

City of Austin



**A Report to the
Austin City Council**

Mayor
Lee Leffingwell

Mayor Pro Tem
Sheryl Cole

Council Members
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Laura Morrison
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**Office of the
City Auditor**

City Auditor
Kenneth J. Mory
CPA, CIA, CISA, CRMA

Deputy City Auditor
Corrie E. Stokes
CIA, CGAP, CFE

AUDIT REPORT

Fitness for Duty: Criminal Background Investigations Audit

September 2013



REPORT SUMMARY

The Human Resources Department (HRD) has implemented a criminal background investigations (CBIs) process and conducts testing of certain City employees. We found indications that the CBI program may need to be expanded. However, departments are not identifying all employees who currently require a CBI and HRD has not established adequate oversight and monitoring of the CBI program. In addition, HRD does not have an adequate process to determine which City employees should receive CBIs, and CBIs are not consistently conducted to ensure that the public, job applicants, City employees, City assets, and the City's reputation are effectively safeguarded.

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GOVERNMENT AUDITING STANDARDS COMPLIANCE

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

AUDIT TEAM

- Patrick A. Johnson, CGAP, CICA, Assistant City Auditor
- Kathie Harrison, CGAP, CFE, CICA, Auditor-in-Charge
- Katie Houston, CPA, CFE, CLEA, Auditor
- Felipe Garcia-Colon, CGAP, Auditor
- Samantha Littlepage, Audit Intern

Office of the City Auditor
Austin City Hall
phone: (512)974-2805
email: oca_auditor@austintexas.gov
website: <http://www.austintexas.gov/auditor>

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September 2013



Audit Report Highlights

Why We Did This Audit

This audit was conducted as part of the Office of the City Auditor's (OCA) FY 2013 Strategic Audit Plan.

What We Recommend

The HRD Director should develop, implement, and monitor a plan to address deficiencies in the CBI process and establish cross-functional teams to address the CBI policy and review exceptions in CBI results in order to effectively safeguard the public, job applicants, City employees, City assets, and the City's reputation.



For more information on this or any of our reports, email oca_auditor@austintexas.gov

FITNESS FOR DUTY: CRIMINAL BACKGROUND INVESTIGATIONS AUDIT

Mayor and Council,

I am pleased to present the Fitness for Duty: Criminal Background Investigations Audit.

BACKGROUND

In 2008, Council passed a resolution commonly referred to as "ban the box" to expand opportunities for qualified job applicants during the initial job application stages of the hiring process while the City continued to conduct full criminal background investigations (CBIs) for certain categories of jobs.

The mission of the Human Resources Department (HRD) is to attract, engage, develop, support, and retain the best workforce in the country to serve our community. This includes conducting CBIs on select City employees. HRD conducts CBIs on two groups of employees – those that have financial responsibilities (i.e. cash handling) and those that work with vulnerable populations (i.e. children and the elderly).

OBJECTIVE AND SCOPE

The objective of this audit was to evaluate HRD's management of the fitness for duty program to determine if there is reasonable assurance that CBIs are conducted effectively and in accordance with laws, regulations, and best practices.

The scope of this audit included HRD-conducted CBIs occurring between October 1, 2010 and March 31, 2013.

WHAT WE FOUND

HRD has a CBI process in place and CBIs are being conducted on City employees. However, that process is limited to employees that have financial responsibilities and work with vulnerable populations. A survey of comparable entities and department management indicate that CBI testing may need to be expanded. In addition, HRD has not established adequate oversight and monitoring of the CBI program, departments are not identifying all employees who currently require a CBI, and CBIs are not consistently conducted to ensure that the public, job applicants, City employees, City assets, and the City's reputation are effectively safeguarded.

We appreciate the cooperation and assistance we received from HRD staff during this audit.

Kenneth J. Mory, City Auditor

BACKGROUND

On October 16, 2008, the Austin City Council joined a movement adopted by several cities throughout the United States by passing Resolution 20081016-012 to “ban the box” which no longer requires disclosure of past criminal history during the initial job application process for certain job positions in the City. This initiative expanded the opportunity for qualified job applicants to be considered for a job during the early stages of the hiring process by delaying any inquiry into criminal background. However, the City’s procedures for full criminal background investigations for certain categories of jobs continued.

The mission of the Human Resources Department (HRD) is to attract, engage, develop, support, and retain the best workforce in the country to serve our community. This includes conducting criminal background investigations (CBIs) on select City employees. CBIs are performed by two employees within the Employment Services division of HRD.

