

**Performance Audit
EEO Complaint Investigation Efficiency
Can Be Improved Through Better
Documentation and Data**

April 2017



03-2017

Office of the City Auditor

City of Kansas City, Missouri

CITY OF FOUNTAINS
HEART OF THE NATION



KANSAS CITY
MISSOURI

Office of the City Auditor

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April 19, 2017

Honorable Mayor and Members of the City Council:

This audit of the Equal Employment Opportunity and Diversity (EEO) Office focuses on whether the city can improve the efficiency of its investigations of submitted complaints. Prompt investigations are critical to both the complainant and the individual accused of inappropriate conduct because both live in uncertainty until the investigation is complete.

EEO needs to improve its documentation and recordkeeping of the investigation process. While the EEO Office's procedures manual discusses many of the elements included in workplace investigation recommended practices, the practices are not documented in the records we reviewed. Additionally, the EEO Office does not have a record of every complaint submitted to its office. EEO documentation must be sufficient to withstand external scrutiny because this documentation helps the city demonstrate it conducted a thorough, fair, and prompt investigation.

The EEO Office needs to improve communications about its investigation process and decisions. This communication should include explanations for why an investigation will or will not occur after an initial inquiry into a complaint. Communicating promptly helps demonstrate to the parties involved that their concerns were taken seriously and were evaluated within the EEO framework.

The EEO Office needs to improve the accuracy, completeness, and use of its data. The database used to track EEO complaints contains inaccurate and blank fields. Because the data was not reliable, we could not evaluate the timeliness of the investigation process. The calculation used by the EEO Office to determine the average number of days to complete an investigation – the only milestone the EEO Office calculates – is inaccurate because it includes cases that were not investigated. Tracking other key milestones, could help management identify where improvements to the process can be made.

We make recommendations to improve the EEO Office's investigation documentation, records, and communications, and the accuracy, completeness and use of EEO data to improve the overall efficiency and management of the investigation process.

The draft report was made available to the director of human resources on March 29, 2017, for review and comment. His response is appended. We would like to thank EEO staff for their assistance and cooperation during this audit. The audit team for this project was Nancy Hunt, Jonathan Lecuyer, and Jason Phillips.

A handwritten signature in blue ink that reads "Douglas Jones". The signature is fluid and cursive, with the first name "Douglas" and last name "Jones" clearly legible.

Douglas Jones
City Auditor

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Introduction

Objectives

We conducted this audit of the Human Resources Department’s Equal Employment Opportunity and Diversity Office under the authority of Article II, Section 216 of the Charter of Kansas City, Missouri, which establishes the Office of the City Auditor and outlines the city auditor’s primary duties.

A performance audit provides “findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.”¹

This report is designed to answer the following question:

- Can the city improve the efficiency of its equal employment opportunity complaint processes?

Scope and Methodology

Our review focuses on complaint investigations performed by the city’s Equal Employment Opportunity and Diversity (EEO) Office. Our audit methods included:

- Interviewing staff of the Human Resources and Law departments and other city staff to understand the nature of the EEO process and to identify potential criteria, issues, sources of information, and concerns.
- Reviewing professional literature to identify recommended practices for conducting workplace investigations.

¹ Comptroller General of the United States, *Government Auditing Standards* (Washington, DC: U.S. Government Printing Office, 2011), p. 17.

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- Reviewing city ordinances, state statutes, and federal codes and regulations to identify governing EEO laws.
- Reviewing the EEO Office's Standard Operating Procedures Manual, Department of Human Resources' Rules & Policy Manual, and EEO Investigator Training materials to understand the city's established process for investigating complaints.
- Identifying a judgmental sample of 36 files of complaints received from May 1, 2014 - April 30, 2016, to assess the EEO process.
- Comparing the judgmental sample of EEO files to the EEO database to assess the validity and reliability of the data contained in the database.

We originally planned to analyze EEO data to determine how long it takes staff to investigate complaints and identify trends; however, we did not find the data to be sufficiently valid or reliable to complete these analyses.

