD-2) take the dogs home, and then, AWD-2 gave the dogs away to another individual. The AWD embedded microchips in these dogs disclosed they had been transported to New York. AWD had no contact with the people that took the dogs. The AD said AWD-1 had been instructed by the former Director not to transfer the dogs, and to have a “SAFER” test done on the dogs. She said the vetting for these dogs was out of date.

The AD stated that it was the former Director who decided to terminate AWD-1’s employment. However, she believed that the City’s Human Resources Director contributed to the decision, as well as one of the City’s Assistant City Attorneys.

The AD confirmed that objective criteria was used in the PIP, for measuring whether AWD-1 met the goals and objectives of the plan. The decision to terminate AWD-1 was required to be based on AWD-1's progress in meeting objective criteria. The AD reiterated that everything that was asked of AWD-1 was met with the response, "I didn't have time to do that," or "I don't know how to work the computer to get that." She said these were not acceptable explanations. The AD further said that AWD-1 had to walk past the former Director's office to get to the clinic, and for one week the former Director kept a record of how many AWD-1 walked past his office and for how long she was in the clinic. He used this information when she said she was busy, after asking her "well how many fosters did you get out yesterday, or this week?" The AD said AWD-1 responded with "around three." The AD said that processing three animals (or even ten animals for the week), was sufficient for a 40-hour per week job.

The AD revealed that AWD did not use the required regular employee performance evaluations and intermittent feedback checkpoints. She stated that AWD did the one-year checkpoint. The AD also said AWD-1 was an unclassified employee. She reiterated that the COO gave the direction to put AWD-1 on a PIP. The COO had also met with the former Director and the City's HR Director to discuss the email that AWD-1 had sent to the COO. The AD said the AWD-1 had also included the City's Senior Employee Relations Coordinator on the email. The COO, the former Director and the HR Director all decided that a PIP would be initiated.

The AD claimed that the Assistant City Attorney told her to request emails after some employees initiated a law suit for retaliation. She indicated that the Assistant City Attorney also provided key words to be used in email review. The AD stated that she was then advised to provide the relevant results of the review of emails to the Assistant City Attorney. She suspected that none of the employees were aware that she was reviewing their emails. She also indicated that she was advised by AWD's HR representative to request and view the emails, which she assumed originated from the Assistant City Attorney.

Note: The OIG's position is that instructing the AD and Director to review the emails, with their possible biases (given previous investigations), could create the appearance of an actual conflict of interest. A better practice should have been to have a disinterested and objective third party conduct the email review.

Interview of Former AWD Human Resources Representative:

On March 9, 2018, the OIG spoke with the former HR representative for AWD via telephone. She stated she was employed with AWD from January 2015 through April 2017.

The former HR representative recalled that the former AWD Director had expressed his desire to place AWD-1 on a PIP in approximately December, 2016. She thought he had followed through with the PIP, but did not know for certain, as she did not help him with it.

She remembered participating in a meeting with both the former Director and AWD-1 in approximately November or December, 2016. She stated AWD-1 had tried to get clarification about her position from the former Director. The former HR representative said there was a lack of communication and that the meeting was not productive. She said AWD-1 thought the former

Director was “blindsiding” her with information for which she lacked awareness. The former HR representative said AWD-1 was “taken aback” with a lot of what the former Director was telling her. She indicated that it was a lot of information being communicated to AWD-1 about what she was doing wrong. The former HR representative remembered suggesting that they have a follow up meeting to see where things were, and for the former Director and AWD-1 to try to get a better understanding of each other’s concerns. However, she did not believe a follow-up meeting was ever done.

The former HR representative said a “power struggle and challenge” ensued not only between the former Director and AWD-1 but also between the former Director and many of the employees. She recalled there was a department-wide complete “breakdown.” She explained that it was as though the former Director, the AD, the Executive Assistant and the Fiscal Officer established their own “clique” and everyone else in the department was on the outside.

The former HR representative did not believe AWD-1 was insubordinate, even though she expressed her concerns to leadership. The former representative explained that AWD-1 believed “too much was being put on her plate” and had questioned the expectations of her. The former HR representative agreed that some of the expectations did seem to be too much and seemed unrealistic. She provided an example in which the former Director brought up a situation about kittens with ringworm and he said he wanted AWD-1 to take kittens to a Senior Center. The former representative said that ringworm was contagious and could be spread from an animal to a human. She further explained that even if all kittens were perfectly healthy, AWD just did not have the resources to be at senior centers or in the community on a regular basis. However, the former Director wanted to expand the foster program and wanted AWD-1 to go out into the community. He also wanted to expand the program to include dogs that may have had some behavior issues. The former HR representative said AWD-1 was concerned with public safety and wanted to make sure to “cover herself.” She also said if these type of dogs were going to go into the foster program, then AWD-1 wanted waivers and forms to be signed and wanted to have a support system in place for the foster homes so they could receive advice and assistance from AWD staff experienced in animal behavior.

The former HR representative stated that AWD-1 had no prior disciplinary actions on her record and that unclassified employees were not required to have performance reviews.

Conclusion:

The position of the OIG is that there wasn't conclusive evidence that AWD-1 was wrongfully terminated (retaliation) by the former AWD Director or the AD for cooperating with OIG in a previous investigation. This determination was based on a "clear and convincing" standard, which means the evidence must prove that it is substantially more likely than not that the allegation is true. This standard is greater than "preponderance of the evidence" standard, but less than the "beyond a reasonable doubt" standard. Likewise, there was insufficient evidence to disprove that her termination was retaliatory in nature.

The timing of AWD-1's termination of employment, just before the former Director stepped down, certainly raises valid questions. Additionally, the initiation of the PIP soon after the completion of the previous OIG investigation, without a poor performance history, also raises valid concerns. Objectively and countering the problematic timing of these actions is the documented failures by AWD-1 to comply with instructions and objectives in her PIP.

The City doesn't have a requirement for annual performance evaluations of unclassified employees but a best practice would be to establish such a requirement. It could help with situations such as this one and, more importantly, provide an unclassified employee with important feedback on their level of performance, so that they can adjust their efforts to meet the expectations of them.

As previously indicated, this was a self-initiated investigation and not based on a receipt of a Whistleblower complaint. A primary reason for making the decision to initiate the investigation was the timing of the establishment of a PIP soon after the prior OIG investigation, without a history of poor performance, and the subsequent termination of the employee just prior to the departure of the former AWD Director. Also, two other employees who cooperated with the prior OIG investigation have alleged retaliatory action for their cooperation and subsequently filed lawsuits.