



## THE CITY OF SAN DIEGO

DATE: July 27, 2012

TO: Honorable Members of the Audit Committee

FROM: Eduardo Luna, City Auditor

SUBJECT: **City Auditor's Quarterly Fraud Hotline Report – Qtr 4 Fiscal Year 2012**

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The Office of the City Auditor administers the City's Fraud Hotline program. The primary objective of the Fraud Hotline is to provide a means for a City employee or citizen to confidentially report any activity or conduct—related to or involving City personnel, resources, or operations—for which he or she suspect instances of fraud, waste, or abuse.

The Network Inc., an independent third-party provider, accepts calls from City employees and the public at (866) 809-3500. Callers can choose to remain anonymous, providing complete confidentiality. The Network prepares a report for each complaint received and sends them to the Office of the City Auditor via email. Complaints can also be submitted directly to the Office of the City Auditor.

### **Superior Court Ruling Regarding Disclosures by the City Auditor relating to Fraud, Waste, and Abuse Hotline Investigations**

In June 2010, a lawsuit (Shapiro v City of San Diego, 37-2010-00094276-CU-JR CTL) was filed in San Diego County Superior Court seeking disclosure by the City Auditor of 66 complaints identified as closed in the City Auditor's Quarterly Fraud Hotline Report-Qtr 2-Fiscal Year 2009, pursuant to the California Public Records Act.

In September 2011, the court issued an order that stated:

- A distinction exists between access to government records under the California Public Records Act (California Government Code §6255) and the confidentiality required under California Government Code §53087.6.
- The City must disclose any report of investigation that has been substantiated.
- Disclosure of completed investigations (whose allegations are not substantiated) is not necessitated unless the Auditor deems it necessary to serve the interests of the public.



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In April 2012, the court dismissed the plaintiff's suit and denied the plaintiff's request for costs.

The plaintiff filed a writ of mandate for relief from the Court of Appeal to review the trial court's order denying release of public records, denying a declaratory judgment on a corrected issue of law, and dismissing the action with prejudice. In June 2012, a three judge panel from the Court of Appeal summarily denied plaintiff's writ of mandate.

California Government Code §53087.6(e)(2) states that

*“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.”*

The City Auditor will, therefore, continue to create—and make public—reports for all complaints that have been substantiated. In addition, the City Auditor will report on completed investigations whose allegations could not be substantiated but that the City Auditor deems their disclosure necessary to serve the interests of the public.

### **Citizen Suggestions for Improving Quarterly Fraud Hotline Reports**

During the April 2012 Audit Committee meeting, a citizen suggestion was made that opening and closing dates of Fraud Hotline investigations be reported. Starting with this report, the date the complaint was received and the date that the resolution was finalized and investigation completed will be listed. Open/Unresolved complaints will show the date that the complaint was received.

### **Complaints Received in the Fourth Quarter of Fiscal Year 2012**

During the fourth quarter of fiscal year 2012 (April 2012 – June 2012), individuals filed 58 complaints with the Hotline. Six (6) of the complaints were selected for investigation by the Office of the City Auditor. The Intake and Review Committee referred twenty-one (21) complaints to City Departments for review and resolution. City Auditor staff found that thirty-one (31) complaints were not in the purview of the Fraud Hotline and complainants were referred to the proper authority.

The Public Utilities Department assisted with the Fraud Hotline marketing initiative by placing a notice about the Fraud Hotline in water bills beginning in March 2012. A total of 28 Fraud Hotline complaints received in the third and fourth quarters of fiscal year 2012 were determined to be billing or leak inquiries by customers as opposed to substantive complaints of fraud, waste, and/or abuse. These 28 customer service-type inquiries were determined to not be in the purview of the Fraud Hotline and were forwarded to the Public Utilities Department.

Table 1 below summarizes the 115 complaints received during fiscal year 2012.