Although some cases we reviewed may also have parallel complaints filed with outside agencies such as the Missouri Commission on Human Rights, the United States Equal Employment Opportunity Commission, or the courts, our scope of review was limited to the cases filed with the city's EEO Office.

The original auditor assigned to conduct this audit was reassigned when a potential conflict of interest was identified during the course of this audit. We do not believe this potential conflict impaired our independence or audit conclusions.

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. No information was omitted from this report because it was deemed privileged or confidential.

Background

Federal and state law prohibit discrimination in employment and the city has enacted an EEO policy to prohibit conduct by its employees that is discriminatory or inappropriate and might create a discriminatory hostile work environment. The policy requires the Human Resources Department's Equal Employment Opportunity and Diversity (EEO) Office to assess the eligibility of complaints under city policies, determine whether a violation has occurred, and recommend corrective action or disciplinary measures if a violation of the policy is determined. Complaints may be filed with one or more of these entities: the city's Equal Employment Opportunity and Diversity Office (EEOC), the United States Equal Employment Opportunity Commission, or the Missouri Commission on Human Rights (MCHR).

EEO Investigation Process and Requirements

The EEO Office investigates complaints of violations of the city's equal opportunity of employment and anti-harassment policies.² Complaints received by the EEO Office must satisfy a number of criteria for the EEO Office to investigate.³ Covered individuals include applicants, current employees, and former employees of the City of Kansas City, Missouri.⁴ A complaint must be submitted within 180 days from when the alleged incident occurred⁵ and the complaining party must be either the individual who was subjected to the alleged discrimination, persons who were harmed by the alleged discrimination, or a person filing a complaint "on behalf of" an aggrieved person or persons.⁶ Supervisors and managers are required to report suspected or complained of EEO violations of which they are aware.⁷ The aggrieved must fall under a basis covered by the individual's protected status and a covered issue. Protected status' include⁸:

² Code of Ordinances, Kansas City, Missouri, Sec. 2.367 (e).

³ *EEO Standard Operating Procedures Manual*, Equal Employment Opportunity Office, Kansas City, Missouri, pp. p. 10.

⁴ *EEO Standard Operating Procedures Manual*, p. 10.

⁵ *Department of Human Resources Rules & Policy Manual*, City of Kansas City, Missouri, Appendix A. Sec E.2. p. 63, Equal Employment Opportunity Discrimination/Harassment Policy, August 4, 2014.

⁶ *EEO Standard Operating Procedures Manual*, p. 10.

⁷ Code of Ordinances, Kansas City, Missouri, Sec. 2.367 (c).

⁸ City EEO Discrimination/Harassment Policy, Appendix A. p. 63.

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- Race
- Sex
- National Origin
- Religion
- Age
- Sexual Orientation
- Genetic Information
- Pregnancy
- Veteran Status
- Gender Identity
- Disability
- Color

When a complaint is determined to be eligible, the EEO Office will conduct an investigation or delegate the investigation to a city department.⁹ Investigations include collecting documentation and interviewing relevant parties. The EEO Office issues a final written report to identify the facts of the case and determines whether or not a violation occurred. A summary of the report is provided to the complainant and respondent. If the final report determines that a violation occurred, the EEO Office will recommend corrective or disciplinary action to be taken. If the department disagrees with the corrective action or disciplinary measures recommended by the EEO Office, they may appeal to the city manager whom then makes a final determination. Employees who receive corrective or disciplinary action may challenge the action through the appropriate city grievance procedure or appeals process.¹⁰ Departments are responsible for enforcing and implementing the recommended corrective or disciplinary action. The EEO Office is responsible for verifying that recommendations are followed.

The EEO Office closed 147 complaint cases from May 1, 2014 through April 30, 2016. Of these, 82 complaints were investigated. EEO did not investigate 55 submitted complaints because the complaint type did not meet the criteria for an EEO investigation, the complaint was withdrawn, or the complainant failed to show up for an intake meeting. Ten complaints were dismissed after an initial investigation because the EEO Office determined the complaint to be ineligible. (See Exhibit 1.)