Currently, HRD conducts CBIs on two groups of employees – those that have financial responsibilities¹ and those that work with vulnerable populations (i.e. children and the elderly). In Fiscal Year (FY) 2012, HRD reported conducting 6,535 CBIs on the City workforce. While HRD administers CBIs for the majority of the City departments, some departments administer their own CBI programs and there is variability in the way each department processes CBIs. Departments administering their own CBI programs do not report the results of such investigations to HRD.

OBJECTIVE, SCOPE, AND METHODOLOGY

The Fitness for Duty: Criminal Background Investigations Audit was conducted as part of the Office of the City Auditor’s (OCA) FY 2013 Strategic Audit Plan, as presented to City Council Audit and Finance Committee.

Objective

The objective of this audit was to evaluate HRD’s management of the fitness for duty program to determine if there is reasonable assurance that CBIs are conducted effectively and in accordance with laws, regulations, and best practices.

Scope

The scope of this audit included a review of HRD-conducted CBIs occurring between October 1, 2010 and March 31, 2013.

Methodology

To accomplish the audit objectives, the audit team:

- Researched industry standards, best practices, laws and regulations, and HRD policies and procedures relating to the conduct of CBIs
- Conducted interviews with staff in HRD and other City departments that administer CBIs
- Obtained and analyzed documentation in manual and electronic format

¹ Financial responsibilities include but are not limited to: handling cash, recording bank deposit slips, making deposits, using City credit cards, payroll timekeeping, signing checks, overseeing and distributing grant funds, and approving system users.

- Conferred with HRD to identify job titles that should be subject to CBIs
- Selected and tested a judgmental sample of 92 employees
- Evaluated risks related to information technology and fraud, waste, and abuse relevant to the audit objective
- Conducted benchmarking interviews with eight comparable entities regarding their respective CBI programs (entities were selected based on: HRD management feedback, population size, type of government, median family income, size of workforce, and municipal civil service status)

AUDIT RESULTS

The Human Resources Department (HRD) has a criminal background investigations (CBIs) process in place and CBIs are being conducted on City employees. However, that process is limited to employees that have financial responsibilities and work with vulnerable populations. A survey of comparable entities and department management indicate that CBI testing may need to be expanded. In addition, HRD has not established adequate oversight and monitoring of the CBI program, departments are not identifying all employees who currently require a CBI, and CBIs are not consistently conducted to ensure that the public, job applicants, City employees, City assets, and the City's reputation are effectively safeguarded.

Finding 1: HRD does not have an adequate process to determine which City employees should receive CBIs.

Texas Government Code Section 411.129 allows, but does not mandate, the City of Austin to obtain and review criminal history records for municipal employment purposes. The City of Austin has established Procedures and Guidelines for Conducting a Criminal Background Investigation, General Guidelines for Centralized Process (General Guidelines) to “establish a protocol for identifying City of Austin positions for which adverse criminal histories create risk to the City.” These Guidelines also note that “CBIs will be centrally-administered by HRD/CBI, under the authority of the HRD Director or designee.”

We surveyed eight comparable entities² and all reported that they conduct CBIs on their entire workforce as part of the selection process. Additionally, four of the comparable entities routinely conduct CBIs on their existing workforce (either on a random sampling basis, in response to indications of criminal activity, or on all individuals within certain positions).

We found that HRD does have a CBI process in place and CBIs are being conducted on City employees. This process is limited to two categories of employees, those that: (1) have financial responsibilities and (2) work with vulnerable populations. However, HRD does not determine which City employees need a CBI. Rather, HRD relies on representatives in City departments to self-report employees that need to have a CBI. Also, that determination is made by job task, not job description, and HRD does not maintain a complete list of which City employees need a CBI.

Our testing found that not all employees who need to have a CBI are being identified by the departments and HRD does not conduct monitoring of the department lists for completeness or to ensure that employees in similar positions across the City are treated in a consistent manner related to CBI testing. For example, Administrative Specialists in the Parks and Recreation Department often receive CBIs while Administrative Specialists in the Planning and Development Review Department usually do not.