**Table 1 – Complaints Received by Quarter in Fiscal Year 2012**

<b>Office of City Auditor Investigations</b>	<b>Qtr 1</b>	<b>Qtr 2</b>	<b>Qtr 3</b>	<b>Qtr 4</b>	<b>FY2012 Total</b>	<b>% of FY2012 Total</b>
Conflicts of Interest	2	0	0	2	4	
Fraud	0	1	2	0	3	
Accounting/Audit Irregularities	0	2	0	0	2	
Waste and Abuse	0	1	4	2	7	
Retaliation of Whistleblowers	0	1	0	0	1	
Customer Relations	0	0	1	0	1	
Theft of Time	0	0	1	0	1	
Policy Issues	0	0	0	1	1	
Falsification of Company Records	0	0	0	1	1	
<b>Subtotal OCA Investigations</b>	<b>2</b>	<b>5</b>	<b>8</b>	<b>6</b>	<b>21</b>	<b>18.2%</b>
<b>City Department Investigations</b>						
Conflict of Interest	0	0	1	0	1	
Customer Relations	2	5	1	9	17	
Employee Relations	0	0	1	3	4	
Fraudulent Insurance Claims	1	0	0	1	2	
Policy Issues	1	0	0	0	1	
Safety and Sanitation Issues	0	2	0	4	6	
Theft of Time	0	1	2	2	5	
Discrimination	0	0	0	1	1	
Wage/Hour Issue	0	0	0	1	1	
Waste and Abuse	2	0	7	0	9	
<b>Subtotal Department Investigations</b>	<b>6</b>	<b>8</b>	<b>12</b>	<b>21</b>	<b>47</b>	<b>40.9%</b>
<b>Total Complaints Received In Purview of Fraud Hotline</b>	<b>8</b>	<b>13</b>	<b>20</b>	<b>27</b>	<b>68</b>	<b>59.1%</b>
<b>Non-City Complaints or Complaints Not in Purview of Fraud Hotline</b>						
Referred to Proper Authority	7	0	9	31	47	40.9%
<b>Total Complaints Received in FY2012</b>	<b>15</b>	<b>13</b>	<b>29</b>	<b>58</b>	<b>115</b>	<b>100%</b>

A caller to the Fraud Hotline can either make the complaint anonymously, or the caller can provide his or her identity and contact information. Table 2 below represents the breakdown of the caller profile for all calls to the Fraud Hotline by fiscal year.

**Table 2 – Caller Profile by Fiscal Year**

<b>Fiscal Year</b>	<b>Anonymous</b>		<b>Identified</b>		<b>Total</b>
2009-4 Qtrs	69	49%	71	51%	140
2010-4 Qtrs	28	46%	33	54%	61
2011-4 Qtrs	35	46%	41	54%	76
2012- 4Qtrs	42	37%	73	63%	115

**Status of Hotline Complaints Received in the Fourth Quarter of Fiscal Year 2012 and Unresolved Complaints from the Previous Quarter**

As reported, 58 complaints were filed with the Hotline between April 2012 and June 2012. It was determined that 31 complaints were not in the purview of the Fraud Hotline, leaving 27 complaints that were added to inventory.

In addition to the 27 complaints received that are in the purview of the Fraud Hotline, 17 complaints remained open and unresolved at the end of the previous quarter, for a total of 44 active complaints in the purview of the City’s Fraud Hotline in the fourth quarter. Table 3 on the following page summarizes the status of the 44 active complaints. Twenty-four of the 44 remain open and unresolved, and 20 were closed. Of the 20 that were closed, two were substantiated, 13 were unsubstantiated but the Department took corrective or preventative action, and the allegations made in five (5) complaints were closed as unsubstantiated.

**Table 3 – Status of Complaints Received in Fourth Quarter of Fiscal Year 2012 and Unresolved Complaints from the Previous Quarter**

<b>Complaint Status</b>	<b>City Auditor Investigations</b>	<b>Department Investigations</b>	<b>In Purview Total</b>	<b>Not In Purview of Fraud Hotline</b>	<b>Grand Total</b>	<b>Percent</b>
<b>Complaints Unresolved as of 3/31/2012</b>	<b>7</b>	<b>10</b>	<b>17</b>	<b>4</b>	<b>21</b>	
Complaints Received In 4th Quarter	6	21	27	31	58	
Active Inventory	13	31	44	35	79	
Complaints Closed	-5	-15	-20	-34	-54	
Substantiated	0	2	2			10%
Unsubstantiated w/Corrective or Preventative Actions	3	10	13			65%
Unsubstantiated/Investigation Not Necessary	2	3	5			25%
<b>Complaints Unresolved as of 6/30/2012</b>	<b>8</b>	<b>16</b>	<b>24</b>	<b>1</b>	<b>25</b>	<b>100%</b>

**City Auditor Investigations Summary – Fourth Quarter of Fiscal Year 2012**

Table 4 below summarizes the status of the 16 active City Auditor Fraud Hotline investigations for the fourth quarter of fiscal year 2012, including the incident type, a general description of the complaint, and the case status.