Exhibit 1. Complaints Closed by EEO Office, Fiscal Years 2014 - 2016

EEO Action	Number of Cases ¹¹	Percent of Total
Investigation Conducted	82	56%
No Investigation	55	37%
Dismissed	10	7%
Total	147	100%

Sources: EEO Databases and CAO calculations.

⁹ Code of Ordinance, Kansas City, Missouri, Sec. 2.367 (e).

¹⁰ *EEO Standard Operating Procedures Manual*, p. 31.

¹¹ We excluded 22 records that were included in EEO databases, but were not EEO cases, were still open, or stated another reason why no determination was given.

The most common types of complaints received were for discrimination or harassment. (See Exhibit 2.)

Exhibit 2. Type of Complaints Received, Fiscal Years 2014 - 2016

Complaint Basis ¹²	Number of Cases ¹³	Percent of Total
Discrimination	73	43%
Harassment	61	36%
Retaliation	25	15%
Hostile Work Environment	5	3%
Inappropriate Sexual Conduct	5	3%
Total	169	100%

Sources: EEO Databases and CAO calculations.

¹² We consolidated categories of the EEO databases to correct inconsistencies in data entry.

¹³ Some cases we included had more than one complaint basis. We excluded seven cases because the complaint type field was blank.

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Findings and Recommendations

Summary

While the Equal Employment Opportunity and Diversity (EEO) Office's written procedures include many of the elements included in workplace investigation recommended practices, these practices are not reflected in the EEO investigation records. The EEO Office does not have a record of every complaint submitted to its office and does not always communicate to complainants the reason an investigation will or will not occur. The EEO Office could improve the quality of its records by documenting why a case will or will not be investigated and communicating the reason to the complainant; including a documented investigation plan in the investigation files; linking the EEO Office's conclusion to the evidence collected during the investigation; and doing a quality assurance review on each investigation.

The EEO Office's database used to track EEO complaints contains inaccurate and incomplete fields. Because the data was not reliable, we could not evaluate the timeliness of the investigation process. The only milestone the EEO Office tracks is the average number of days to complete an investigation and it is not calculated correctly because it includes cases that are not investigated. Improving the accuracy and completeness of the EEO database, including only investigated cases in the average number of days to complete an investigation calculation, and tracking the timeliness of other milestones could help management improve the overall efficiency of the EEO process.

Equal Employment Opportunity and Diversity Office Documentation Needs Improvement

The Equal Employment Opportunity and Diversity (EEO) Office does not have a record of all submitted complaints and does not clearly document the reason a case was or was not investigated. EEO's written procedures include many of the elements of workplace investigation recommended practices, but these practices are not reflected in the records retained for each investigation.

EEO Needs a File for Every Submitted Complaint

The EEO Office did not create or maintain a file for all complaints in their database. The EEO Office does not have a record of every complaint submitted.

The EEO Office did not create a file for each complaint in their database. City code requires that the EEO Office keep records on the city's enforcement of EEO policies.¹⁴ EEO's Standard Operating Procedures (SOP) manual requires a file to be established with all records, documents, and correspondence for all complaints submitted to the EEO Office even if an investigation is not initiated.¹⁵

EEO investigative files could not be located for each complaint listed in the EEO database. We attempted to locate 36 complaint files listed in the EEO database. EEO staff were unable to locate six complaint files we requested. Eventually, staff found and placed a couple of emails and an unsigned memo in three unlabeled, individual manila file folders in response to our request. Staff never located three other complaint files.