Also, HRD is not the only department in the City that conducts CBI testing. HRD administers CBI testing for the majority of the City departments, but some departments conduct CBI testing outside of the HRD process. Some of those departments conduct CBIs in-house while others utilize a third-

² Auditors defined the following entities as comparable: (1) Dallas, TX, (2) El Paso, TX, (3) Fort Worth, TX, (4) Houston, TX, (5) Maricopa County, AZ, (6) San Antonio, TX, (7) San Diego, CA, and (8) San Francisco, CA. Entities were selected based on: HRD management feedback, population size, type of government, median family income, size of workforce, and municipal civil service status.

party vendor to conduct the testing. In addition, some employees are hired through recruiting organizations. We found that these employees do not consistently receive CBIs due to misunderstandings between HRD and City departments regarding who is responsible for conducting these CBIs. The multiple CBI programs as well as lack of clarity related to roles and responsibilities has created gaps in the process.

In addition, many City employees have direct and indirect access to fungible assets, confidential information, or critical information systems. Other employees may work in close proximity, although not directly, to vulnerable populations. However, not all of these employees are subject to a CBI under the current process. We spoke with management in multiple City departments who stated that such employees should be subject to the CBI process.

The CBI process within the City of Austin appears to have been developed incrementally over time. However, this has resulted in a complex and difficult-to-manage CBI program and we did not see evidence that the program is periodically reviewed and assessed for effectiveness. Without an effective and efficient process to administer the CBI process, the City may be exposing the public, job applicants, its employees, its assets, and its reputation to significant risk.

Finding 2: Newly-hired and transferred employees do not consistently receive CBIs when needed.

According to the General Guidelines, “a CBI is required for any personnel action involving CBI-sensitive positions, including new hires and transfers” and the CBI must be completed prior to the effective date of the personnel action involving a CBI-sensitive position. The General Guidelines apply to non-civil service employees in CBI-sensitive positions, which include executive-level employees. The General Guidelines also state that “each individual in a CBI-sensitive position must have a new CBI to confirm that the individual continues to remain eligible for the position.”

As noted, HRD does not maintain a complete list of which City employees need a CBI, but did identify job titles that had previously received a CBI. From that list, we identified employees that should have received a CBI and conducted testing of newly-hired and transferred employees during our scope period.

We tested a sample of 30 newly-hired employees (15 hired into positions involving financial responsibilities and 15 hired into positions involving vulnerable populations)³. Results are summarized in Exhibit 1.

³ This review did not include tests of CBIs conducted by other City departments.

**EXHIBIT 1
CBIs on Newly-Hired Employees**

	Employee has financial responsibility	Employee works with vulnerable populations
CBI properly conducted	11 of 15 (73%)	15 of 15 (100%)
CBI <i>not</i> conducted or conducted late	4 of 15 (27%) ⁴	0 of 15 (0%) ⁵

SOURCE: OCA analysis of CBIs conducted on newly-hired employees, August 2013

We also tested 62 instances in which people transferred into positions requiring a CBI for evidence that the CBI occurred at transfer and on a recurring basis as needed (34 for positions involving financial responsibilities and 28 for positions involving vulnerable populations). Overall, we found 10 of 62 (16%) instances with a documentation deficiency. Examples include evidence of a CBI in the paper file but not in the electronic system and vice versa, indications of HRD reviewing detected criminal backgrounds but not documenting conclusions on whether criminal activity precludes the employee from City employment, inconsistent information in paper documents (i.e. different birthdates or social security numbers for the same person), and searches identifying criminal history for the wrong person.

Also, 30 of the 34 (88%) employees tested with financial responsibilities had at least one of the five issues listed in Exhibit 2 below. All 28 (100%) employees tested who work with vulnerable populations had at least one of the five issues listed below.

**EXHIBIT 2
CBIs on Transferred Employees⁶**

	Employee has financial responsibility	Employee works with vulnerable populations
Employee never received a CBI	3 of 34 (9%)	1 of 28 (4%)
At time of Transfer: CBI was not conducted	19 of 34 (56%)	15 of 28 (54%)
At time of Transfer: CBI was conducted late	5 of 34 (15%)	4 of 28 (14%)
Recurring: CBI was not conducted	10 of 34 (29%)	12 of 28 (43%)
Recurring: CBI was conducted late	10 of 34 (29%)	18 of 28 (64%)

SOURCE: OCA analysis of CBIs conducted on transferred employees, August 2013

We also noted that executive-level employees were not consistently tested during our scope period. During the course of our audit, HRD reported that CBIs for some of the executive-level employees had been conducted.

Also during the course of our audit, we noted inconsistent information in an employee file and referred that information to the City Auditor’s Integrity Unit for review.

⁴ For employees with financial responsibilities, two CBIs were not conducted and two CBIs were conducted late. The late CBIs were conducted two and seven days after the employee hire date, respectively.

