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Mayor

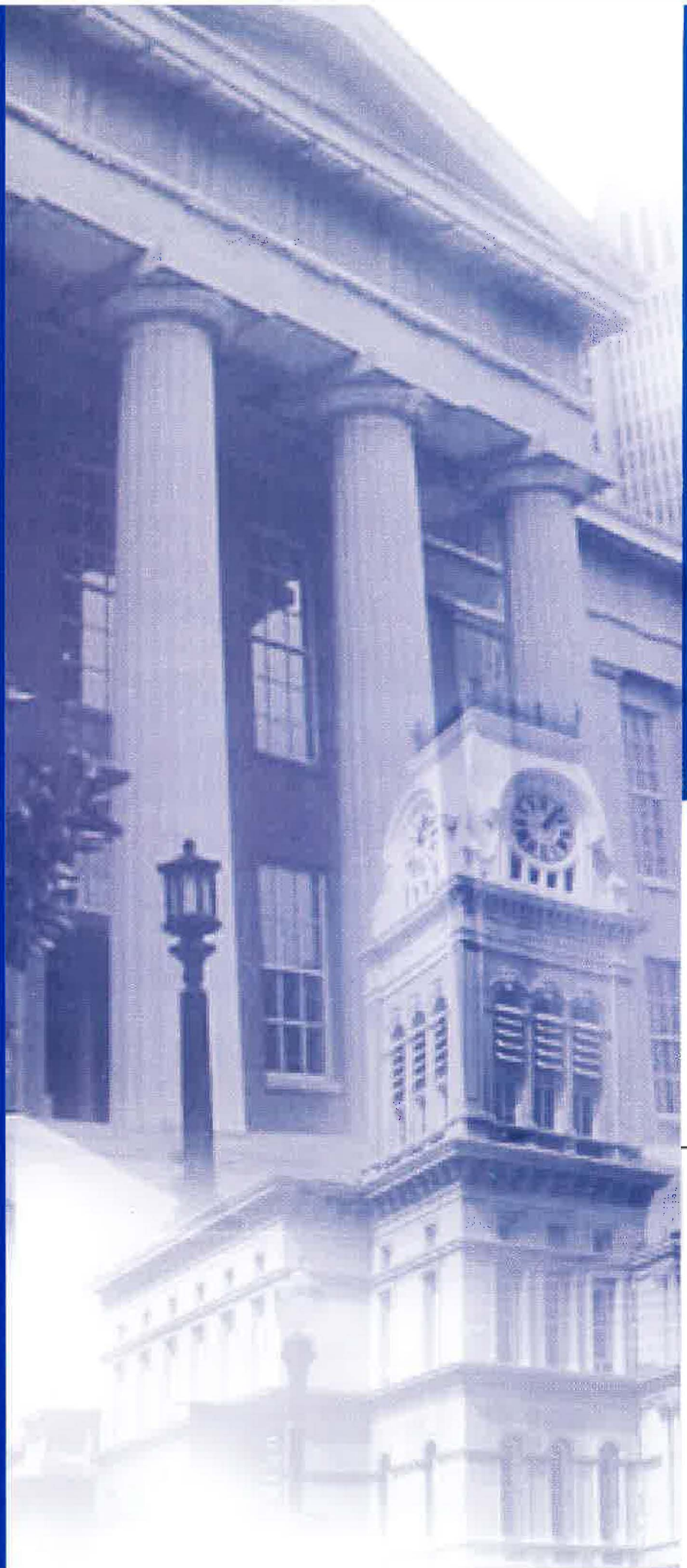
Louisville Metro Council

The Office of Internal Audit provides independent, objective assurance and consulting services that adds value to and improves Louisville Metro Government.

Office of Internal Audit

Louisville Metro
Government

Non-union Employee Complaint
Process



Audit Report

Louisville Metro Government

Non-union Employee Complaint Process

April 2022





AUDIT SUMMARY

Louisville Metro Government – Non-union Employee Complaint Process

Report Issue Date: April 22, 2022

WHY THIS AUDIT WAS PERFORMED

This audit was included in the Fiscal Year 2022 Audit Plan. The objective of the audit was to assess Human Resources’ process for receiving, investigating, tracking, and resolving non-union employee complaints. Non-union employee complaints include Equal Employment Opportunity (EEO) complaints and non-EEO complaints. An assessment of Human Resources’ involvement with non-EEO complaints, specifically as it relates to oversight, was performed. The scope includes non-union employee complaints received during April 1, 2020 through May 31, 2021. Ethics tipline complaints are not included in the scope of this audit.