The EEO Office may not have conducted an initial inquiry for three additional complaints. The EEO Office is required by ordinance to conduct an initial inquiry into all complaints submitted and maintain records of these activities.¹⁶ We identified three EEO complaints submitted by supervisors where the supervisor never received any follow-up from the EEO Office. The EEO database did not have a record of the submitted complaints and EEO staff did not have any files to demonstrate the complaints received an initial investigation to determine whether the complaints warranted further investigation. Without maintaining appropriate records for each submitted EEO complaint, it is impossible to verify that the city conducted an initial inquiry and took the necessary steps to address reported, potential problems.

In order to verify all submitted complaints receive an initial inquiry to determine whether the complaints warrant further investigation, the director of human resources should ensure a file is established and maintained for each complaint submitted to the EEO Office.

¹⁴ Code of Ordinances, Kansas City, Missouri, Sec 2.367 (a).

¹⁵ *EEO Standard Operating Procedures Manual*, p. 8-9.

¹⁶ Code of Ordinances, Kansas City, Missouri, Sec 2.367 (a) and (e).

Complaint Eligibility Decision Process Needs Improvement

EEO complaint files do not contain an explanation of why a case was or was not investigated. In order to conduct an EEO investigation, the EEO Office must establish that a complaint was submitted within 180 days of the incident, the complainant has standing to file a complaint, the aggrieved party is a covered individual, the complaint is a covered basis, and the issue is a potential violation of city EEO policy.¹⁷ After staff conducts an intake interview with a complainant, it is the EEO Office's practice to discuss the case with the EEO manager. The EEO manager decides on the EEO eligibility of the complaint during this discussion. While the EEO SOP identifies the EEO criteria that must be met to initiate an investigation, there is no procedure or requirement to document this decision making process or the reasons for the decision reached.

In our review of EEO Office investigation files, it was difficult to determine why some complaints were investigated while others were not. Information contained in the intake notes seemed to indicate an investigation should occur based on the city's EEO criteria. When we reviewed these cases with the EEO manager she agreed that based on the information contained within the file she could not determine why no investigation took place.

Without proper documentation demonstrating the eligibility of complaints, some complaints that warranted an EEO investigation may not be investigated. The intake process is an important step in the investigation process. Information and records will be gathered to determine whether or not to investigate the complaint. Using checklists with EEO criteria and standardized documentation procedures can help ensure consistency in determining whether or not a complaint should be investigated.

In order to ensure the EEO intake makes consistent determinations and eligible EEO complaints are investigated, the director of human resources should ensure EEO staff use standardized checklists and documentation procedures when determining EEO complaint eligibility.

Complaint Investigation Documentation Needs Improvement

EEO files did not include documentation of investigation planning or connections between conclusions and evidence. EEO staff does not have a quality assurance process to verify that conclusions are supported by

¹⁷ City EEO Discrimination/Harassment Policy, Appendix A. and *EEO Standard Operating Procedures Manual*, p. 10.

evidence in the files. EEO files we reviewed were not organized. EEO SOP discusses many of the elements that are included in workplace investigation recommended practices, but the implementation of these written procedures are not reflected in the records retained for each investigation.

Most EEO files did not contain documentation of investigation planning.

Recommended practices for workplace investigations note that effective planning prior to an investigation helps improve the conformity, consistency, and thoroughness of an investigation. Documentation of the planning process should take place in the form of a preliminary investigation plan.¹⁸ Although the EEO SOP¹⁹ describes most of the steps and methodologies in investigative planning, including analyzing the complaint, developing a list of witnesses, identifying documents and records needed, and determining whether evidence substantiates that the respondent has violated ordinance, policies, rules, or acts, and EEO staff is required to follow this template for their EEO planning process, investigators are not required to document their investigation planning process in each file.

Only 1 of 20 EEO files we reviewed contained documentation that outlined the planning process. The EEO manager reported that investigators are required to use a template for their EEO planning process, however they are not required to include that information in the investigation files.