**Table 4 – Status of City Auditor Hotline Investigations**

<b>No.</b>	<b>Incident Type</b>	<b>General Description of Complaint</b>	<b>Outcome / Status/ Elapsed Days</b>
1	Fraud 116231565  Rec'd: 2/17/2012	Allegation of lack of proper oversight of Special Use Permit (SUP)	Corrective Action Taken Public Report Issued 6/4/12  Closed: 6/8/2012
2, 3	Conflicts of Interest 116586220 116586261 Rec'd: 5/14/2012	Allegation of conflict of interest by City employee also hired as independent contractor	Corrective Action Taken Public Report Issued 6/18/2012  Closed: 6/18/2012

No.	Incident Type	General Description of Complaint	Outcome / Status/ Elapsed Days
4	Theft of Goods 115262891  Rec'd: 5/31/2011	Allegation of employee misappropriating supplies through faulty order process	Complaint found to be unsubstantiated; The investigation verified approval and oversight for requisitions processed by employee and the quantity and specific supplies ordered were in line with the business objectives of the work unit. Closed: 6/27/2012
5	Falsification of Company Records 116515364  Rec'd: 4/26/2012	Allegation of fictitious inspection reports	Complaint found to be unsubstantiated; Department produced multiple witnesses and photographic evidence for inspection dates. Closed: 5/23/2012
6	Accounting/Audit Irregularities 114042861 Rec'd: 6/17/2010	Internal request by Department to assist with fraud risk assessment	Open/Unresolved
7	Accounting/Audit Irregularities 115250128 Rec'd: 5/26/2011	Internal request with recommendation follow-up and to assist with fraud risk assessment	Open/Unresolved
8	Accounting/Audit Irregularities 116005801 Rec'd: 12/16/2011	Allegation of misstating accounting records in public reports	Open/Unresolved
9	Waste and Abuse 116154489 Rec'd: 1/27/2012	Allegation of purchases of unnecessary supplies and equipment	Open/Unresolved
10	Waste and Abuse 116235836 Rec'd: 2/18/2012	Allegation of City funds being wasted on an unnecessary IT project	Open/Unresolved
11	Waste and Abuse 116463250 Rec'd: 4/13/2012	Allegation of poor oversight of department policy	Open/Unresolved
12	Policy Issues 116666404 Rec'd: 6/4/2012	Allegation of permit processing irregularities	Open/Unresolved
13	Waste and Abuse 116760214 Rec'd: 6/27/2012	Allegation of IT Security policy violation	Open/Unresolved

### **City Auditor Public Reports Regarding Substantiated Complaints**

The Office of the City Auditor received a Fraud Hotline complaint alleging that the Park and Recreation Department has been issuing Special Use Permits (SUP) to Sunshine Pony/Colt League (SPL) for youth baseball but not providing the proper oversight, which has allowed a SPL official the opportunity to illegally rent the field to non-youth baseball organizations and personally profit from the SUP.

The investigation determined that SPL has been given a SUP for the field located at 4402 Federal Boulevard. The SUP authorizes SPL to collect a reasonable maintenance fee from other City-approved groups in accordance with a City-approved fee schedule. The SUP also requires that all maintenance fees collected by SPL must be used for the operation, maintenance, and improvement of the field. We, therefore, determined that the allegation that the SPL official is illegally renting out the field is unsubstantiated. We also found that SPL officials are not personally profiting from sublease activities.

The investigation did, however, identify significant weaknesses in the oversight by Park and Recreation over compliance with the SUP. We found that Park and Recreation has not reviewed the operations of organizations granted SUPs in a timely manner; has not provided oversight on the sublease fees charged and collected by SPL; and has not ensured that sublease fees were totally used for field maintenance as required by the SUP.

Three recommendations were made to strengthen the oversight over SUPs, and Park and Recreation Department staff agreed with the report and the recommendations regarding the oversight to SUPs. The report of investigation, including management's response, can be found on our website at:

<http://www.sandiego.gov/auditor/pdf/hotline/12-012.pdf>

The Office of the City Auditor received Fraud Hotline complaints in May 2012 that alleged that recreation center directors recruited a recreation leader to run a contractual program at the recreation center at which the recreation leader was assigned. The complaints also stated that compensation from the contract was divided between the employees.

