Trust & Innovation Portal

Fraud Procedures Manual

Updated May 2020

Office of the City Auditor
City of Beverly Hills
Preface

The City Auditor operates a Trust & Innovation Portal (TIP) to provide a means for City of Beverly Hills employees and residents to confidentially report: (1) alleged improper activity involving City operations, vendors, and employees; and (2) suggestions for improving the efficiency and effectiveness of City operations. This manual documents guidance on conducting fraud investigations (Fraud Hotline) that are entered into the TIP website. The process for reviewing suggestions for improvement are documented in the Audit Manual. Any reference to Fraud Hotline in this manual refers to fraud, waste, or abuse-related complaints made to the TIP. There is no separate Fraud Hotline.
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I. Overview of the Fraud Hotline and Complaint Program

A. Introduction

1. Objective

The objective of the Trust & Innovation Portal (TIP) is to provide a means for City of Beverly Hills employees, residents, vendors, and others to confidentially report: (1) any activity or conduct in which he/she suspects instances of fraud, waste, or abuse; (2) violations of certain federal or state laws and regulations relating to fraud, waste, or abuse as it is defined at California Government Code §53087.6(f)(2); and (3) offer suggestions for improving the efficiency and effectiveness of City operations.

2. City Auditor’s Authority

California Government Code §53087.6 establishes the City Auditor’s authority to maintain a whistleblower hotline to receive information regarding fraud, waste or abuse. Per Municipal Code Title 2, Chapter 3, Article 13, effective 10-6-2017, City Auditor duties include investigating allegations of fraud, abuse, or illegal acts.

3. Structure

The City Auditor utilizes a third party web based application, TIP, (Trust & Innovation Portal) to allow City employees and the public to make confidential reports of alleged improper activity or offer suggestions to improve operations. The online portal can be accessed at http://www.beverlyhills.org/TIP. When a record is entered in TIP, the system automatically notifies the City Auditor of the complaint for investigation or referral as described in Section C4.

Employees and residents may also contact the Office of the City Auditor directly in person, by telephone, email, or by written correspondence. These communications are also treated confidentially. The dedicated phone number for receiving calls is (310) 288-2847 or by email address at TIP@beverlyhills.org.
4. Reporting

The City Auditor will issue a quarterly summary report regarding the Fraud-related activity, and will present it to the City Council for review and acceptance. The City Auditor’s Quarterly Fraud Report will include the number, category, and disposition of the complaints received. To the extent permissible by California Government Code §53087.6, the report will describe the resolution for the complaints made to the Fraud Hotline. The allegations are determined to be either substantiated, corrective action taken, unsubstantiated, or no further action necessary. When a significant allegation is substantiated, a public Hotline Investigation Report will be issued, with the extent of the information shared being in compliance with California Government Code §53087.6, along with a detailed confidential report to management and City Council.

The City Auditor will maintain the appropriate level of confidentiality regarding all complaints and the information provided in public reports. In order to protect the confidentiality and integrity of investigations, complainants who provide an allegation will not be given details or updates regarding the investigation except for the information provided in publically issued reports. See Section II of this manual for more details regarding the reporting of substantiated cases of fraud, waste, or abuse.

B. Terms & Definitions

1. Fraud, Waste, or Abuse

California Government Code §53087.6(f)(2) defines the terms, “fraud, waste, or abuse” as “any activity by a local agency or employee that is undertaken in the performance of the employee’s official duties, including activities deemed to be outside the scope of his or her employment, that is in violation of any local, state, or federal law or regulation relating to corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, is economically wasteful, or involves gross misconduct.”
For the purposes of the administration of the Fraud Hotline, the Office of the City Auditor will apply the following definitions to the violations listed below.

<table>
<thead>
<tr>
<th>Violation</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abuse</td>
<td>Official City action that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary under the circumstances.</td>
</tr>
<tr>
<td>Bribery</td>
<td>The corrupt payment, receipt, or solicitation of a private favor or payment for official action.</td>
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<tr>
<td>Coercion</td>
<td>Compulsion by physical force or threat of physical force; threat of taking or withholding official action or causing an official to take or withhold an action.</td>
</tr>
<tr>
<td>Conversion</td>
<td>The wrongful possession of or interference with the City's property as if it were one's own.</td>
</tr>
<tr>
<td>Corruption</td>
<td>The impairment of a public official's duties, such as by bribery.</td>
</tr>
<tr>
<td>Fraud</td>
<td>Any intentional act or omission designed to deceive others, resulting in the victim (City of Beverly Hills) suffering a loss and/or the perpetrator achieving a gain.</td>
</tr>
<tr>
<td>Fraudulent claims</td>
<td>A misrepresentation of facts in a claim to receive compensation.</td>
</tr>
<tr>
<td>Gross misconduct</td>
<td>An indifference to, and a blatant violation of, a legal duty with respect to the rights of others.</td>
</tr>
<tr>
<td>Malfeasance</td>
<td>Wrongdoing or misconduct by a City official.</td>
</tr>
<tr>
<td>Malicious prosecution</td>
<td>Intentionally (and maliciously) instituting and pursuing (or causing to be instituted or pursued) a legal action that is brought without probable cause and dismissed in favor of the victim that caused damages.</td>
</tr>
</tbody>
</table>
### Violation | Definition
--- | ---
Misuse of government property | The wrongful misuse of the City’s property.
Theft of government property | Unauthorized taking in to one’s possession of property owned by the City.
Waste | The intentional or unintentional, thoughtless or careless expenditure, consumption, mismanagement, use, or squandering of City resources. Waste also includes incurring unnecessary costs because of inefficient or ineffective practices, systems, or controls.
Willful omission to perform duty | Intentional failure to take action required by law or contract.

Complaints received by the Fraud Hotline that allege certain labor/management issues (e.g. discrimination, sexual harassment, substance abuse, and workplace violence/threats) are generally forwarded to the Human Resources Director for review with no further action by the City Auditor. The complete facts of each case will determine the disposition, in consultation with Human Resources and relevant agencies, as necessary.
2. Third-Party Provider

The City Auditor utilizes a third party web based application, named ACL, dba Galvanize, and referred to as the City’s Trust & Innovation Portal, to allow City employees and the public to make confidential reports of alleged improper activity or offer suggestions to improve operations. Online reporting can be accessed at http://www.beverlyhills.org/TIP.

3. Case Management System

The TIP system allows the City Auditor to document and manage all cases in a single, centralized system.

4. Fraud Hotline Reports

Information received from the caller, such as when the alleged incident occurred and where, is documented in TIP. This information is organized into a report. These reports are disseminated to the City Auditor’s designated recipients. Information received by the Office of the City Auditor in person, by telephone, email, or by written correspondence are also entered into TIP.

5. Resolution

The resolution to a complaint describes the results of the investigation, and action taken based on the investigation of the Fraud Hotline complaint.

II. Processing of Fraud Hotline Complaints

A. Receipt and Control of Complaints

City employees and the general public can accesses TIP to enter specific information about an alleged improper activity on the City’s webpage. Information from such online reports is recorded on a Fraud Hotline report.

In order to process a complaint/concern, the following information is generally required:

1. The alleged misconduct involves a City of Beverly Hills employee, a contractor, or a vendor that has been or is currently doing business with the City of Beverly Hills;
2. Name(s) of the individual(s) involved, if known;
3. Specific information regarding the alleged misconduct;
4. When the alleged misconduct occurred; and
5. Where, or in what department, the alleged misconduct occurred;
6. Circumstances surrounding how the alleged misconduct occurred; and
7. Any supporting documentation.