BACKGROUND

Employees may submit a complaint either directly to Human Resources or through designated channels within his /her department. The Compliance Division of Human Resources is required to investigate EEO complaints in accordance with the EEO and Affirmative Action policy. Complaints that do not meet the criteria to be considered an EEO complaint are typically investigated by the complainant’s department and may or may not be reviewed by Human Resources.

INTERNAL CONTROL ASSESSMENT: INADEQUATE

OBSERVATIONS

The Non-union Employee Complaint Process received an internal control assessment rating of “Inadequate”. The “Inadequate” rating indicates that the issues are likely to impact operations and corrective action should be immediate. Although, Human Resources had some controls in place to monitor the Non-union Employee Complaint Process, additional controls are required to ensure employee complaints are properly administered. Some observations include the following:

- Human Resources’ Standard Operating Procedures (SOP) for complaint investigations have not been updated to reflect the current process. Additionally, the SOPs have not been updated to include procedures to guide investigations that involve appointed employees.
- Human Resources has not established guidelines for departments to use when investigating non-union employee complaints.
- Human Resources was unable to provide evidence that the results of completed investigations were shared with the complainants and their department director.
- There are no defined training requirements for Human Resources Compliance Staff or others responsible for performing employee complaint investigations.

RECOMMENDATIONS

Some recommendations include, but are not limited to, the following:

- Human Resources should revise the SOP for complaint investigations to ensure it reflects the investigatory procedures to be performed for all investigations.
- Human Resources should establish investigative guidelines for departments investigating non-union employee complaints.
- The results of completed complaint investigations performed by Human Resources should be provided to the complainant and their director.
- Human Resources should define the training requirements for all individuals responsible for performing employee complaint investigations.

MANAGEMENT RESPONSE

Management concurred and agreed to implement 6 of 6 recommendations.

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Introduction

In accordance with the Office of Internal Audit Charter, decreed in Chapter 30 of Louisville Metro Government's (LMG) ordinances, an audit of the Louisville Metro Government - Non-union Employee Complaint Process was performed. This was a scheduled audit, included in the Fiscal Year 2022 Annual Audit Plan.

Background

Employees may submit a complaint either directly to Human Resources (HR) or through designated channels within his /her department. The Compliance Division of Human Resources is required to investigate EEO complaints in accordance with the EEO and Affirmative Action policy. Complaints that do not meet the criteria to be considered an EEO complaint are typically investigated by the complainant's department and may or may not be reviewed by Human Resources. However, according to Louisville Metro Government Personnel Policy 10.04(1), the Director of Human Resources has the ultimate authority for the administration of employee complaints and grievances.

In accordance with Louisville Metro Government Ordinance No. 19 Series 2021, all Metro agencies are required to complete an Equity Impact Statement each fiscal year. Human Resources' Department Equity Vision Statement for Fiscal Year 2022 states the following: "The Louisville Metro Human Resources Department is committed to achieving the racial equity goals of Louisville Metro Government through ensuring equitable hiring and retention practices across all Metro departments, to help create and maintain a diverse workforce that is highly skilled and that reflects the demographics of our city while promoting a culture of inclusivity for both Metro employees and the community that we serve."¹ In order to achieve racial equity and promote a culture of inclusivity, HR has a responsibility to take steps to prevent harassment, discrimination, and retaliation and to take appropriate action when such incidents are reported.

When non-union employee complaints are filed, they will fall within the following categories:

- Equal Employment Opportunity - Complaints which include allegations of discrimination based on race, color, religion, national origin, sex (including sexual harassment and sexual orientation) age, physical or mental handicap.
- Non-Equal Employment Opportunity - Complaints that do not claim discrimination based on a protected class, as defined by Louisville Metro Government or applicable federal, state, or local regulations.

