

City of Austin



**A Report to the
Austin City Council**

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**Office of the
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AUDIT REPORT

Fitness for Duty: Drug and Alcohol Testing Audit

September 2013



REPORT SUMMARY

The Human Resources Department (HRD) has a drug and alcohol testing program in place and tests are being conducted on City employees. However, the program is limited to Commercial Driver's License (CDL) employees. A survey of comparable entities and department managers indicate that the drug and alcohol testing program may need to be expanded. In addition, HRD systems and procedures are not effective in ensuring the integrity of data related to drug and alcohol testing to mitigate risks to public and employee safety and liability for the City.

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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

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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 drug and alcohol testing program and establish cross-functional teams to address the drug and alcohol testing policy and review positive tests in order to safeguard the safety of the public and City employees and mitigate liability to the City.



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

FITNESS FOR DUTY: DRUG AND ALCOHOL TESTING AUDIT

Mayor and Council,

I am pleased to present the Fitness for Duty: Drug and Alcohol Testing Audit.

BACKGROUND

The Human Resources Department (HRD) Employee Relations Division administers and manages the citywide Commercial Driver's License (CDL) Drug and Alcohol program as well as contracts with Concentra, a third-party vendor, to conduct drug and alcohol testing on commercial drivers in the City.

OBJECTIVE AND SCOPE

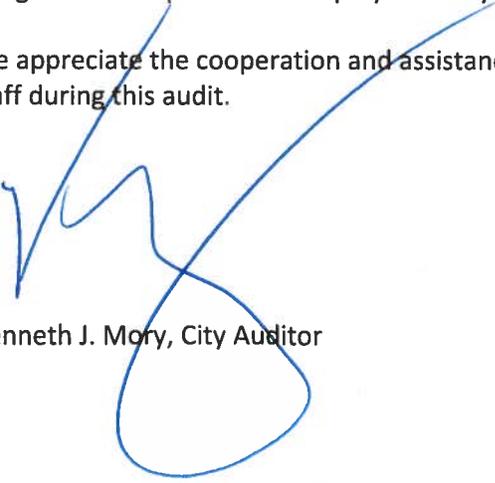
The objective of this audit was to evaluate HRD's management of the fitness for duty program to determine if there is reasonable assurance that drug and alcohol testing is being conducted effectively and in accordance with laws, regulations, and best practices.

The scope of this audit included a review of drug and alcohol testing occurring between October 1, 2010 and March 31, 2013.

WHAT WE FOUND

HRD has a drug and alcohol testing program in place and tests are being conducted on City employees. However, the program is limited to CDL employees. A survey of comparable entities and department managers indicate that the drug and alcohol testing program may need to be expanded. In addition, HRD systems and procedures are not effective in ensuring the integrity of data related to drug and alcohol testing to mitigate risks to public and employee safety and liability for the City.

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


Kenneth J. Mory, City Auditor

BACKGROUND

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. The HRD Employee Relations Division administers and manages the citywide Commercial Driver's License (CDL) Drug and Alcohol program as well as contracts with Concentra, a third-party vendor, to conduct drug and alcohol testing on commercial drivers in the City.

OBJECTIVE, SCOPE, AND METHODOLOGY

The Fitness for Duty: Drug and Alcohol Testing Audit was conducted as part of the Office of the City Auditor's (OCA) Fiscal Year (FY) 2013 Strategic Audit Plan, as presented to the 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 drug and alcohol testing is being conducted effectively and in accordance with laws, regulations, and best practices.

Scope

The scope of this audit included a review of drug and alcohol testing occurring between October 1, 2010 and March 31, 2013.

Methodology

To accomplish our audit objectives, the audit team:

- Researched industry standards, best practices, laws and regulations, and department policies and procedures related to drug and alcohol testing requirements
- Conducted interviews with key department personnel including HRD Employee Relations and Law Department staff
- Reviewed and analyzed HRD financial documentation
- Reviewed and analyzed drug and alcohol testing data from the HRD departmental tracking system and the Banner personnel tracking system
- Selected and tested a random sample of 35 employees hired into CDL positions representing 9 City departments (out of 16) that are subject to drug and alcohol testing
- Selected and tested a random sample of 35 existing employees in CDL positions representing 11 City departments utilizing the Master Pool lists from May 2013 and July 2013 managed by HRD Employee Relations (CDL employees are selected for random testing by a third-party vendor)
- Tested the population of 29 positive drug and alcohol tests representing 8 City departments
- Tested the population of 6 post-accident drug and alcohol testing incidents representing 3 City departments
- Evaluated risks related to information technology and fraud, waste, and abuse significant to the audit objective
- Conducted benchmarking interviews with eight comparable entities regarding their respective Drug and Alcohol Testing 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 drug and alcohol testing program in place and tests are being conducted on City employees. However, the program is limited to Commercial Driver's License (CDL) employees. A survey of comparable entities and department managers indicate that the drug and alcohol testing program may need to be expanded. In addition, HRD systems and procedures are not effective in ensuring the integrity of data related to drug and alcohol testing to mitigate risks to public and employee safety and liability for the City.