Upon completion of a complainant’s call or online report, the City Auditor is notified of the complaint and makes the determination of how the complaint will be investigated. At the time of the call, in the instance where the complainant has identified him/herself, the TIP system will prompt the reporting party whether the City Auditor may share his/her identity with persons outside of the Office of the City Auditor. The City Auditor will contact the complainant to verify if his/her identity may be shared. Identities of complainants will not be shared outside of the Office of the City Auditor without such permission, in writing, and will be in compliance with the California Government Code §53087.6. Incomplete reports will result in a request for more information via the third-party provider’s case management system. The case will close if the necessary details are not provided within 30 days.

B. Complaint Investigation Assignments

Based on the nature of the allegation made in the complaint, the City Auditor may investigate or may determine that the complaint should be investigated by one of the following entities:

1. Fair Political Practices Commission

Alleged violations of the Political Reform Act of 1974 (The Act) will be referred to the California Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, CA 95811. In summary, The Act regulates campaign finance, lobbying activity, and conflicts of interest.

2. Sworn Public Safety Employees – Police and Fire

Complaints against sworn police officers will be forwarded directly to the Beverly Hills Police Department Professional Standards Unit and handled under the Peace Officers Bill of Rights. Complaints against firefighters will be handled in accordance with the Firefighters Procedural Bill of Rights Act and management agreements.

3. Human Resources Director

1. Complaints that include but are not limited to issues such as employee relations, customer relations, labor/management issues and personnel related complaints will be referred to the Human Resources Director.
2. A standardized department referral email (see Section VIII of this manual) is sent to the HR Director, along with the attached Fraud Hotline report generally within two business days of receiving the complaint. The email advises of the filing of the complaint and requests a resolution in 30 days, if possible. The City Auditor will grant extensions on a case-by-case basis. The email also advises that the response should be provided by a level of management that is at least one level above those allegedly involved, and the response should not be provided by any of the individuals named in the complaint. The email states that no attempt should be made to determine the identity of an anonymous complainant.

3. The City Auditor may also send a copy of the standardized department referral email to the City Manager, Assistant City Manager, or other Appointing Authority, as appropriate.

4. At the discretion of the City Auditor or his/her designee, and based on the facts and circumstances of the complaint, all high risk complaints will be addressed promptly.¹

5. The resolution completed by the HR Director will be reviewed by the City Auditor to determine if the investigative actions and disposition are sufficient. The City Auditor can request additional information or clarification to resolutions.

4. City Council

If a complaint is made against the Mayor, City Council, City Treasurer, or City Auditor, the procedures outlined in the attachment found in XIV – City Council Investigative Procedures will be followed.

C. Investigation Procedures

1. Department Investigation

   1. Department directors and any other personnel involved in the investigation of a Fraud Hotline complaint referred by the City Auditor or HR Director for resolution shall not share the substance of a complaint with anyone except those individuals who are directly involved in and are essential to conducting the investigation. Any personnel provided with this information are required to hold and maintain all information obtained as confidential.

¹ See Section 4.5 for a list of high-risk/priority complaints.
2. The department/division head and those conducting the investigation will disclose the nature of the allegation(s) only to the extent necessary to receive information sought. Such a disclosure may be made by providing only a summary of the allegation(s). However, care should be taken to provide no information that would compromise the complainant’s or any witness’ identity or otherwise violate applicable confidentiality restrictions. No attempt should be made to determine the identity of an anonymous complainant. Sharing allegation(s) outside of the City Auditor’s review process may be a violation of California State law, and/or the policies and procedures of the City and may constitute cause for a legal claim of defamation, slander, invasion of privacy or other possible legal claims.

3. Any breaches of confidentiality may result in disciplinary action.

4. If a complaint involves a department head that includes but is not limited to issues such as employee relations, customer relations, labor/management issues and personnel related complaints, it may be forwarded to the City Manager for investigation and review, or investigated by the City Auditor.

5. If the City Auditor determines that the resolution is sufficient, the case will be closed. A closing email will be sent to the appropriate director indicating that the case has been closed and no further action is necessary. See Section XI for a sample closing email.

6. If the City Auditor determines that the response inadequately addresses the allegation(s) raised in the complaint, the City Auditor will communicate their concerns or questions to the appropriate director and request that the director address the concerns. The division or department head will be provided with an opportunity to provide further clarification, which may include any internal investigative reports.

5. City Auditor Investigations

1. The City Auditor or his designee will conduct an investigation generally following the procedures recommended by the Association of Certified Fraud Examiners’ Fraud Examiners Manual for any allegations of improper financial activity and fraud, waste, or abuse. The scope of the investigation will be to determine if the accusations made are valid, and to determine if there is any potential internal control weaknesses that need to be corrected that allowed fraud, waste, or abuse to occur.
2. For each fraud, waste, or abuse allegation that is determined to be significant, preliminary evidence will be gathered, such as reviewing the information provided via the hotline, reviewing other pertinent records, and interviewing appropriate witnesses to assess if the allegation appears to be valid. The City Auditor will notify and consult with the appropriate law enforcement agency for any allegations that appear to involve criminal activity. Once a referral is made to a law enforcement agency, no investigative contacts will be made by the City Auditor without the full concurrence of the law enforcement agency to which the matter has been referred.

3. When the City Auditor receives a Fraud Hotline matter that is the subject of pending City litigation, investigation, or other legal proceeding, the City Auditor, in consultation with the City Attorney, will evaluate the impact of an investigation on the legal proceeding, prior to pursuing its own investigation. In some cases, it may be appropriate for the City Auditor to cooperate with or conduct concurrent investigations; in other cases, the City Auditor should withdraw from the investigation to avoid interfering with the legal proceeding.

4. Investigative procedures will continue for each significant allegation until, in the City Auditor’s sole discretion based on the facts and circumstances, a reasonable case can be made for a referral to an appropriate agency for prosecution, or it is determined that there is insufficient evidence to substantiate the allegation of fraud, waste, or abuse.

5. The order that cases are worked on often depends on the importance of the cases. Important high priority cases may include safety concerns, criminal activity, significant losses to the City, high-level staff involvement, collusion of multiple wrongdoers, a major department-wide issue, or need for immediate action to stop a potential major issue. Based on the discretion of the City Auditor, addressing these items could take priority over other investigations and audits.

6. Investigative procedures will generally include, but are not limited to:
   
i. Documenting the allegation in writing.
   
ii. Interviewing potential witnesses and documenting the information gathered. The form included in Section XII of this manual will be used and signed by interviewees when the Fraud Investigator suspects that criminal conduct may be involved.
   
iii. Identifying facts or circumstances or indicators of fraud related to the allegation.
iv. Notifying and consulting with the Beverly Hills Police Department and City Attorney, as appropriate.

v. Developing an investigative plan and determining the type of evidence to pursue.

vi. Gathering evidence and performing analysis as is appropriate, such as:

1) Reviewing accounting records, payroll records, bank records, canceled checks, and credit card records.
2) Downloading and analyzing electronic data.
3) Reviewing emails and written correspondence.
4) Consulting with trained computer forensics specialist to image computer hard drives and from the image review the files and activities.

7. When an investigation by the City Auditor substantiates that fraud, waste, or abuse may have occurred, a draft confidential report will be issued to the appropriate City management with statements of facts and evidence supporting the conclusion that the allegation is substantiated so that the appropriate corrective action can be taken. Once the appropriate City management staff has reviewed the facts in the draft report, and provides the City Auditor with a response, the confidential report will be finalized and issued to the appropriate City management. A public Fraud Hotline investigation report will also be issued for all significant cases, or if the City Auditor deems the information is necessary to serve the interests of the public. The public hotline report will be posted on the City Auditor’s website. The City Auditor will include the information related to the public report in the Quarterly Report of Fraud Hotline Activities that is provided to the Audit Committee.