There are multiple avenues for employees to report non-union complaints. See Illustration 1 below.

¹ <https://louisvilleky.gov/human-resources/document/fy22-hr-budget-impact-statement>

Illustration 1: Methods for Filing Employee Complaints



The Compliance Division of HR employs two investigators that are responsible for performing EEO investigations. Louisville Metro Government employs over 5,000 employees across 24 departments, of which, approximately 1,700 are non-union employees, and any EEO complaints filed by non-union employees would be handled by these two investigators. Due to the size of the workforce and the Compliance Division of HR's resource constraints, a shared responsibility between HR and LMG departments was adopted for investigating employee complaints. According to Louisville Metro Government Standard Operating Procedure 80.02(3), "Complaints that do not claim discrimination based on a protected class, as defined by Louisville Metro Government or applicable federal, state, or local regulations, shall be redirected to the complaining employee's department director or designee to determine the appropriate action and shall not be investigated by the Department of Human Resources." However, the general oversight responsibility ultimately rests with HR.

During the review period, April 1, 2020 through May 31, 2021, the Compliance Division of HR reviewed eight² non-union employee complaint investigations, of which one was deemed to be a legitimate EEO complaint as defined by the Louisville Metro Government Personnel Policy. It is unknown how many non-union employee complaints were performed by LMG departments because not all departments track this information as it has not been a requirement by HR for them to do so.

² Of the 8 investigations, only 4 investigations were completed during the review period.

Objective

The Louisville Metro Government - Non-Union Employee Complaint Process audit included an assessment of the internal controls within Human Resources for receiving, investigating, tracking, and closing non-union employee complaints. The policies and procedures for the non-union employee complaint process as well as the training requirements for those responsible for performing the investigations were also assessed. The objective was to obtain assurance that the risks are adequately mitigated through internal controls in the process.

Scope and Methodology

The review period was April 1, 2020 through May 31, 2021. A thorough understanding of the Non-Union Employee Complaint Processes was obtained to evaluate the internal control structure. This was achieved through interviews of key personnel and examination of supporting documentation. This included, but was not limited to, the following:

- A review of the four completed non-union investigation files within the review period to verify that there was a consistent process for receiving, investigating, tracking, and closing the complaints.
- A review of the survey responses from the questions distributed to 24 Louisville Metro Government (LMG) departments to gain an understanding of the following:
 - The types and quantity of complaints investigated by the departments;
 - The method for determining which investigations should be investigated by the department instead of HR;
 - The position(s) responsible for performing investigations performed by the department;
 - The method(s) for tracking investigations;
 - The process for updating documented investigation procedures;
 - The method(s) for communicating outcomes of the investigations to HR;
 - The sufficiency of training and staffing capacity of the investigating departments.
- A comparison of the employee complaint investigation procedures, policies and / or processes for 3 peer municipal human resource departments to benchmark against Louisville Metro Government's processes.
- A review of best practices for performing employee complaint investigations as defined by the Society of Human Resources Management (SHRM) to identify potential recommendations.

Acknowledgements

The Compliance Division of Human Resources should be commended for taking the initiative to begin working on remediating some of the observations identified prior to the completion of the audit. For example, HR has already implemented a process to track

the HR Representatives and the person(s) responsible for performing employee investigations within each department. We would also like to thank Human Resources, both management and staff, for their time, information, and cooperation during this audit, as we realize that this audit occurred simultaneously as several high-priority projects.

Opinion

It is our opinion that the internal control structure for the processes impacting the Louisville Metro Government – Non-union Employee Complaint Process is inadequate. The internal control rating criteria is detailed in the Statements and Audit Considerations section of this report. The rating quantifies our opinion regarding the internal controls. Opportunities to strengthen the internal control structure are detailed in the Observations and Recommendations section of the report.