Appropriate planning for an investigation is important to ensure the investigation is effective, but it is equally as important to document this process in the investigation file. An effective investigation plan will help investigators work more efficiently, ensure that all necessary elements of an investigation are covered, and facilitate oversight. EEO complaints and their subsequent investigation and outcomes can become the basis of future litigation. Internal and external legal counsel should be able to understand the steps taken to investigate a complaint and why alterations to an initial investigation plan were made. Adequate documentation of a thorough, consistent planning process is necessary to demonstrate the city is appropriately responding to each complaint.

In order to improve the efficiency and documentation of EEO investigations, the director of human resources should ensure EEO

¹⁸ D. Jan Duffy, “Best Practices in Internal Investigations: 2013 Edition,” American Bar Association, 2013, pp. 2-3, retrieved online from http://www.americanbar.org/content/dam/aba/events/labor_law/Transatlantic%20conferences/2013/whistleblowing_duffy.authcheckdam.pdf . Accessed February 9, 2017.

¹⁹ *EEO Standard Operating Procedures Manual*, p. 12.

investigators demonstrate their investigation planning process within the complaint file.

EEO does not document connections between conclusions and evidence. Recommended practices for workplace investigations state that conclusions must be backed by and linked to sufficient and specific facts supported by evidence and that these conclusions be able to withstand independent scrutiny.²⁰ Although EEO staff complete a final summary of the investigation including an overall narrative of the investigation and conclusions, staff does not demonstrate how conclusions were reached in the final summary. In the judgmental sample of investigations we reviewed, individual pieces of evidence, interviews, and other documents do not include attached written summaries or other efforts to explain how the evidence was evaluated, what purpose it served towards arriving at a conclusion, or any accompanying explanation of the investigator's opinions and professional judgments made from the included evidence.

Linking conclusions to facts supported by evidence helps ensure the final determination is accurate. A conclusion without a description of how an investigator arrived at the conclusion and a link to the supporting evidence may not be able to withstand independent scrutiny.

In order to facilitate oversight and to ensure investigation conclusions are backed by evidence in the files, the director of human resources should ensure EEO staff documents how investigation conclusions are linked to evidence in the EEO files.

EEO does not have a quality assurance process to ensure statements and conclusions in the final summary are supported by documented evidence and facts. Recommended practices state that “findings and related conclusions should be reviewed and checked for accuracy preferably by someone other than the fact finder, before an ultimate decision is reached.”²¹ EEO conclusions presented in final summaries are not verified or cross referenced to evidence collected to ensure those conclusions are accurate and supported. The EEO manager reviews and signs off on final summaries, however the EEO manager stated this review is for editing purposes and not an accuracy check.

In order to ensure EEO final summaries and conclusions are supported by documented evidence and facts, the director of human resources should ensure EEO statements and conclusions in the final summary undergo a documented quality assurance process.

²⁰ “Best Practices in Internal Investigations: 2013 Edition,” p. 5.

²¹ “Best Practices in Internal Investigations: 2013 Edition,” p. 5.

EEO files lack overall organization and consistency. The EEO Office's SOP notes that "Uniformity and organization in creating files will help the EEO complaint process become more efficient."²² The SOP lists steps to facilitate uniformity and organization such as securing documentation in a file, creating consistent labels for files, and tracking dates of communications and steps in the investigation with case logs and case management checklists. The EEO files we reviewed did not have any discernable organization. Case management checklists and logs were absent or not completed. Notes and documents were not secured in the files.

Without using the SOP's file organizational controls, it is difficult to determine whether the file and investigation steps are complete. When multiple staff members use files that are not organized and consistent, steps can be duplicated or missed or documents can be lost. Consistent organization and documentation are key strategies in efficiently completing a thorough investigation and facilitate review and oversight.

In order to improve the consistency and efficiency of EEO investigations, the director of human resources should ensure EEO staff follows written office policies on investigation file organization and documentation.