8. Pursuant to California Government Code §53087.6(e)(2), the City Auditor has the discretion to “issue any report of an investigation that has been substantiated, or to release any findings resulting from a completed investigation that are deemed necessary to serve the interests of the public.”

9. The City Auditor will maintain the appropriate level of confidentiality regarding all complaints and the information provided. Any Hotline investigative report issued to the public will not include any details of confidential information that cannot be disclosed under applicable laws, such as personnel issues. In accordance with California Government Code §53087.6, the identities of individual or individuals reporting the improper government activity, and the subject employee or employees
shall be kept confidential, and their identities will not be included in any public reports.

10. Any significant internal control weaknesses that are identified and substantiated or appear to be substantiated during any investigation of Hotline complaints will be addressed in a Hotline report to management. The Hotline report will include recommendations to management to correct the internal control weaknesses identified. The Finance Director and the external auditor will also be informed of the identified internal control weaknesses.

11. If the subject of the complaint is a supervisor/manager at any level, the complaint will be forwarded to, and should be resolved by, a level of management that is at least one level above those allegedly involved, and the response should not be provided by any of the individuals named in the complaint.

12. When an investigation substantiates an allegation of City employee wrongdoing, a detailed confidential hotline report describing the evidence obtained will be issued to management staff. The report will generally include a recommendation for management to review the information and conduct an independent fact-finding investigation in order to take any corrective and/or disciplinary action that is appropriate. The City Auditor will be given an opportunity to present the evidence obtained to the City staff conducting the fact-finding investigation panel.

13. Complaints alleging criminal activity (e.g. theft) will be referred to the appropriate law enforcement agency for investigation as soon as the Fraud Investigator develops firm indications that criminal activity has occurred.

D. Law Enforcement Referrals

1. Procedures

1. The following is a summary of the procedures the Office of the City Auditor intends to follow with respect to Fraud Hotline investigations that may involve criminal conduct.

2. When information obtained through a Fraud Hotline investigation indicates that criminal acts may have occurred, may be occurring, or may occur in the future, the Office of the City Auditor intends to act in accordance with this manual, and as follows:
3. The City Auditor will evaluate the potential impact of the Fraud Hotline investigation on a criminal investigation.

4. The City Auditor will notify and consult with the appropriate law enforcement agency for any allegations that appear to involve criminal activity.

5. The appropriate law enforcement agency to be contacted for consultation may include, but is not limited to: the Beverly Hills Police Department, the County of Los Angeles District Attorney's Office, and Federal law enforcement agencies, at the discretion of the City Auditor.

6. Notice to the City's management of the ongoing criminal investigation will be made in accordance with the wishes of the law enforcement agency based on the need to maintain the integrity of the criminal investigation, or other determination by the law enforcement agency.

7. Once a referral is made to a law enforcement agency, no investigative contacts by the Office of the City Auditor will be made without the full concurrence of the law enforcement agency to which the matter has been referred.
   
   i. In some instances, it may be appropriate for Office of the City Auditor's Investigator to work with law enforcement investigators or other legal authorities who are conducting criminal investigations.
   
   ii. In other instances, the Office of the City Auditor may close the Fraud Hotline case based on the referral to law enforcement. A status of “No further action necessary” may be used for public reporting purposes when Fraud Hotline cases are referred to law enforcement for investigation.

8. Fraud Hotline investigation reports and other information provided to law enforcement by the Office of the City Auditor are subject to the confidentiality provisions of applicable City, State, and Federal statutes, rules, and regulations. Compliance will be achieved as follows.
   
   i. Pursuant to California Government Code §53087.6(e)(l), “The identity of the person providing the information that initiated the investigative audit shall not be disclosed without the written permission of that person, unless the disclosure is to a law enforcement agency that is conducting a criminal investigation.”
ii. The City Auditor will be the point of contact for dissemination of Fraud Hotline investigation documents, including any employee personnel documents, to law enforcement for referrals made by the Office of the City Auditor.

iii. A log of documents requested by a law enforcement agency will be generated and forwarded to the Human Resources Department Director for review and approval, in consultation with the City Attorney, prior to dissemination in order to ensure that the confidentiality of employee personnel documents is maintained, as required. The log will include the following information:

1) date of request
2) source of the record
3) custodian of the record
4) description of the record
5) conclusion regarding disclosure (disclose, disclose with redactions, or do not disclose without Court order)
III. Processing of All Other Employee and Resident Complaints Received Outside of the Fraud Hotline

A. Procedures

1. The Office of the City Auditor may receive communications that can be considered complaints by means other than through the Fraud Hotline (e.g. in person, e-mail, telephone, or letter). Complainants may remain anonymous.

2. If the communication is provided in person, by telephone, email, or written correspondence, City Auditor logs, in writing, the factual allegation(s) of the complaint and attempts to obtain adequate information to facilitate an effective review.

3. The City Auditor will review the communication and make the determination whether or not the communication is a Fraud Hotline complaint.

4. If it is determined that the communication is in the purview of the Fraud Hotline, the complaint is entered into the third-party provider Case Management System as soon as possible.

5. Once entered into the Case Management System, the complaint is processed according to procedures as set forth in Section II of this manual.

IV. City Auditor Self-Initiated Investigations

A. Policy

1. Beverly Hills Municipal Code Title 2—Administration, Personnel, and Procedures, Chapter 3, Article 13 Office of the City Auditor: provides the City Auditor the authority to initiate investigations. The City Auditor may initiate investigations based on professional judgment or when information is received during the course of business or proactively obtained by other means, indicating potential fraud, waste or abuse is occurring related to a City activities.

2. The City Auditor will review the information received and determine whether the allegation is in the purview of the Fraud Hotline and warrants an investigation.

3. If it is determined that an investigation is warranted, the information is entered into the third-party provider Case Management System as soon as possible.

4. Once entered into the Case Management System, the case is processed according to procedures as set forth in Section II of this manual.
V. Escalation Procedure for High Risk Threats

A. Procedures

1. When a report is received that is considered a high risk/threat situation, it may be designated for escalation by the City Auditor. These situations include, but are not limited to, workplace violence or threats, substance abuse, and retaliation of whistleblowers. Escalation will be triggered if the complaint received is considered high risk and if it is determined the incident is likely to happen within 24 hours. The City Auditor will refer high risk complaints to the appropriate authority for a response. When a report is received that involves a City employee which is considered a time sensitive/high risk situation or needs immediate attention, it will be referred to the City Manager or Human Resources Director as soon as practicable.

VI. Security for Complaints and Associated Reports, Working Papers, and Other Documents

A. Policy

1. All complaints, associated reports, working papers, and other documents detailing employee and resident complaints, received either through the Fraud Hotline, by mail, e-mail, and those documents or notes of any oral conversations with City employees or residents, shall remain confidential at all times.

2. Such complaints, associated reports, working papers, and other documents shall only be discussed with the officials in the offices of the City Auditor, City Attorney, Law Enforcement, and other individuals as determined by the City Auditor. Details regarding fraud risks associated with prior complaints may be discussed with City Auditor staff as part of the Audit Planning and Risk Assessment processes. No copies are to be made of any complaints, associated reports or emails, working papers, and other documents or when complaints are forwarded to a department head for investigation and resolution. Original complaints, associated reports, working papers, and other documents shall be maintained in a secure manner by City Auditor staff, usually the Assistant to the City Auditor.

3. Fraud Hotline reports or information provided therein shall only be provided to individuals who are responsible and essential for conducting the investigation or reviewing of the complaint. These individuals are required to hold such information in strict confidence.
4. The confidentiality of all complaints, associated reports, working papers, and other documents shall be maintained at all times by the Office of the City Auditor and investigating/reviewing departments, who shall take such measures as they determine are reasonable and necessary to maintain the confidentiality of such information and documents.