Observations and Recommendations

Observation 1: Complaint Investigation Standard Operating Procedures. Human Resources' Standard Operating Procedures (SOP) for complaint investigations have not been updated to reflect the current process. Additionally, the SOPs have not been updated to include procedures to guide investigations that involve appointed employees. According to Louisville Metro Government Personnel Policy 10.04, the Director of Human Resources is responsible for the administration of employee complaints, including creating, revising, communicating, and interpreting the relevant personnel policies. The SOPs were not updated because there is no process to review and update the procedures on a regular basis. Additionally, there were staffing changes, within the Compliance Division, during January 2020 and 2021 that impacted the ability to update and consistently apply the SOPs. Outdated SOPs increase the likelihood that investigations will not be performed consistently and in accordance with relevant laws and regulations. This increases operational, compliance and legal risks. The immediate effect of outdated SOPs is included in the audit findings detailed below, including but not limited to, inconsistent investigative file maintenance, undefined training requirements, and unclear methods for investigation outcome reporting.

Recommendation 1:

- ✓ The Compliance Division has proactively created a draft of the Standard Operating Procedures. Human Resources should ensure the procedures to be performed for all investigations, including the procedures for identifying complaints and the steps to be taken for complaints involving appointed employees, are included.
- ✓ The SOPs for complaint investigations should be reviewed, at least annually, and revised, accordingly. HR must establish and document a process for periodic review and revision. The documented process should include procedures for when HR does not have the operational capacity to review the procedures annually. For example, the reason for such may be noted, and an alternative timeframe should be identified for performing the review.

Human Resources' Corrective Action Plan

HR concurs and will implement the recommendations regarding Observation 1. In addition, HR provided the following additional comment:

The HR Compliance Division has maintained Investigations SOPs since at least 2018, for Ethics Tipline cases and for EEO Complaint investigations, and we have largely followed these SOPs. HR Compliance investigates complaints from both union and non-union employees in the same way, using the applicable SOP. (HR Compliance does not handle union grievances that fall under the scope of a union contract, as they are handled according to that union's grievance procedure.) The HR Compliance Division is currently drafting an SOP to be used for all non-EEO complaints, whether they come from the Ethics Tipline or are reported directly to HR Compliance via email, telephone call or otherwise. The new SOP will state that the procedures apply to all employee investigations, union and non-union. The new SOP also will include provisions responsive to many of the concerns raised in this audit. In particular, the new SOP will provide that appointed employees including Department Directors will be referred to the HR Director for investigation, with notice to

the Department Chief. In the event the HR Director or a Department Chief is accused, the matter will be referred to the Mayor's office for investigation by a qualified outside party.

The new non-EEO Complaint Investigation SOP will provide that the SOP be reviewed at least annually, prior to the start of each fiscal year on July 1. Each annual version will be reviewed by the Compliance Administrator and will indicate the review date. The SOP will require an explanation in the event it cannot be timely reviewed.

Target Implementation Date: June 1, 2022

Observation 2: Departmental Investigation Guidelines. Human Resources has not established minimum criteria or requirements to guide departments in investigating non-union employee complaints. In accordance with Louisville Metro Government Personnel Policy 10.04(1), the Director of Human Resources has the authority and responsibility for the administration of employee complaints and grievances. As the majority of non-union employee complaints are delegated to the departments for investigation, it is imperative that guidelines be defined, documented, and communicated to departments to guide the investigative process as well as facilitate HR's responsibilities for oversight. Guidelines have likely not been developed because the extent of HR's oversight responsibilities and the related process for those responsibilities has not been defined. The absence of established guidelines for departments to follow increases the likelihood that investigations will not be performed as intended by HR, in accordance with values, policies, and laws applicable to LMG. There is an increased risk that investigations performed at the department level will be inconsistent without investigative guidelines, which will result in decreased employee confidence in the investigative process and potential legal risk.

Recommendation 2:

- ✓ Human Resources should establish investigative guidelines for departments investigating non-union employee complaints. These guidelines may be similar to the Standard Operating Procedures recommended for Human Resources in Recommendation #1 above, but at a minimum, these departmental guidelines should include the following:
 - How complaints should be tracked, including the minimum information to be noted for each complaint.
 - Which complaints should be referred to Human Resources for investigation, if any.
 - The minimum investigative steps to be performed, at a minimum, to include the following:
 - Careful review of the complaint and supporting facts.
 - Determination of whether an investigation is needed.
 - Development of an investigation plan and timeline.
 - Meetings with complainant, respondents, and witnesses.
 - Gathering and analyzing evidence.
 - Preparation of an investigative report to include conclusions and recommendations, as necessary.