Complaint Eligibility Communication Needs Improvement

The EEO Office does not always communicate to complainants whether an investigation will or will not occur and when it is communicated, it is not always timely. In addition, when complaints are not investigated, the reason is not clearly communicated. The EEO SOP requires complainants to be informed whether or not an investigation will occur. A close out letter is required to be sent if no investigation will occur.²³ We reviewed eight files that should have contained a close out letter because the EEO had decided not to conduct an investigation. Two of the eight files did not contain a close out letter. In two of the files we reviewed more than 116 days passed between the date of the intake interviews and the date the letters were prepared. No explanation for this delay was documented.

The form letter used to communicate a case will not be investigated is not very informative. It states, "Based on the information provided

²² *EEO Standard Operating Procedures Manual*, p. 9.

²³ *EEO Standard Operating Procedures Manual*, p. 9.

during the meeting, you were informed that an investigation would not be performed by our office".²⁴ The letter does not explain why the issue was not investigated as an EEO complaint.²⁵

A letter is not required to be sent to the complainant when the EEO decides to investigate a complaint. The EEO manager states it is the practice of the office to call the complainant to communicate the decision to investigate. Because case logs were not completed and no letters were sent, we could not determine how or when a complainant was informed of the EEO Office's decision to investigate.

When the EEO Office does not clearly and timely communicate to a complainant whether and why an investigation will occur or not, complainants may believe the city is not adequately addressing their concerns and take their complaint to the EEOC, MCHR, and the court system.

In order to keep complainants informed about the status of their complaint, the director of human resources should ensure a written communication is sent promptly to complainants explaining whether or not complaints submitted to the EEO Office will be investigated and the reason why or why not.

EEO Program Needs Complete and Accurate Data

Because the database used to track EEO complaints contains inaccurate and blank fields we do not have confidence in the data to evaluate the timeliness of investigations. The calculation used by the EEO Office to determine the average number of days to complete an investigation is inaccurate because it includes cases that were not investigated. The EEO Office does not track the timeliness of investigations by the completion of significant milestones during the process to understand where improvements can be made.

EEO Data Not Complete or Accurate

The database the EEO Office uses to track complaints contains fields that are incomplete and inaccurate. We reviewed a judgmental sample of 20 EEO files to assess the accuracy and completeness of the database. We determined that the database had fields that were not used, were blank, or

²⁴ *EEO Standard Operating Procedures Manual*, p. 46.

²⁵ The letter may include information about additional resources for a complainant to access.

did not match the source documents. In addition, some source files did not contain enough documentation to verify the accuracy of the database fields. Because the data fields were not sufficiently reliable, we could not determine with confidence how long it took from the time a complaint was received until a case was closed.

The EEO Office uses the database to track ongoing cases and for reporting and management purposes. Without reasonable assurance regarding the accuracy and completeness of the database, its usefulness as a reporting and management tool to improve the efficiency of EEO investigations is limited.

In order to improve the management of the EEO process, the director of human resources should develop procedures to ensure EEO database information is accurate and complete.

Timeliness Tracking Could Be Improved

The only milestone the EEO Office tracks is the average number of days to complete an investigation and it did not calculate it correctly. Tracking other milestones could help management improve the overall efficiency in the EEO process.

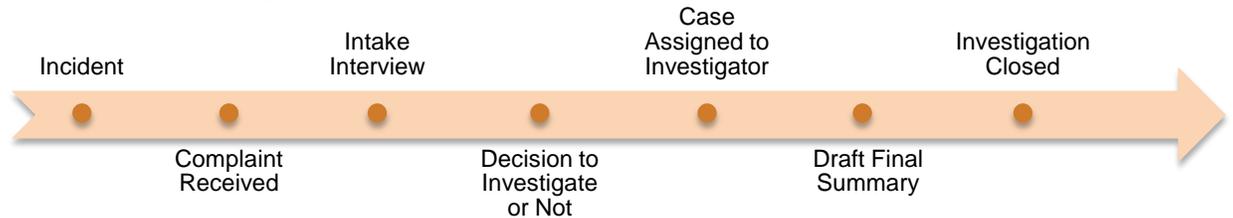
Investigation timeliness is not calculated correctly. The EEO Office is not calculating the average number of days to complete an investigation correctly because they include complaints that are not investigated. Cases that are determined as not eligible as an EEO complaint do not go through the investigation process and should not be included in that calculation. Including the complaints not investigated when determining the average number of days to complete an investigation underreports the average time it takes to complete an investigation.