5. City Auditor staff and City department staff responsible for investigating allegations made in a Fraud Hotline complaint can make investigative disclosures of information contained in a complaint to the extent necessary for obtaining additional information or information otherwise unavailable.

6. Only the City Auditor, or his/her designee, in conjunction with the Office of City Attorney, is authorized to determine the distribution or release of any complaints, associated reports, working papers, other documents and correspondence associated thereto, in accordance with the California Government Code §53087.6, and any other applicable law.

7. The City Clerk shall refer to the City Auditor any Public Records Act or other requests for information or documents regarding Fraud Hotline complaints.

B. Confidentiality

1. The City Auditor will prominently mark all complaints, associated reports, emails, working papers and other documents, in both hard copy and electronic formats, concerning the review or investigation of complaints as “Confidential.” The City Auditor and departments will maintain strict confidentiality throughout the processing of all complaints and through disposition of the investigation and thereafter. The City Auditor shall comply with the California Government Code §53087.6 that governs the confidentiality of hotline whistleblower complaints filed with municipal governments.

2. In connection with complaints and investigations under the Fraud Hotline, the confidentiality of such investigations and results shall be strictly protected by all City employees and officers in accordance with California Government Code §53087.6. Any breaches of the confidentiality provisions of this manual or applicable laws may result in disciplinary action. In the event any subsequent California or local laws or regulations relating to municipal whistleblower hotlines are enacted, all City Officers and employees shall comply with such later enacted applicable laws or regulations.
C. Custodian of Complaint Documents

1. The City Auditor shall maintain custody of complaints, associated reports, working papers, emails, and all other pertinent information regarding any investigations of complaints. Other parties involved in the investigation shall also retain their own documentation. All such documents shall be retained and or disposed of in accordance with applicable document retention policies of the City.

VII. Referral of Employee Complaints

A. Policy

1. All such complaints and concerns shall be processed as described in Section II of this manual. Any complaint that does not meet the statutory definition of fraud, waste, or abuse, may be closed with no further action by the Office of the City Auditor and may be referred to an appropriate authority.

B. Filing of Malicious Complaints

1. The City Auditor will not tolerate malicious complaints. The processing of a complaint requires staff time and attention regardless of its appropriateness. Mistaken complaints are not considered malicious. Complaints made frivolously, in bad faith or without factual basis may constitute defamation and may be legally actionable. Malicious complaints made in bad faith may result in disciplinary action in accordance with applicable City policies and procedures, up to and including dismissal. Lodging a malicious complaint is, in itself, a category of unethical behavior.
VIII. Sample Department Referral Email

Good Morning/Afternoon,

Attached is a copy of a confidential incident report that was filed with the City’s Trust & Innovation Portal. This office received the report regarding the alleged issue or concern and determined it should be referred to your department for resolution. The response should be provided by a level of management that is at least one level above those allegedly involved, and the response should not be provided by any of the individuals named in the complaint. No attempt should be made to determine the identity of an anonymous complainant. Our office is privy to full disclosure of all pertinent information, including personnel actions taken.

In order to help sustain the integrity and success of the hotline, send the attached Resolution Form to [name & email] within 30 days of receiving this e-mail. The attached Resolution Form should be completed and returned once you resolve the allegation.

Thank you for your assistance in this matter.

Kind regards,

Eduardo Luna  
City Auditor  
City of Beverly Hills  
455 N. Rexford Drive  
Beverly Hills, CA 90210

Office (310) 285-6805  
Fax (310) 273-3078  
eluna@beverlyhills.org
# Sample Resolution Form

**City of Beverly Hills**  
**Office of the City Auditor**  
**Confidential Trust & Innovation Portal Resolution**

<table>
<thead>
<tr>
<th>Report #</th>
<th>Resolution date:</th>
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<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Describe how you resolved the issue/concern below*

<table>
<thead>
<tr>
<th>Name &amp; Title (Print)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date:</td>
</tr>
</tbody>
</table>

Please Return to _____ Executive Assistant to the City Auditor  
Office of the City Auditor
X. Resolution Received E-mail

Good Morning/Afternoon,

Thank you for your response. Let me review the response and if I have no further questions, this report will be closed. I will let you know the outcome.

Thank you for your cooperation.

Kind regards.

Eduardo Luna
City Auditor
City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210

Office (310) 285-6865
Fax (310) 273-3078
ehua@beverlyhills.org

Beverly Hills
XI. Sample Closing Email

Good morning/afternoon,

Our office received your response to the Fraud Hotline Report referenced above. I have reviewed the response and deem the response satisfactory; therefore, our office will close this case, and no further action will be taken regarding this matter.

If you have any questions regarding this report or the process, contact insert name.

We appreciate your contributions to improving the City's ethical climate.

Thank you,

Eduardo Luna
City Auditor
City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210

Office (310) 285-6865
Fax (310) 273-3078
eluna@beverlyhills.org
XII. Sample Fraud Hotline Investigation Admonishment Form

**Fraud Hotline Investigation Admonishment**

This Fraud Hotline Complaint investigation is being conducted pursuant to California Government Code Section 53087.6 which grants the City Auditor authority to receive calls from persons who have information regarding fraud, waste, or abuse by City employees.

California Government Code Section 53087.6(e)(2) also states: “any investigative audit conducted pursuant to this subdivision shall be kept confidential, except to issue any report of an investigation that has been substantiated, or to release any findings resulting from a completed investigation that are deemed necessary to serve the interests of the public. In any event, the identity of the individual or individuals reporting the improper activity, and the subject employee or employees shall be kept confidential.”

The purpose of this questioning is to obtain information to assist the City Auditor in investigating a confidential Fraud Hotline Complaint. The City Auditor is not questioning you for the purpose of instituting criminal proceedings against you. However, during the course of this questioning, if you do disclose information which indicates that you may be guilty of criminal conduct, your self-incriminating statements, and any fruits thereof, may be used against you in any criminal proceeding. You have the right to refuse to answer any questions. However, for administrative purposes only, the evidentiary weight of your refusal to answer an inculminating question may be considered as a factor in the City Auditor’s investigation and subsequent administrative conclusion.

I have read and understand this admonishment.

______________________________  __________________________
Signature                           Date

______________________________  __________________________
Printed Name, Title

Witness Signature  __________________________

______________________________  __________________________
Printed Name, Title
XIII. California Government Code Section 53087.6

GOVERNMENT CODE - GOV

TITLE 5. LOCAL AGENCIES [50001 - 57550]  (Title 5 added by Stats. 1949, Ch. 81.)

DIVISION 2. CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 55821]  (Division 2 added by Stats. 1949, Ch. 81.)

PART 1. POWERS AND DUTIES COMMON TO CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 54999.7]  (Part 1 added by Stats. 1949, Ch. 81.)

CHAPTER 1. General [53000 - 53162]  (Chapter 1 added by Stats. 1949, Ch. 81.)

ARTICLE 4. Miscellaneous [53060 - 53087.6]  (Article 4 added by Stats. 1951, Ch. 522.)

(a) (1) A city, county, or city and county auditor or controller who is elected to office may maintain a whistleblower hotline to receive calls from persons who have information regarding fraud, waste, or abuse by local government employees.

(2) A city, county, or city and county auditor or controller who is appointed by, or is an employee of, a legislative body or the government agency that is governed by the city, county, or city and county, shall obtain approval of that legislative body or the government agency, as the case may be, prior to establishing the whistleblower hotline.

(b) The auditor or controller may refer calls received on the whistleblower hotline to the appropriate government authority for review and possible investigation.