- How completed investigations should be reported to Human Resources and what investigative information, if any, should be provided to Human Resources (such as allegations, steps performed, final disposition of allegation, etc.).
 - Depending on the method used to track the investigations it may not be necessary to send the information to Human Resources if the cases are maintained and managed within an electronic tool, similar to Ethics Tipline cases, as recommended in Observation 6.
 - The timeframe within which key investigative steps and / or the overall investigation should be completed.
 - The documentation retention requirements.
- ✓ Human Resources should develop a process to oversee employee complaint investigations conducted by the departments. This may include review of all employee complaint investigations performed by the departments to ensure they were performed thoroughly and in a similar manner to how Human Resources would have performed the investigation.

See Appendices A & B for sample templates for the development of investigation guidelines, not all components may be applicable and there may be some recommendations above that are not reflected in the templates. The templates are a guide and are not considered to be the required templates to be used. The Appendices were obtained from the paid resources available on the Society of Human Resources Management's website.

Human Resources' Corrective Action Plan

HR concurs and will implement the recommendations regarding Observation 2. In addition, HR provided the following additional comment:

The HR Compliance Division is currently drafting investigation guidelines for use by departments investigating internal complaints. The new guidelines will address, at a minimum, the topics set out in this Audit Recommendation. The SOP will also describe which complaints may be investigated by a department and which must be referred to HR. In the latter category are complaints that involve an EEO claim, complaints against a manager or above, complaints where the department has previously investigated the same complaint, complaints of a significant ethical nature, criminal complaints, and any complaint where HR investigation is requested. Criminal complaints or those involving money may be referred to PIU by HR. The Finance Division of LMG OMB will also be notified of complaints of misappropriation of money or theft of property, per OMB request.

The HR Compliance Division will require all departments to submit a quarterly summary of all department investigations, for our review and oversight. HR Compliance review will include verification that the Departmental Investigation guidelines described in response to Observation 2 were followed.

Target Implementation Date: July 1, 2022

Observation 3: Communication of Investigation Disposition. The Human Resources Compliance Division was unable to provide evidence that the results of completed

investigations were shared with the complainants and their department director for all four of the non-union employee complaint investigation files reviewed. According to Louisville Metro Government Standard Operating Procedure 80.02, once an investigation is complete for complaints within the authority of the Human Resources Compliance Division, “a copy of the results shall be given to the department director and the complaining employee. Meetings shall then be held with the parties individually to discuss the results.” HR cites staffing limitations and turnover as factors that prevented consistent distribution of the final investigation dispositions. It is likely that a combination of these factors coupled with the absence of a documented process or procedures are the cause of the lack of communication of investigation results. The lack of communication of investigation results undermines employee confidence in the investigative process, which may negatively impact employee morale. This increases reputational and operational risk. Legal risk is increased because complaints may be filed with external agencies, despite being addressed internally.

Recommendation 3:

- ✓ Once Human Resources has completed complaint investigations, a copy of the results should be provided to the complainant and their director, additionally, a copy should also be maintained in the investigation file.
- ✓ In circumstances in which staffing limitations prevent key functions related to the complaint investigation process from occurring, notation should be made within the investigation file and a reasonable timeline should be provided within which the task can be performed. Update the SOPs to include a process for communicating the investigation disposition.

Human Resources’ Corrective Action Plan

HR concurs and will implement the recommendations regarding Observation 3. In addition, HR provided the following additional comment:

HR Compliance has traditionally provided a memorandum summarizing the findings and disposition of the case to the complainant, the accused (if appropriate) and department director, and we will continue that practice. Evidence of such communications was not regularly maintained in the investigation file but going forward a copy of these communications will be included. In cases where the complaint to HR Compliance was made anonymously, upon request and demonstrated knowledge of the details of the complaint, the HR Compliance Administrator will provide a verbal summary of the findings to a requesting employee. A copy of the final Investigative report will also be maintained in the investigation file.

Target Implementation Date: April 1, 2022

The new SOP will contain provisions requiring any significant delay in an investigation to be noted and an estimated resumption date to be provided.