⁵ We noted CBI documentation in HRD files for 14 of 15 employees who work with vulnerable populations. CBI documentation for the remaining employee in our sample was verified in Building Services Department files.

⁶ Included in our sample of 62 employees, 10 transferred to Austin Energy. HRD staff reported that financial and vulnerable population CBIs were not conducted at Austin Energy before March 2012.

Our testing indicates that not all employees who need CBIs are receiving them and CBIs that are performed are not completed in a timely manner. HRD does not consistently follow established CBI procedures and guidelines related to conducting CBIs on City employees. Therefore, the City faces increased risk that people with inappropriate backgrounds may be working in positions with financial responsibilities or that involve vulnerable populations. Also, executive-level employees are entrusted to manage the people's business and act as the public face of their departments. Gaps in the CBI process may place the safety of the public, job applicants, City employees, City assets, and the City's reputation at risk.

Finding 3: HRD management has not established adequate oversight and monitoring of the CBI program.

As noted, the General Guidelines state that CBIs will be centrally-administered by HRD, under the authority of the HRD Director or designee. It further states that HRD should maintain the integrity of the CBI process and documents and that HRD should periodically review the CBI database to ensure accurate entry of information.⁷

In the HR Employment Services Division, there are two employees who review, process, and manage the CBIs for the CBI-sensitive positions in their assigned departments. Each employee has been assigned mutually exclusive departments and does not review the other employee's work. HRD management's review of the processing of CBIs is limited to instances in which criminal activity is detected. Since the processing of CBIs for each department is performed by one person, there is risk that CBIs could be improperly or inaccurately processed and, with no supervisory review of successful CBIs, this situation may be undetected by management.

RECOMMENDATIONS

The recommendations listed below are a result of our audit effort and subject to the limitation of our scope of work. We believe that these recommendations provide reasonable approaches to help resolve the issues identified. We also believe that operational management is in a unique position to best understand their operations and may be able to identify more efficient and effective approaches and we encourage them to do so when providing their response to our recommendations. As such, we strongly recommend the following:

- 1. The HRD Director should develop, implement, and monitor a plan to address deficiencies in the CBI process to ensure that a complete list of City employees needing CBIs is created and maintained and all required CBIs are conducted and completed in a timely manner.**

MANAGEMENT RESPONSE: **Concur.** Refer to Appendix A for management response and action plan.

⁷ The Committee of Sponsoring Organizations (COSO) is recognized for establishing best practices and a generally accepted framework for addressing risk in organizations in the United States. According to COSO, management must design and implement internal controls to adequately mitigate risk to the organization. Furthermore, controls should be monitored to assure they are working as designed and executive management is responsible for the oversight of strategically key functions within their purview even if portions of the process are delegated to others.

- 2. The HRD Director should establish a senior management team, including but not limited to, representatives from the City Manager's Office, the Law Department, and HRD management to ensure that the CBI program effectively safeguards the public, job applicants, City employees, City assets, and the City's reputation. This team should address City policy to define which employees are subject to CBIs and how often employees should be reviewed.**

MANAGEMENT RESPONSE: **Concur.** Refer to Appendix A for management response and action plan.

- 3. The HRD Director should establish and lead a team, including but not limited to, representatives from HRD management, the Law Department, and the employee's department to review exceptions in CBI results and determine eligibility for hire or continued employment in the CBI-sensitive area.**

MANAGEMENT RESPONSE: **Concur.** Refer to Appendix A for management response and action plan.

MANAGEMENT RESPONSE



MEMORANDUM

To: Kenneth J. Mory, City Auditor
Office of City Auditor

From: Mark Washington, Director, Human Resources and Civil Service
John Hayes for Mark Washington

Date: September 23, 2013

Subject: Response to Fitness for Duty: Criminal Background Investigation Audit

I have reviewed the draft report of the Fitness for Duty: Criminal Background Investigations Audit and concur with the recommendations made to address the audit findings.

Our responses and key elements of our action plan are included in the attached table. We appreciate the opportunity to work with you and your staff to evaluate Human Resources Department's (HRD) management of the CBI process. We also recognize that your audit was conducted with the purpose of helping us improve the consistency of our CBI process and ensure that the public, City employees, City assets, and City's reputation are effectively safeguarded. Our purpose is mutual. We also want the City's CBI process to be effective, consistent and in accordance with laws, regulations and best practices. And while we recognize the need to strengthen our current CBI process, we will remain committed to do our part and not create any unnecessary barriers to employment for our citizens.