(c) During the initial review of a call received pursuant to subdivision (a), the auditor or controller, or other appropriate governmental agency, shall hold in confidence information disclosed through the whistleblower hotline, including the identity of the caller disclosing the information and the parties identified by the caller.

(d) A call made to the whistleblower hotline pursuant to subdivision (a), or its referral to an appropriate agency under subdivision (b), may not be the sole basis for a time period under a statute of limitation to commence. This section does not change existing law relating to statutes of limitation.

(e) (1) Upon receiving specific information that an employee or local government has engaged in an improper government activity, as defined by paragraph (2) of subdivision (f), a city or county auditor or controller may conduct an investigative audit of the matter. The identity of the person providing the information that initiated the investigative audit shall not be disclosed without the written permission of that person, unless the disclosure is to a law enforcement agency that is conducting a criminal investigation. If the specific information is in regard to improper government activity that occurred under the jurisdiction of another city, county, or city and county, the information shall be forwarded to the appropriate auditor or controller for that city, county, or city and county.

(2) Any investigative audit conducted pursuant to this subdivision shall be kept confidential, except to issue any report of an investigation that has been substantiated, or to release any findings resulting from a completed investigation that are deemed necessary to serve the interests of the public. In any event, the identity of the individual or individuals reporting the improper government activity, and the subject employee or employees shall be kept confidential.

(3) Notwithstanding paragraph (2), the auditor or controller may provide a copy of a substantiated audit
report that includes the identities of the subject employee or employees and other pertinent information concerning the investigation to the appropriate appointing authority for disciplinary purposes. The substantiated audit report, any subsequent investigatory materials or information, and the disposition of any resulting disciplinary proceedings are subject to the confidentiality provisions of applicable local, state, and federal statutes, rules, and regulations.

(f) (1) For purposes of this section, “employee” means any individual employed by any county, city, or city and county, including any charter city or county, and any school district, community college district, municipal or public corporation, or political subdivision that falls under the auditor’s or controller’s jurisdiction.

(2) For purposes of this section, “fraud, waste, or abuse” means any activity by a local agency or employee that is undertaken in the performance of the employee’s official duties, including activities deemed to be outside the scope of his or her employment, that is in violation of any local, state, or federal law or regulation relating to corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, is economically wasteful, or involves gross misconduct.

(Amended by Stats. 2010, Ch. 80, Sec. 1. Effective January 1, 2011.)
XIV. City Council Investigative Protocols

I. Objective

The City of Beverly Hills is committed to ethical practice of government in service of its residents and community.

These protocols are intended to supplement the Trust & Innovation Portal Fraud Procedures Manual with respect to confidential complaints received through the City’s Trust & Innovation Portal (“TIP”) against the City’s elected officials. California Government Code §53087.6 establishes the authority of the City Auditor to maintain a whistleblower hotline to receive information regarding fraud, waste, or abuse. Per Municipal Code Title 2, Chapter 3, Article 13, effective October 6, 2017, the City Auditor’s duties include investigating allegations of fraud, waste, abuse and other similar misconduct or unlawful activity. Because the City Auditor is a City Council appointee, in order to avoid any actual or perceived conflict of interest with investigations of allegations made against the City’s elected officials, which includes the City Treasurer, or against the City Auditor himself or herself, such allegations and investigations shall be handled pursuant to these protocols.

These protocols also address the handling of complaints made against an elected official outside the purview of the TIP.

II. Misconduct Allegations Covered By The TIP

   A. Terms & Definitions

   The term “abuse” refers to official City action that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary under the circumstances.

   The term “bribery” refers to the corrupt payment, receipt, or solicitation of a private favor or payment for official action.

   The term “coercion” refers to compulsion by physical force or threat of physical force; threat of taking or withholding official action or causing an official to take or withhold an action.

   The term “conversion” refers to the wrongful possession of or interference with the City’s property as if it were one’s own.
The term “corruption” refers to dishonest or fraudulent conduct or other impairment of a public official’s duties, such as by bribery.

The term “fraud” refers to any intentional act or omission designed to deceive others, resulting in the victim (City of Beverly Hills) suffering a loss and/or the perpetrator achieving a personal gain.

The phrase “fraud, waste, or abuse” refers to any activity undertaken in the performance of official duties, including activities deemed to be outside the scope of official duties, that is in violation of any local, state, or federal law or regulation relating to corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, is economically wasteful, or involves gross misconduct.

The term “fraudulent claim” refers to a misrepresentation of facts in a claim to receive compensation.

The term “gross misconduct” refers to an indifference to, or a blatant violation of, a legal duty with respect to the rights of others.

The term “malfeasance” refers to wrongdoing or misconduct by a City official.

The term “malicious prosecution” refers to intentionally (and maliciously) instituting and pursuing (or causing to be instituted or pursued) a legal action that is brought without probable cause and dismissed in favor of the victim that caused damages.

The term “misuse of government property” refers to the wrongful misuse of the City’s property.

The term “remedial action” refers to any action taken to address or correct issues or claims substantiated through the complaint investigation process.

The term “resolution” refers to the results of the investigation and the remedial action taken in response, if any.

The term “theft of government property” refers to unauthorized taking in to one’s possession of property owned by the City.

The term “waste” refers to the intentional or unintentional, thoughtless or careless expenditure, consumption, mismanagement, use, or squandering of City resources. Waste also includes incurring unnecessary costs because of inefficient or ineffective practices, systems, or controls.
The term “willful omission to perform duty” refers to the intentional failure to take action required by law or contract.

**B. Making Complaints Through The TIP**

City employees and the general public can access the TIP at www.beverlyhills.org/TIP to enter specific information about alleged improper activity by an elected official. In order to process a complaint or make a report, the following information is generally requested:

1. A description of the alleged misconduct;
2. Name(s) of the individual(s) involved, if known;
3. Where the alleged misconduct occurred;
4. The specific or approximate time the alleged misconduct occurred;
5. How long the alleged misconduct has been going on;
6. How the complainant became aware of the alleged misconduct;
7. Identification of any prior contacts with the City concerning the alleged misconduct and any prior effort made to address it; and
8. Any supporting documentation.

City employees and the general public can also make complaints or reports directly to the City Auditor in person, by telephone, email, or written correspondence. The dedicated phone number for receiving calls is (310) 288-2847 and the dedicated email address for receiving electronic communications is TIP@beverlyhills.org.

Incomplete reports will result in a request for additional information. The case will close if the necessary details are not provided within 30 days.

**C. Receipt And Control Of Complaints**

All information received through the TIP is directed to the City Auditor. The City Auditor shall review the submitted complaint and any related materials to determine whether the complaint falls within the purview of the TIP or the Human Resources Director. The initial receipt and assessment by the City Auditor shall be limited to reviewing the allegations to determine their nature and to assess whether the complaint will be handled pursuant to Section II of these protocols or referred to the Director of Human Resources for handling pursuant to Section III of these protocols.

Complaints received through the TIP that allege labor/management issues (e.g., discrimination, harassment, retaliation, abusive conduct, or other potential policy violations) shall be referred to the Director of Human Resources with no further action or involvement by the City Auditor, pursuant to Section III of these protocols.
If the complaint pertains to an elected official or the City Auditor, the City Auditor shall refer the complaint to the City Attorney, for handling pursuant to Section II-D of these protocols, with no further action or involvement by the City Auditor.

D. Investigation Of Complaints Against Elected Officials Or City Auditor

Upon receiving a complaint through the TIP that an elected official or the City Auditor has engaged in alleged misconduct within the purview of the TIP, the City Auditor shall delegate his or her authority to conduct or oversee an investigation of the matter to the City Attorney, without any further involvement from the City Auditor. Complaints outside the purview of the TIP will be handled pursuant to Section III of these protocols.