Target Implementation Date: June 1, 2022

Observation 4: Training Requirements. There are no defined training requirements for the Human Resources Compliance Division or others responsible for performing employee complaint investigations. To comply with the Louisville Metro Government Personnel Policy 10.04, those responsible for performing employee complaint investigations should be trained to ensure investigations align with HR’s values and standards. Further, periodic training will ensure investigators remain knowledgeable of Louisville Metro Government and / or applicable federal, state, or local regulations, and any updates. Human Resources has not updated the Complaint Investigation SOPs to include training requirements. As a result, the training requirements of the Compliance Division and others responsible for performing employee investigations have not been defined, documented, and communicated. Inconsistencies and varying levels in investigation knowledge and training increases the risk that investigations are not properly performed as well as the risk of noncompliance with laws, regulations, and policies. Additionally, when investigations are performed by individuals not properly trained there is the potential for errors to occur, placing Louisville Metro Government at a higher legal risk.

- Of the 24 departments surveyed during the review, to determine if they had access to training resources required to perform employee investigations, 58% said they did not have adequate access to training, that additional training was needed, or that depending on the situation additional training maybe needed.

Recommendation 4:

- ✓ Human Resources should define the training requirements for all individuals assigned to perform employee complaint investigations.
- ✓ Standard Operating Procedures should be revised to include the training requirements for new employees and the frequency of any required ongoing training. Human Resources should ensure the training requirements for investigators cover the following topics, at a minimum:
 - Investigator Training
 - Legal requirements (including discrimination, harassment, and retaliation)
 - Planning an investigation
 - Confidentiality
 - Interviewing techniques
 - Note taking and report writing

Human Resources’ Corrective Action Plan

HR concurs and will implement the recommendations regarding Observation 4. In addition, HR provided the following additional comment:

EEO complaints will be investigated by an HR Compliance investigator who has completed specific EEO investigation training. Non-EEO training for HR investigators will be completed within three months of hire, and annual training will be required thereafter. Training for department investigators will be required and will be defined and made available. The nature of non-EEO training has yet to be determined, as resources are constantly evolving, but HR will explore developing and recording our own training.

Target Implementation Date: September 1, 2022

The new SOP will contain training requirements, including the topics enumerated above.

Target Implementation Date: June 1, 2022

Observation 5: Complaint Tracking and Monitoring. Human Resources has not identified a method to track and monitor employee complaints investigated at the department level. As a result, HR is not certain of the quantity, type, status, and resolution of employee complaint investigations taking place at the department level. At a minimum, periodically tracking this information is necessary to provide the oversight required by Personnel Policy 10.04. Human Resources tracks the investigations performed solely by HR. Out of 24 departments surveyed during the review, approximately 67% stated that investigations were tracked internally. However, there is not a process or method to allow HR to track all employee complaint investigations. The lack of a complaint tracking process is a barrier to effectively monitoring the performance and resolution of investigations, as well as any corrective actions. Additionally, HR's ability to aggregate and analyze complaint data to identify recurring problems is limited without tracking.

- Based on a survey of 24 departmental representatives responsible for performing employee complaint investigations, 58% of the respondents stated that they provide the outcomes of their investigations to Human Resources, evidencing that there may have been an informal requirement to do so.

Recommendation 5:

- ✓ If departments are performing complaint investigations, Human Resources should establish a method to track the complaints filed and investigated within the departments.
 - At a minimum, the information provided to Human Resources should include a summary of the investigation methods used, the findings, and the conclusions reached, including any recommendations made.
- ✓ Human Resources should determine whether or not its economically and logically feasible to use the existing Ethics Tipline to track all complaints (both EEO and Non-EEO), in addition to ethics complaints currently tracked in the tipline.

Human Resources' Corrective Action Plan

HR concurs and will implement the recommendations regarding Observation 5. In addition, HR provided the following additional comment:

The quarterly reports from departments summarizing the investigations they performed, described in Observation 2(2), will serve as the tracking mechanism. We will request these reports in spreadsheet format to help facilitate tracking across LMG. Upon receipt of the first set of reports, HR may make adjustments to the process to more effectively track departmental investigations.