Finding 1: HRD does not have an adequate process to determine which City employees should receive drug and alcohol tests.

We surveyed eight comparable entities¹ and 5 of 8 (63%) reported that they conduct drug or alcohol testing on all positions as part of their pre-employment process. The entities also reported conducting drug and alcohol testing on safety-sensitive positions in addition to CDL employees.

According to the City of Austin Personnel Policies related to a Drug-Free Workplace, "all City work sites shall be free of drugs, alcohol, and inhalants" and "City employees shall not report to work, remain on duty, or be on call for duty while under the influence of drugs or alcohol." In addition, the City of Austin has established policies, procedures, and guidelines (Procedures) related to drug and alcohol testing of employees in positions that require a CDL². According to the Procedures, a commercial driver is any person who operates a commercial motor vehicle³ at the direction of or with the consent of the City and those drivers are prohibited from using controlled substances⁴ or alcohol.

We found that HRD does have a drug and alcohol testing program in place and drug and alcohol tests are being conducted on CDL employees. HRD relies on representatives in City departments to identify and update the CDL employees that are subject to drug and alcohol testing. HRD receives these updates and makes changes to the testing list when notified. However, we found that HRD does not conduct monitoring of the department-reported updates for completeness to ensure that all eligible employees are included on the testing list.

For other (non-CDL) employees that are suspected of substance abuse, departments must follow the City's Drug-Free Workplace policy and the Health Fitness policy which requires that more than one supervisor document and communicate their observations to HRD. The HRD Director must determine if an employee is approved for an evaluation with a substance abuse professional. According to multiple department managers, the existing policies do not allow management to address their concerns in the same day that an employee is suspected of substance abuse. There is

¹ Auditors defined the following entities as comparable: (1) Dallas, TX; (2) El Paso, TX; (3) Fort Worth, TX; (4) San Antonio, TX; (5) Houston, TX; (6) Maricopa County, AZ; (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.

² In order to comply with the requirements of the Omnibus Transportation Employee Testing Act of 1991.

³ Commercial motor vehicle is a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property, if the motor vehicle: (1) has a gross combination weight rating or weight rating of 26,001 or more pounds; (2) is designed to transport 16 or more passengers including driver; and (3) is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act.

⁴ Controlled substances refer to marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines (including methamphetamine).

risk that appropriate personnel action may not be taken when warranted due to lack of evidence and the length of the process.

In addition, there are many City employees who drive vehicles and operate small- and medium-sized equipment such as loaders, mowers, and backhoes. Department managers reported that such employees do not require a CDL, but should be subject to drug and alcohol testing due to their job responsibilities. While the City has a Drug-Free Workplace policy that applies to all City work sites and City employees, the only testing program in place to address drug and alcohol use is for CDL employees. This program may not be adequate to manage all the employees that may pose risk to public and employee safety and create liability for the City.

Finding 2: HRD systems and procedures are not effective in ensuring the integrity of data related to drug and alcohol testing.

According to the Procedures, the City conducts drug and alcohol testing in accordance with U.S. Department of Transportation regulations for employees in positions that require a CDL. These employees are subject to pre-employment, change of duty, random, post-leave, post-accident, and reasonable suspicion testing. Also, according to the U.S. Department of Transportation Federal Motor Carrier Safety Administration, an employer shall prepare and maintain a summary of the results of its alcohol and controlled substance testing programs performed during the previous calendar year, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

As noted, HRD receives departmental updates regarding employees eligible for drug and alcohol testing. HRD enters the updates into the drug and alcohol database to create a “master pool” list and provides that information to Concentra, the City’s third-party drug and alcohol testing vendor. Based on the “master pool” list, Concentra selects employees for random testing. During our testing, we received incomplete information and reports from the City’s drug and alcohol database. HRD management reported that some of those issues are related to the interface between the City’s drug and alcohol database and another City system, Banner⁵. These instances may be indicative of IT data integrity issues. HRD Management also reported that they are currently planning to transition the current Microsoft Access drug and alcohol database to another system platform to better meet their needs. In addition, we noted other documentation issues including information not located in the database or the employee file, information located in the database but not in the file and vice versa, and incomplete information. Without complete and accurate information, there is increased risk that the City is not testing all employees subject to drug and alcohol testing.

The City’s Procedures also require that the City conduct random testing on a minimum of 10% of covered commercial drivers for alcohol and a minimum of 50% of covered commercial drivers for controlled substances on an annual basis⁶. The HRD Employee Relations Records Control Schedule states that any records documenting the City’s compliance with Federal, State and other jurisdictional laws, statutes, ordinances, rules and regulations shall be retained for a five-year period. HRD management reported having monitoring procedures in place and noted that staff

⁵ Banner is the City’s administrative and payroll system.