1. Referral To Outside Attorney

The City shall establish a panel of qualified outside law firms to which matters under this section shall be referred. The City Attorney shall select an attorney from the panel (“Outside Attorney Investigator”) to conduct a preliminary assessment of the complaint to determine whether the complaint warrants investigation based on the materials submitted by the complainant, any other materials available and deemed relevant to the issues alleged, and any necessary follow up with the complainant.

An investigation will only be initiated when there is sufficient predication that an elected official or the City Auditor has committed an intentional or reckless act of fraud, waste, or abuse. “Sufficient predication” means that there is a reasonable basis for the Attorney Investigator to determine, based on sufficiently specific and credible allegations, that the allegations, if substantiated, would involve a violation of the City’s standards of conduct, processes or procedures, and/or a violation of City policy or the law.

For complaints deemed by the Outside Attorney Investigator proper for investigation, he or she shall so state, including the basis for his or her conclusion, in a memorandum addressed to the City Attorney, with a copy to the City Auditor. The City shall then select a different Attorney Investigator from the panel of qualified outside law firms to proceed with conducting an investigation pursuant to the remainder of these protocols. If the Outside Attorney Investigator who performs the initial assessment determines that an investigation is not warranted by the information presented, he or she shall so state, including the basis for his or her conclusion, in a memorandum addressed to the City Attorney with a copy to the City Auditor. If the Outside Attorney Investigator’s initial assessment determines that the allegation is without merit or is unsupported by the facts, or there is insufficient information or evidence after appropriate follow up with the complainant, the preliminary inquiry will be
closed, and the complainant will be notified in writing, if the complainant has provided his or her name and contact information. Depending on the nature of the allegations, notification to the subject concerning the investigation and its disposition will be made at the discretion of the City based on the circumstances presented.

Attorney Investigators shall be timely and efficient in conducting the preliminary assessment, which shall be completed by the Attorney Investigator within thirty (30) days of the date of the referral of the complaint by the City. The Outside Attorney Investigator shall not have any prior personal or professional relationship with the complainant or subject(s) of the investigation.

2. Legal Services Agreement And Scope Of Investigation

The scope of the investigation shall be set forth in a legal services agreement between the City and the outside law firm. Any new issues or concerns raised or discovered during the investigation shall be reported to the City Attorney. The scope of the investigation may change or expand only upon a written amendment to the legal services agreement. Generally, the scope of the investigation shall be to make a factual finding as to whether the alleged conduct occurred. The decision whether to expand the scope of the investigation shall be made on a case-by-case basis, and rests solely with the City Attorney and in compliance with City policy.

3. Process

Outside attorney investigations shall generally follow the procedures recommended by the Fraud Examiners’ Manual for any allegations of improper financial activity or fraud, waste, or abuse. Due to the unique nature of each case, the scope and complexity of some investigations, unexpected events that may occur, and privacy or confidentiality considerations, flexibility may be required to ensure that each investigation is properly conducted and each complaint is evaluated on its own merit.

The Outside Attorney Investigator shall bring his or her skill, legal expertise, and professional judgment to bear in conducting the investigation. The Outside Attorney Investigator will use his or her legal expertise to identify pertinent facts, interview witnesses, collect and review pertinent evidence, synthesize the evidence, make factual findings about what occurred or did not occur, and prepare a written report. The Outside Attorney Investigator will personally perform the investigation and all related professional services. He or she will make factual findings, utilizing his or her legal skills, knowledge, and experience in so doing.
The Outside Attorney Investigator will not render a legal determination whether there was any violation of law, statute, or regulation. He or she will make only factual findings as to whether the alleged conduct occurred or did not occur, based on a preponderance of the evidence.

The City will make available all witnesses, documents, information, or materials requested by the Outside Attorney Investigator and deemed relevant to the investigation to permit him or her to thoroughly perform the independent investigation.

Upon discussion and agreement between the City Attorney and the Outside Attorney Investigator, investigation interviews may be recorded.

4. **Timing**

All investigations should be conducted as promptly as possible after an allegation is received to preserve relevant information and documentation and prevent the continuation of the alleged wrongdoing or the occurrence of other incidents. To this end, the investigator(s) should strive to complete the investigation, including the report, within ninety days. Although expediency is an important consideration, Outside Attorney Investigators must not be pressured to meet unreasonable deadlines, and time constraints must not affect the due care of the Outside Attorney Investigator.

5. **Notice**

For matters referred to an Outside Attorney Investigator, the City Attorney may advise the Council that a complaint has been received and referred for investigation pursuant to these protocols, and may keep the Council apprised of any significant developments, as appropriate and consistent with applicable confidentiality restrictions and the privacy rights of those involved in the complaint and investigation. In the event that the matter presents a conflict of interest for the City Attorney to update or advise the Council on the investigation, its outcome, or appropriate remedial measures, the City may retain special outside counsel for that limited purpose.

All witnesses to be interviewed and any subject(s) of the investigation shall be given at least five days prior notice of the date and time of the interview. Witnesses and the subject(s) shall be provided with a basic description of the nature or summary of the allegations. Subjects, and witnesses who are City employees, may bring a representative of his or her choice to the interview. Any representative present during the investigation may not impede or disrupt the proceedings in any way.
6. **Duty To Cooperate**

All subjects and witnesses who are City employees have a duty to cooperate during the investigation process and to answer all questions truthfully and completely. It is improper for anyone to destroy or tamper with documents or other evidence, mislead investigators, retaliate against a City employee who has provided information or participated in an investigation, or violate the confidentiality of the investigative proceeding.

The City will implement anti-retaliation measures to protect any City employee who makes a complaint against an elected official or who participates in an investigation against an elected official.

7. **Findings**

Findings of fact shall be based upon a preponderance of the evidence, as follows:

- **Unfounded** – A preponderance of the evidence established that the allegation is or without merit.

- **Unsubstantiated** – There is inconclusive evidence to determine whether the alleged conduct occurred.

- **Substantiated** – A preponderance of the evidence established that the allegation is true.

The findings in the report shall be based on the totality of the evidence and a thorough analysis of all the facts and evidence, and, where necessary, credibility determinations shall be made.

8. **Investigation Report**

The outside attorney investigator shall prepare a confidential written report which includes, at minimum, a statement of the scope, a summary of the evidence reviewed, a summary of witness statements, and findings and analysis as to each allegation investigated.

Where an allegation has been sustained, or where a public report is deemed necessary to serve the interests of the public, at the direction of the City Attorney, the Outside Attorney Investigator shall also prepare a non-confidential report to be shared with the public, pursuant to Section II-G of these protocols.
9. Internal Remedial Action

Based upon the findings of the investigation, members of the City Council who were not subjects of the investigation, in conjunction with the City Attorney, shall determine whether remedial action is warranted or necessary. Remedial measures may include, but are not necessarily limited to addressing or correcting any internal control weaknesses that allowed the fraud, waste, or abuse to occur, or censure of any elected official who engaged in the fraud, waste, or abuse.

E. Referral To Outside Agency

If, at any time during the investigation, the Outside Attorney Investigator determines the allegations may involve criminal conduct, the Outside Attorney Investigator shall confer with the City Attorney. If the facts and circumstances so justify, the matter may be referred to the appropriate government authority or law enforcement agency for review and possible investigation and/or prosecution. For complaints referred to an outside government authority or law enforcement agency, the Outside Attorney Investigator will make no further investigative efforts without the full concurrence of the agency to which the matter has been referred. The investigator may provide assistance and/or related investigative materials, upon request, to the authority or agency receiving the referral.