In order to report accurate information, the director of human resources should ensure cases that are not investigated are excluded from the calculation used to establish the average number of days to complete an EEO investigation.

Tracking milestones in the EEO process could improve timeliness. The EEO Office currently tracks only the total length of time it takes to complete an investigation; however, the EEO's investigation process has a number of key milestones. (See Exhibit 3.) Each of these key milestones has different requirements. Understanding the amount of time each milestone takes in the EEO process can help identify where

actions can be taken to improve the timeliness and efficiency of the process.

Exhibit 3: EEO Investigation Process



In order to identify areas where timeliness can be improved, the director of human resources should ensure EEO staff tracks the amount of time each milestone in the EEO process takes.

Recommendations

1. The director of human resources should ensure a file is established and maintained for each complaint submitted to the EEO Office.
2. The director of human resources should ensure EEO staff use standardized checklists and documentation procedures when determining EEO complaint eligibility.
3. The director of human resources should ensure EEO investigators demonstrate their investigation planning process within the complaint file.
4. The director of human resources should ensure EEO staff documents how investigation conclusions are linked to evidence in the EEO files.
5. The director of human resources should ensure EEO statements and conclusion in the final summary undergo a documented quality assurance process.
6. The director of human resources should ensure EEO staff follows office policies on investigation file organization and documentation.

EEO Complaint Investigation Efficiency Can Be Improved Through Better Documentation and Data

7. The director of human resources should ensure a written communication is sent promptly to complainants explaining whether or not complaints submitted to the EEO Office will be investigated and the reason why or why not.
8. The director of human resources should develop procedures to ensure EEO database information is accurate and complete.
9. The director of human resources should ensure cases that are not investigated are excluded from the calculation used to establish the average number of days to complete an EEO investigation.
10. The director of human resources should ensure EEO staff tracks the amount of time each milestone in the EEO process takes.

Appendix A

Director of Human Resource's Response

EEO Complaint Investigation Efficiency Can Be Improved Through Better Documentation and Data

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CITY AUDITOR'S OFFICE

Date: April 12, 2017
To: Douglas Jones, City Auditor
From: Gary O'Bannon, Human Resources Director
Subject: Response to Performance Audit: *EEO Complaint Investigation Efficiency Can Be Improved Through Better Documentation and Data*

1. *The director of human resources should ensure a file is established and maintained for each complaint submitted to the EEO Office.*

Agree. The EEO Office will establish a file for each complaint, effective immediately. See Recommendation # 6 for additional information related to this response.

2. *The director of human resources should ensure EEO staff use standardized checklists and documentation procedures when determining EEO complaint eligibility.*

Agree. Currently, the EEO Office utilizes a standard template to document the information obtained in the intake interview. The notes are transcribed into a typewritten report that is initially reviewed by the EEO Manager. This report is used as a reference document when determining whether to move forward in the investigation process. Developing a more standardized process to determine complaint eligibility and developing documentation procedures will streamline this process. Upon receipt, complaints will initially be viewed in the light most favorable to the complainant. Therefore, any allegations, if true, will constitute a violation of the Discrimination/Harassment Policy, and the allegation will be investigated.

3. *The director of human resources should ensure EEO investigators demonstrate their investigation planning process within the complaint file.*

Agree. Currently, staff completes the investigative plan in an electronic format and updates the document throughout the investigation. The EEO Office will ensure that investigators place both the initial investigative plan and a final copy of the revised investigative plan in each file at the conclusion of the investigation.

4. The director of human resources should ensure EEO staff documents how investigation conclusions are linked to evidence in the EEO files.