⁶ According to our comparable entity survey, five entities reported conducting alcohol testing on 10-25% and drug testing on 50% of their CDL and safety-sensitive populations. One comparable entity reported conducting drug testing on 20% of other employees.

produces reports from the drug and alcohol database for review. However, we were unable to determine that such reports were consistently requested or retained.

Finding 3: Appropriate security controls were not maintained over the drug and alcohol database that increased the risk of unauthorized access.

According to the Department of Transportation, an employer must maintain records in a location with controlled access. In addition, the City of Austin Workstation Security Policy states that the City shall implement physical safeguards for all workstations that can access Electronic Protected Health Information and Electronic Protected Information. Further, the City of Austin Computer Acceptable Use Policy and Password Policy state that employees are responsible for the security of City computer equipment and should take all reasonable precautions to prevent use by unauthorized individuals.

We observed system login information and passwords posted on a workstation in plain sight for the HRD administrator of the drug and alcohol database. This information was immediately removed after we communicated the issue and HRD management reported that there were no instances of unauthorized access. However, we did not see evidence that unauthorized access could be detected which increases the risk that the system data contains inaccurate or incomplete information.

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 drug and alcohol testing program to ensure that a complete list of City employees needing drug and alcohol testing is created and maintained and all required drug and alcohol testing is conducted and completed in a timely manner.**

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

- 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, HRD management, Communication and Technology Management Department management, and other City departments affected by drug and alcohol testing to ensure that the drug and alcohol testing program effectively safeguards the safety of the public and City employees. This team should address City policy to define which employees are subject to drug and alcohol testing and how often employees should be tested.**

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 positive drug and alcohol test results and determine eligibility for hire or continued employment.**

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

MANAGEMENT RESPONSE



MEMORANDUM

To: Kenneth J. Mory, Office of City Auditor
Copy sent for Mark Washington
From: Mark Washington, Director, Human Resources and Civil Service
Date: September 23, 2013
Subject: Response to Fitness for Duty: Drug and Alcohol Testing Program

I have reviewed the draft report of the Response to the Fitness for Duty: Drug and Alcohol Testing Program Audit and concur with the recommendations made to address the audit findings.

The Human Resources Department (HRD) is committed to the delivery of high quality Human Resources services to ensure that the City of Austin has a safe workplace and the talent needed to meet the needs of the citizens of Austin. To that end, we will continue to manage to ensure that the City's Drug and Alcohol Testing Program is effective, consistent and in accordance with laws, regulations and best practices. We welcome the review and input from your office. Staff has created a plan of action to address your recommendations which is attached for your review.

You will note that the action plan includes references to enhancements of our current IT systems. Human Resources Department is in the preliminary planning stages for a potential upgrade of our Human Capital Management systems to support integration and workflow across human resources processes. Communications & Technology Management, HRD and Finance are conducting a comprehensive assessment of gaps in our current processes and systems and identifying requirements that could be used for a future procurement. Among other benefits, an upgraded system could reduce the number of manual interventions required to track compliance with the drug and alcohol testing program and reduce risk in this area. We have also been evaluating the possible expansion of the drug testing program to non-commercial drivers where there is a safety or security business need.

Should you have any questions or comments, please do not hesitate to contact me.

cc: Marc Ott, City Manager
Anthony Snipes, Assistant City Manager
Karen Sharp, Assistant Director, Human Resources Department

Attachment

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, HRD management, Communication and Technology Management Department management, and other City departments affected by drug and alcohol testing to ensure that the drug and alcohol testing program effectively safeguards the safety of the public and City employees. This team should address City policy to define which employees are subject to drug and alcohol testing and how often employees should be tested.</p>	<p>Concur. HRD has been in the process of evaluating the scope of the current alcohol and drug testing and is considering expanding the program. HRD will incorporate the Auditor's findings, including the benchmark data cited, into our evaluation. HRD has held focus groups with executive management as well as HR staff across the City to discuss the possibility of expanding the Alcohol and Drug Testing Program to be inclusive of all safety sensitive positions. The Law Department has also been engaged in these discussions. HRD will work with the Law Department, the City Manager's Office and Departmental stakeholders to evaluate options and potential implementation strategies.</p>	<p>Underway</p>	<p>HRD will propose recommended changes in November 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 positive drug and alcohol test results and determine eligibility for hire or continued employment.</p>	<p>Concur. While there is a well-defined process in place for guiding management actions after a positive test result; discretion resides with the Department Director for a current employee's first violation of the program. When the Director recommendation is to terminate employment for a first offence HRD will review and share the recommendation with the Law Department to ensure no unacceptable legal risk to the City exists.</p>	<p>Planned</p>	<p>November 2013</p>