We determined that the complaints were unsubstantiated and that none of the employees identified in the complaints had entered into independent contractor agreements with a recreation council. We did, however, determine that an employee did work for a youth sports entity at the employee's primary work location, and that this relationship could give a conflict of interest appearance.

Two recommendations were made to strengthen controls over conflict of interests with outside employment. The Department agreed with the recommendations and issued a clarifying memorandum before the City Auditor investigation was completed. The report of investigation, including management's response, can be found on our website at:

[http://www.sandiego.gov/auditor/pdf/report/hotline/2012/12-013\\_hotlinereport061812.pdf](http://www.sandiego.gov/auditor/pdf/report/hotline/2012/12-013_hotlinereport061812.pdf)

**City Department Investigations Summary – Fourth Quarter of Fiscal Year 2012**

The City Auditor, through the Intake and Review Committee, reviews the final resolution of complaints investigated by the departments to ensure that the department has taken the proper actions to resolve the complaint. A complaint whose allegations cannot be substantiated can still result in the department taking corrective, proactive, or preventative measures to reinforce a policy or procedure or to improve customer service.

During the fourth quarter of fiscal year 2012, the Intake and Review Committee received two (2) resolutions from departments that indicated that the complaint was substantiated and corrective action(s) were taken as a result of the complaint, and received 10 resolutions that indicated that, although the complaint could not be substantiated, the Department took proactive action as a result of the complaint. In order to maintain compliance with California law regarding confidentiality requirements for whistleblower hotlines and still provide findings that serve the interests of the public concerning actions initiated by a Fraud Hotline complaint, we have prepared Table 5 below with a general description of these complaints and the action taken by the departments.

**Table 5 – Department-Investigated Complaints that were Substantiated and/or had Findings that Serve the Interests of the Public**

No.	Incident Type	General Description of Complaint	Outcome / Status/Elapsed Days
1	Safety Issues 116595657  Rec'd: 5/16/2012	Allegation of allowing minor non-employee to operate City equipment	Complaint found to be Substantiated and employee disciplined  Closed: 6/27/2012
2	Employee Relations 116422908 Rec'd: 4/3/2012	Allegation of profanity use by supervisor	Complaint found to be Substantiated and employee disciplined  Closed: 6/27/2012
3,4, 5,6, 7,8, 9	Waste and Abuse 116188995(2/6/12) 116208811(2/10/12) 116215520(2/13/12) 116227627(2/16/12) 116270225(2/27/12) 116306371(3/5/12) 1163445553/14/12)	Allegation of unnecessary and wasteful remodeling	Corrective Action Taken; Independent Fact-finding verified appropriate and timely approvals; Department will improve communications to provide better understanding of justification and funding  Closed: 5/10/2012
10	Employee Relations 116226842  Rec'd: 2/16/2012	Allegation of theft of City time by employees	Corrective Action Taken: Employees were determined to be following authorized rest period rules; Department held tail gate on rest period rules and communications with Public. Closed: 5/10/2012

No.	Incident Type	General Description of Complaint	Outcome / Status/Elapsed Days
11	Theft of Time 116225007  Rec'd: 2/15/2012	Allegation of theft of City time by supervisor	Corrective Action Taken: Unable to substantiate theft of time but employee disciplined for supervisory practices.  Closed: 6/27/2012
12	Safety Issues 116455668  Rec'd: 4/11/2012	Allegation of employee smoking in restricted area	Corrective Action Taken: Complaint could not be substantiated but meeting held and employees reminded of no smoking policy  Closed: 6/27/2012

### Conclusion

The Office of the City Auditor is dedicated to investigating all of the reported claims of fraud, waste, and abuse related to City operations. During fiscal year 2012, we have spent approximately 1,424 hours administering the Fraud Hotline, coordinating Intake and Review Committee activities, and investigating Fraud Hotline complaints.

I will be prepared to discuss this report at the next available Audit Committee meeting.

Respectfully submitted,



Eduardo Luna  
City Auditor

cc: Honorable Mayor Jerry Sanders  
Honorable Members of the City Council  
Jay M. Goldstone, Chief Operating Officer  
Wally Hill, Assistant Chief Operating Officer  
Ken Whitfield, City Comptroller  
Jan Goldsmith, City Attorney  
Andrea Tevlin, Independent Budget Analyst