In 2008, the City Council passed the Ban-the-Box resolution. The City of Austin and Travis County were the first municipal/county governments to adopt this initiative. We wish to remain true to our commitment to be a workplace that allows ex-offenders to work in areas in which there is no risk to the public when their offenses are not related to the job in which they are considered.

The City of Austin has received national and local recognition for its initiatives. In its February 2011 edition of "HR Magazine," the Society for Human Resource Management (SHRM) cited the City of Austin for the City's high standards for criminal background checks and its Ban-the-Box resolution. Recently, the Travis County Sheriff's office recognized Rochion Gregg, one of our Employment Specialists who works with re-entry outreach efforts, with the Vision Award during their "Vision Summit: Looking Toward the Future of Re-Entry." This award recognizes an individual and/or organization in Texas who has demonstrated extraordinary vision by significantly impacting the re-entry population through training, work development and

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social/civic engagement. Additionally, cities such as Baton Rouge, LA; Lexington, KY; and Milwaukee, WI have looked to the City of Austin for guidance on re-entry outreach efforts.

I think many of your findings regarding efficiencies are in part related to the governance structure for Human Resources and in part related to the need to enhance our technology for Human Resources Information support. It is important to note that HRD has a long-range plan to upgrade our Human Resource Information Systems to support integration and workflow across HR processes, reducing the number of manual interventions required to track compliance in the CBI process and reducing the risks in this area. HRD, Communications & Technology Management and Finance have conducted an assessment of gaps in our current processes and systems and identified requirements that could be used for a future procurement.

cc: Marc A. Ott, City Manager
Anthony Snipes, Assistant City Manager
Judy Wallace, Assistant Director, Human Resources

Attachment

ACTION PLAN

Fitness for Duty: Criminal Background Investigations Audit

Recommendation	Concurrence and Proposed Strategies for Implementation	Status of Strategies	Proposed Implementation Date
<p>1. The HRD Director should develop, implement, and monitor a plan to address deficiencies in the CBI process to ensure that a complete list of City employees needing CBIs is created and maintained and all required CBIs are conducted and completed in a timely manner.</p>	<p>Concur</p> <p>a. Develop a plan to reduce the dependence on departments to self report. HRD will inventory all job titles that have been CBI'd in the past two years to determine if those will continue to need CBIs. That list will be used as the default, and any personnel actions in those job titles will be considered as needing CBIs unless specifically identified otherwise.</p> <p>b. Initiate new processes to monitor and take necessary actions to ensure all required CBIs are conducted and completed in a timely manner.</p> <p>c. Minimize dependence on lengthy turnaround time of National FBI checks by simultaneously using statewide DPS check results when applicants have both out-of-state and limited time with in-state residency.</p> <p>d. Review reports every pay period to ensure that CBIs were conducted on personnel actions that required a CBI.</p> <p>e. Increase HRD oversight to ensure that all stakeholders understand the importance of requirements and have adequate tools to comply with requests.</p>	<p>Underway</p> <p>Planned</p> <p>Planned</p> <p>Planned</p> <p>Planned</p>	<p>Dec. 2013</p> <p>Jan. 2014</p> <p>Nov. 2013</p> <p>Oct. 2013</p> <p>Jan. 2014</p>

APPENDIX A

Recommendation	Concurrence and Proposed Strategies for Implementation	Status of Strategies	Proposed Implementation Date
<p>2. The HRD Director should establish a senior management team, including but not limited to, representatives from the City Manager’s Office, the Law Department, and HRD management to ensure that the CBI program effectively safeguards the public, job applicants, City employees, City assets, and the City’s reputation. This team should address City policy to define which employees are subject to CBIs and how often employees should be reviewed.</p>	<p>Concur</p>	<p>Planned</p>	<p>1st meeting Oct. 31, 2013</p>
<p>3. The HRD Director should establish and lead a team, including but not limited to, representatives from HRD management, the Law Department, and the employee’s department to review exceptions in CBI results and determine eligibility for hire or continued employment in the CBI-sensitive area.</p>	<p>Concur</p> <p>HRD has clearly defined criteria when criminal history is related to a job that has been reviewed by the Law Department. HRD will confer with the Law Department in instances when facts related to the hiring decision incorporate factors other than the current guidelines to assess the legal risks.</p>	<p>Planned</p>	<p>Oct. 2013</p>