HR Compliance will explore with Navex the possibility of maintaining a repository of complaints that can be separated from those that are reported via the Ethics Tipline, for the recording and management of investigations that are reported directly to HR Compliance.

Target Implementation Date: July 1, 2022

Observation 6: Inconsistent Investigation File Management Practices. Human Resources' employee complaint investigation files were inconsistent regarding how investigations were documented, and the documentation maintained in the file. At a minimum, the files must contain and maintain documentation to comply with Louisville Metro Governments' Retention Policy. Human Resources should consistently maintain investigatory evidence to support the conclusion reached. Inconsistent file management is likely the result of a lack of a defined review process to identify the steps to be performed during a file review. There was not any evidence of review in three of the four investigation files reviewed. Absent a defined review process, it's difficult to ensure that the investigation files contain consistent information. When file documentation does not support the investigation steps taken and the conclusions reached, the risk that the conclusions reached could be challenged increases.

- One of the four investigation files did not contain written statements from the involved parties because phone interviews were performed, however the investigator documented the interviews on the Detailed Communication Log, but there was no evidence that the information was validated by the involved parties. The Written Statement requires parties to sign and date their statements.
- None of the four investigation files contained evidence that notification was provided to the complainant and their Department Director to document the conclusions, findings, and recommendations in accordance with Louisville Metro Government Standard Operating Procedures 80.02.

Recommendation 6:

- ✓ Human Resources should update its complaint investigation Standard Operating Procedures to note the documents required to be created, obtained, and / or maintained in the investigation file. Additionally, when there are exceptions to the documentation standards established, notations should be made in the files to explain the reason for the exceptions.
- ✓ Human Resources should take all steps possible to obtain written statements that have been signed and dated by the providers of the statements. In situations when it's necessary for Human Resources to take verbal statements, the statements should be documented and sent to the parties to validate the accuracy of the statements.
- ✓ Human Resources should ensure that the documentation requirements established are in accordance with the adopted file retention policies of Louisville Metro Government.
- ✓ Human Resources should establish a final review checklist to be completed by the Administrator to guide the final review process prior to closing investigations to ensure the investigations were performed properly and in accordance with any applicable guidelines and that proper documentation was created, obtained, and / or maintained.

Human Resources' Corrective Action Plan

HR concurs and will implement the recommendations regarding Observation 6. In addition, HR provided the following additional comment:

The new Complaint Investigation SOP will address these recommendations.

Target Implementation Date: June 1, 2022

Any witness statements that will be included in the final Investigation Report will be written and signed. These statements may be a summary of the testimony prepared by the investigator and signed by the witness.

Target Implementation Date: May 1, 2022

HR Compliance will verify that our investigation file retention practices are in compliance with the LMG record retention schedule.

HR Compliance will create and maintain such a checklist for each investigative file and will explore maintaining the checklist using DocuSign.

Target Implementation Date: July 1, 2022

Areas for Enhancement are on the following page.

Areas for Enhancement (AFE)

Areas for enhancement identify an opportunity to enhance some component of the process. These are typically low / no risk findings. Although the AFEs include recommendations, implementation of corrective actions is optional.

AFE 1: Investigation Plan. There is an opportunity to strengthen investigation documentation controls by ensuring the investigation plan is formally documented, within the file, to establish the purpose and key aspects of the investigation and how it will be performed. The absence of an investigation plan increases the risk for variation and inconsistencies in investigatory practices, which could result in insufficient evidence to support conclusions and recommendations. This will yield the following benefits:

- This could become essential evidence if the employee files a complaint with the EEOC. Additionally, this will ensure all necessary steps were performed within the investigation.
- Promote efficiencies if investigation plans can be reused (in some form) for similar investigations.