The Outside Attorney Investigator will be the point of contact for dissemination of investigation documents to the receiving authority or agency. The Outside Attorney Investigator shall keep a log of all documents requested and provided to such receiving authority or agency and shall confer with the City Attorney or Human Resource Director, as appropriate, to ensure that the confidentiality of personnel information is maintained. The log shall include the date of the request, the source of the record, the custodian of the record, a description of the record, and the conclusion regarding disclosure (disclose, redact and disclose, or do not disclose without a court order or unless otherwise legally compelled to produce).

In some instances, upon request from the authority or agency receiving the referral, it may be necessary for the Outside Attorney Investigator or other City officials to work with those authorities conducting a criminal investigation. In other cases, the City Auditor, in consultation with the City Attorney, may close the matter based on the referral to an outside agency or authority. A status of “no further action necessary” may be used for public reporting purposes when TIP complaints are referred to an outside agency.

In all instances where the outside agency to which the matter has been referred requests assistance, the City and its Outside Attorney Investigator will fully cooperate.
The identity of the complainant shall not be disclosed without their written permission, unless disclosure is to a law enforcement agency conducting a criminal investigation.

Alleged violations of the Political Reform Act of 1974 may be referred to the California Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, CA 95811. Other violations may be referred to the Beverly Hills Police Department, California Attorney General, Los Angeles County District Attorney, local grand jury, or other government agency.

If the specific allegation is in regard to alleged misconduct that occurred under the jurisdiction of another public agency, the information shall be provided to the appropriate representative for that public agency.

Notice to the Council of the referral of a complaint or investigation to an outside government authority or law enforcement agency for review and possible investigation and/or prosecution may be made by the City Attorney or outside special counsel retained pursuant to Section II-D-5 of these protocols, in accordance with the wishes of the law enforcement agency and based on the need to maintain the integrity of the criminal investigation or other determination by the law enforcement agency.

F. Confidentiality

During the initial receipt and assessment of a complaint received through the TIP or directly to the City Auditor, the City Auditor will hold the information disclosed in confidence, including the identity of the complainant disclosing the information and the parties identified by the complainant.

Upon referral to an Outside Attorney Investigator for investigation, the Outside Attorney Investigator will not disclose the identity of the complainant without the complainant’s written permission, unless the disclosure is to a law enforcement agency that is conducting a criminal investigation. Outside Attorney Investigators must take reasonable precautions to protect any confidential information obtained during the course of an investigation, as well as the identities of the person(s) under investigation, the person who reported the allegation(s), and anyone who provides relevant information or documentation during the investigation.

Any investigation conducted pursuant to these protocols shall be kept confidential, except to issue any report of an investigation that has been substantiated, or to release any findings resulting from a completed investigation that are deemed necessary by the City Council to serve the interests of the public.
City personnel or Outside Attorney Investigators involved in an investigation referred by the City Auditor shall not share the substance of the complaint with anyone except those directly involved in and essential to conducting the investigation. Any personnel provided with this information are required to hold and maintain such information as confidential.

The City Attorney and Outside Attorney Investigator will disclose the nature or a summary of the allegation(s) to the subject or witnesses in the investigation only to the extent necessary to receive the information sought to conduct a thorough investigation. No information shall be provided to compromise the complainant’s identity or otherwise violate any confidentiality requirements.

All complaints, reports, working papers, documents, emails, and other materials related to the investigation shall be maintained confidentially at all times by the Outside Attorney Investigator and shall prominently be marked “CONFIDENTIAL.” Completed investigation reports and all materials relied upon by the Outside Attorney Investigator in making his or her findings shall be provided to the City Attorney and will thereafter be confidentially maintained in the City Attorney’s office.

G. Public Reporting

Any investigation conducted pursuant to these protocols shall be kept confidential. However, where an allegation has been sustained, or where a public report is deemed necessary to serve the interests of the public, at the direction of the City Attorney and/or City Auditor, the Outside Attorney Investigator shall also prepare a non-confidential report to be shared with the public. The public report may release aggregated or summary information established during the investigation.

Any public report will not include any confidential information that cannot be disclosed under applicable laws, such as personnel matters. The complainant’s identity shall remain confidential in any public report, unless the complainant has given his or her written permission to disclose his or her identity. Likewise, names of City employees and other witnesses who participated in the investigation shall remain confidential in any public report. However, the identity of the subject(s) of the investigation conducted pursuant to these protocols may be disclosed in a public report.

A public report may be posted on the City Auditor’s website, and such information may be included in the Quarterly Report of Fraud Hotline Activities provided to the Audit Committee.

Notwithstanding the above, the City Attorney or special outside counsel retained pursuant to Section II-D-5 of these protocols, may disclose the results of, or in appropriate circumstances, provide a copy of an investigation report completed by an
outside attorney investigator, or portions thereof, including the identities of the subject(s) and other pertinent information concerning the investigation, for purposes of advising the Council and taking remedial action. The identity of the complainant shall remain confidential, but the scope of other confidential information that may be revealed in connection with such advice from the City Attorney or special outside counsel shall be determined on a case-by-case basis.

In order to protect the confidentiality and integrity of investigations, complainants who make allegations will not be given details or updates regarding the investigation except for the information provided in publicly issued reports.

III. Misconduct Allegations Related To Labor/Management Relations Or Personnel Issues

A. Referral To Human Resources Director

Complaints received through the TIP that allege labor/management relations or personnel issues (e.g., discrimination, harassment, retaliation, abusive conduct, or other violations of City policies) against the City’s elected officials or City Auditor shall be referred to the Director of Human Resources, with a copy to the City Attorney, with no further action or involvement by the City Auditor. The City Auditor will send the Director of Human Resources a standardized department referral email, along with the TIP complaint and supporting materials as soon as practicable.

If the complaint pertains to the Human Resources Director, the complaint will be referred to the City Attorney for handling consistent with these protocols, with no further involvement from the Human Resources Director.

B. Investigation Of Complaints Against Elected Officials

1. Referral To Outside Attorney

The City shall establish a panel of qualified outside law firms to which matters under this section shall be referred. Upon receipt of the complaint and related information from the City Auditor, the Director of Human Resources shall confer with the City Attorney and shall select an attorney from the panel (“Outside Attorney Investigator”) to conduct a preliminary assessment of the complaint to determine whether the complaint warrants investigation based on the materials submitted by the complainant, any other materials available and deemed relevant to the issues alleged, and any necessary follow up with the complainant.
An investigation will only be initiated when there is sufficient predication that an elected official or the City Auditor has committed an act that falls within this section. “Sufficient predication” means that there is a reasonable basis for the Attorney Investigator to determine, based on sufficiently specific and credible allegations, that the allegations, if substantiated, would involve a violation of the City’s standards of conduct, processes or procedures, and/or a violation of City policy or the law.

For complaints deemed by the Outside Attorney Investigator proper for investigation, he or she shall so state, including the basis for his or her conclusion, in a memorandum addressed to the City Attorney, with a copy to the City Auditor and the Human Resources Director. The City shall then select a different Attorney Investigator from the panel of qualified outside law firms to proceed with conducting an investigation pursuant to the remainder of these protocols.

If the Outside Attorney Investigator who performs the initial assessment determines that an investigation is not warranted by the information presented, he or she shall so state, including the basis for his or her conclusion, in a memorandum addressed to the City Attorney, with a copy to the City Auditor and Human Resources Director. If the Outside Attorney Investigator’s initial assessment determines that the allegation is without merit or is unsupported by the facts, or there is insufficient information or evidence after appropriate follow up with the complainant, the preliminary inquiry will be closed, and the complainant will be notified in writing, if the complainant has provided his or her name and contact information.

Attorney Investigators shall be timely and efficient in conducting the preliminary assessment, which shall be completed by the Attorney Investigator within thirty (30) days of the date of the referral of the complaint by the City.