Agree. Human Resources has already made changes to ensure the clarity of how conclusions are reached through an objective review of decisions. When investigations are conducted, the investigator becomes intimately involved with, and knowledgeable about, the evidence. As a result, the evidence used to reach a conclusion may be more obvious to that investigator than to an outside reader. Previously, the extensive decision letters outlined all of the evidence and then the conclusions reached from that evidence, without linking what specific evidence resulted in each finding or conclusion. A more streamlined letter has resulted in it becoming obvious that an explanation of how conclusions have been reached is needed. Additional investigative staff has given the EEO Manager more time (along with the HR Director and Law) to do an objective review of the decisions and associated documents to ensure the conclusions are clearly supported in the final decisions.

5. The director of human resources should ensure EEO statements and conclusion in the final summary undergo a documented quality assurance process.

Agree. There has always been a quality assurance review of draft determinations by investigators performed by either the HR Division Manager and/or Director of Human Resources, as well as by a representative of the Law department. Except for perhaps the most simplistic of cases, this process also includes a verbal interaction by those parties. These reviews will continue, as well as bi-weekly meetings to review all aspects of active cases. All notes of those discussions will be included with the case file.

Since this audit, the Department of Human Resources has revised the complaint process whereby investigators will prepare a finding of fact for review by a Committee consisting of the City Manager or designee, Human Resources Director or designee and the City Attorney or designee. This Committee will make determinations and recommend disciplinary action when there are violations of the policy.

6. The director of human resources should ensure EEO staff follows office policies on investigation file organization and documentation.

Agree. The EEO Office received two additional staff persons with the FY 16 budget and has been at full staff capacity since July 2016. During the period when there was only one full-time investigator, the Office used paper or electronic files. We agree that the Office should maintain a *master* file that serves as the central case management system to ensure consistency as it relates to file organization and documentation. To that end, the EEO Office will move to an electronic case retention system, thus eliminating the need for paper files. Investigators will scan each document, including notes, related to each case and retain it on a secure HR-Server.

7. The director of human resources should ensure a written communication is sent promptly to complainants explaining whether or not complaints submitted to the EEO Office will be investigated and the reason why or why not.

Agree. The current practice is to verbally notify the complainant if an investigation will be conducted, and send written notification to those whose complaints will not be investigated. As of February 2017, the EEO Office began including a more detailed explanation in the written letter when not pursuing an investigation. The EEO Office will take measures to ensure that complainants and the affected department(s) will receive written notification if the EEO Office decides to investigate a complaint.

8. The director of human resources should develop procedures to ensure EEO database information is accurate and complete.

Agree. In 2015, the EEO Office collaborated with Information Technology to develop a database to reduce the amount of errors in tracking complaint information. After utilizing the database for about a year, the EEO Office recognized that several updates could be made to improve the effectiveness and usability of the database. The EEO Office is currently working with Information Technology to update the tracking capabilities by June 2017. The EEO Office will also create a job aid to assist staff in entering case data information in a consistent and accurate manner. There will also be periodic audits of the database to ensure consistency with information contained in case files.

9. The director of human resources should ensure cases that are not investigated are excluded from the calculation used to establish the average number of days to complete an EEO investigation.

Agree. The department believes that all complaints received in the EEO Office require the expenditure of staff time and influence the timeframe in which investigations are completed. However, in order to address the city auditor's concerns regarding the transparency of tracked data regarding the average number of days to complete an investigation, the human resources proposes to track and report the following:

- Average number of days to complete an initial investigation when the complaint was found to not warrant a formal investigation
- Average number of days to complete a formal investigation
- Overall average number of days to complete an investigation for all complaints received, which will include both initial and formal complaints.

10. The director of human resources should ensure EEO staff tracks the amount of time each milestone in the EEO process takes.

Agree. The capacity to track each milestone has been in place and we have been working with Information Technology to create additional tracking milestones that will allow us to download and run additional efficiency reports.

Gary O'Bannon

Gary O'Bannon
Director
Department of Human Resources

cc: Troy M. Schulte, City Manager