The Outside Attorney Investigator shall not have any prior personal or professional relationship with the complainant or subject(s) of the investigation.

2. Legal Services Agreement And Scope Of Investigation

The scope of the investigation shall be set forth in a legal services agreement between the City and the outside law firm. Any new issues or concerns raised or discovered during the investigation shall be reported to the Director of Human Resources and City Attorney. The scope of the investigation may change or expand only upon a written amendment to the legal services agreement. Generally, the scope of the investigation shall be to make a factual finding as to whether the alleged conduct occurred. The decision whether to expand the scope of the investigation shall be made on a case-by-case basis in consultation between the outside attorney investigator, the City Attorney,
and the Director of Human Resources. The legal services agreement shall specify that the City intends to establish an attorney-client relationship with the outside attorney investigator, that the City’s communications with the outside attorney investigator are intended to be privileged, and that the report prepared by the outside attorney investigator is subject to the attorney-client privilege.

3. Process

Outside attorney investigations shall generally follow the procedures and best practices established by the Equal Employment Opportunity Commission, Department of Fair Employment and Housing, and/or the Association of Workplace Investigators. Due to the unique nature of each case, the scope and complexity of some investigations, unexpected events that may occur, and privacy or confidentiality considerations, flexibility may be required to ensure that each investigation is properly conducted and evaluated on its own merit.

The Outside Attorney Investigator shall bring his or her skill, legal expertise, and professional judgment to bear in conducting the investigation. The Outside Attorney Investigator will use his or her legal expertise to identify pertinent facts, interview witnesses, collect and review pertinent evidence, synthesize the evidence, make factual findings about what occurred, and prepare a written report. The Outside Attorney Investigator will personally perform the investigation and all related professional services. He or she will make factual findings, utilizing his or her legal skills, knowledge, and experience in so doing.

The Outside Attorney Investigator will not render a legal determination whether there was any violation of law, statute, regulation, or policy. He or she will make only factual findings as to whether the alleged conducted occurred or did not occur, based on a preponderance of the evidence.

The City will make available all witnesses, documents, information, or materials requested by the outside attorney investigator and deemed relevant to the investigation to permit him or her to thoroughly perform the independent investigation.

Upon discussion and agreement between the Human Resources Director, City Attorney, and the Outside Attorney Investigator, investigation interviews may be recorded.
4. **Timing**

All investigations should be conducted as promptly as possible after an allegation is received to preserve relevant information and documentation and prevent the continuation of the alleged wrongdoing or the occurrence of other incidents. Although expediency is an important consideration, Outside Attorney Investigators must not be pressured to meet unreasonable deadlines, and time constraints must not affect the due care of the investigator.

5. **Notice**

For matters referred to an Outside Attorney Investigator, the City Attorney and/or the Director of Human Resources may advise the Council that a complaint has been received and referred for investigation pursuant to these protocols, and may keep the Council apprised of any significant developments, as appropriate and consistent with applicable confidentiality restrictions and the privacy rights of those involved in the complaint and investigation. In the event that the matter presents a conflict of interest for the City Attorney and/or Director of Human Resources to update or advise the Council on the investigation, its outcome, or appropriate remedial measures, the City may retain special outside counsel for that limited purpose.

All witnesses to be interviewed and any subject(s) of the investigation shall be given at least five days prior notice of the date and time of the interview. Witnesses and the subject(s) shall be provided with a basic description of the nature or summary of the allegations. Additional information concerning the allegations may be disclosed to witnesses or the subject(s) of the investigation where necessary to enable adequate preparation by the witness or subject(s) or to ensure a thorough and impartial investigation.

Subjects, and witnesses who are City employees, may bring a representative of his or her choice to the interview. Any representative present during the investigation may not impede or disrupt the proceedings in any way.

Depending on the nature of the allegations, notification to the subject concerning the investigation and its disposition will be made consistent with City practices concerning investigations related to labor/management or personnel issues.

6. **Duty To Cooperate**

All witnesses who are City employees have a duty to cooperate during the investigation process and to answer all questions truthfully and completely. Although elected officials may not be compelled to participate in the investigation, his or her good faith
participation is requested in order to ensure a thorough and fair investigation of the allegations.

It is improper for anyone to destroy or tamper with documents or other evidence, mislead investigators, retaliate against City employee who has provided information or participated in an investigation, or violate the confidentiality of the investigative proceeding.

7. Interim Measures

The Director of Human Resources and the City Attorney shall confer about whether any interim measures, such as modification of duties, reassignment, administrative leave, or revision of City policies or procedures, are necessary or should be implemented during the pendency of the investigation. In the event that the matter presents a conflict of interest for the Director of Human Resources and/or the City Attorney to update or advise the Council on the investigation, its outcome, or appropriate remedial measures, the City may retain special outside counsel for that limited purpose.

The City will implement anti-retaliation measures to protect any City employee who makes a complaint against an elected official or who participates in an investigation against an elected official. All participants in an investigation shall be notified of the City’s policy against retaliation and directed to report any actual or perceived retaliation to the Director of Human Resources.

8. Findings

Findings of fact shall be based upon a preponderance of the evidence, as follows:

- **Unfounded** – A preponderance of the evidence established that the allegation is not true. A preponderance of the evidence established that the allegation is or without merit.

- **Unsubstantiated** – There is insufficient evidence to determine whether the alleged conduct occurred.

- **Substantiated** – A preponderance of the evidence established that the allegation is true.

The findings in the report shall be based on the totality of the evidence and a thorough analysis of all the facts and evidence, and, where necessary, credibility determinations shall be made.
9. **Investigation Report**

The outside attorney investigator shall prepare a confidential written report which includes, at minimum, a statement of the scope, a summary of the evidence reviewed, a summary of witness statements, and findings and analysis as to each allegation investigated.

10. **Remedial Action**

Based upon the findings of the investigation, the City Attorney and Human Resources Director, in conjunction with the members of the City Council who were not a subject of the investigation, shall determine whether remedial action is warranted or necessary. Remedial measures may include policy revision, training, or censure of any elected official who engaged in the alleged misconduct or violation of City policy.

C. **Confidentiality And Disclosure**

The investigation will be treated as a confidential personnel matter, and will be kept as confidential as possible under the circumstances, however, complete confidentiality cannot be guaranteed due to the need to thoroughly investigate and remediate any substantiated allegations. City personnel or outside attorney investigators involved in a personnel investigation involving an elected official shall not share the substance of the complaint with anyone except those directly involved in and essential to conducting the investigation. Any personnel provided with this information are required to hold and maintain such information as confidential.

Notwithstanding the above, these protocols may not infringe with the rights of City employees to engage in protected, associational, or concerted activity, including but not limited to, discussing wages, hours, working conditions, and other aspects of employment with the City. Moreover, disclosure of some or all of the investigation report, information contained in the investigation report, or the findings set forth in the report may be necessary for taking remedial action, disclosure pursuant to the Public Records Act, or when otherwise compelled by law, policy, or the public interest.

All complaints, reports, working papers, documents, emails, and other materials related to the investigation shall be maintained confidentially at all times by the outside attorney investigator and shall prominently be marked “CONFIDENTIAL” and/or “ATTORNEY-CLIENT PRIVILEGED.” Completed investigation reports and all materials relied upon by the Outside Attorney Investigator in making his or her findings shall be provided to the City Attorney and will thereafter be confidentially maintained in the City Attorney’s office.
Whether and to what extent information developed during an investigation, the outcome of an investigation, or the report itself shall be disclosed to the complainant, the subject(s), or the public may depend on the nature or severity of the allegations, whether the allegations have been sustained, and what remedial actions may be appropriate or warranted under the circumstances, taking into account all requisite privacy, due process, and public interest concerns.