AFE Recommendation 1:

- ✓ Human Resources should ensure all files contain an investigation plan. An investigation plan is the methodology for performing the investigation, including the steps that should be taken to complete the investigation. There doesn't need to be a thorough detail documentation of each step but rather a high-level summary at minimum, of the following steps:
 - Goal of the investigation (questions to be answered by the investigation)
 - Limitations of the investigation (scope)
 - Allegations/issues to be investigated
 - Required evidence to reach the goals
 - Potential sources of evidence / information

AFE 2: Employee Rights Postings Monitoring. Departments are required to review and publicly post information about employees' rights against discrimination annually and Human Resources is responsible for monitoring compliance with the requirement. There is an opportunity to strengthen controls by documenting the monitoring process to be performed by Human Resources and the evidence to be maintained. The absence of a documented process increases the risks that employees may not receive pertinent information about the complaint process and their rights against discrimination.

AFE Recommendation 2:

- ✓ Human Resources should establish a documented process to include the following:
 - Time frame when the employee rights postings will be reviewed by Human

Resources Compliance and the steps to be performed during the review.

- The process to track department's compliance with the posting requirements.
- Escalation procedures for noncompliance issues.

AFE 3: Department Contacts. The department contacts that are responsible for investigating employee complaints should be tracked to ensure that any established investigation guidelines and / or training information is disseminated. If this information is not tracked Human Resources would not be readily aware of who was performing investigations and therefore, who may need complaint investigation guidance and / or training.

AFE Recommendation 3:

- ✓ Human Resources should establish a listing of the employees responsible for investigating employee complaints. The list should be reviewed at least annually to ensure the appropriate individuals are added and / or removed from the list as changes in staffing occurs. Prior to the conclusion of the audit, Human Resources implemented a process to capture the department contacts, however there should be a plan in place to ensure the information is updated regularly.

AFE 4: File Maintenance. There is an inconsistent process for storing investigation files for investigations performed by the Compliance Division of Human Resources. Investigation files may be stored in multiple places, including in investigators' cubicle file drawers, in office file cabinets, or electronically on Human Resources' network. This poses risk that files may not be able to be easily located when needed for audits, open records requests, etc.

AFE Recommendation 4:

- ✓ Human Resources should define and implement procedures for storing investigation files and / or any documentation related to investigations performed.

Appendix A

Sample Template for Investigation Guidelines

Workplace Perform Investigations Policy

Purpose

The purpose of this policy is to provide guidance for performing internal investigations of alleged unlawful discrimination, harassment and other violations of company policies, rules and standards of perform.

Applicability

All [Company Name]-operated sites in the United States.

Policy

This organization is committed to ensuring that all company-initiated investigations are performed in a fair, impartial, thorough, thoughtful manner and in compliance with all applicable laws within the United States.

Procedures

Whenever an agent of [Company Name] (i.e., officer, manager, supervisor) receives a complaint or other information indicating a possible violation of law or [Company Name] policy, [Company Name] will perform an investigation.

Responsibility

[Company Name] will promptly initiate an appropriate investigation into all possible violations of law and [Company Name] policy. The vice president of human resources (HR) or the HR department designee will have primary responsibility for investigating complaints relating to employee misperform.

In certain situations, the legal department may assume responsibility for certain investigations and instruct other [Company Name] personnel to gather information for the investigation. In such cases, the assigned investigator(s) will follow counsel's instructions relating to communications and evidence to ensure that "attorney-client" and "attorney work product" privileges are preserved.

Situations to be investigated

The following list, while not all-inclusive, provides examples of the types of situations that [Company Name] will investigate:

- Alleged perform that potentially deprives a company employee or third party (i.e., customer, persons or entities desiring to engage in business with the company) of rights because of race, color, religion, sex, sexual orientation, national origin, age, disability, marital status or other characteristics protected by law.
- Alleged verbal or physical perform that potentially denigrates or shows hostile feelings toward any individual because of race, color, religion, sex, sexual orientation,

gender identity or expression, pregnancy, age, national origin, disability status, genetic information, protected veteran status, or any other characteristic protected by law. This includes perform that has the purpose or effect of any of the following:

- Creating an intimidating, hostile or offensive work environment.
- Unreasonably interfering with an employee's work performance.
- Affecting an individual's employment opportunity at the company.
- Alleged perform or intentional behavior that potentially violates [Company Name] policy or affects the safety or well-being of fellow employees, visitors, operations or other [Company Name]-related activities. Such perform includes threatening communication, physical injury or potential physical harm to another, aggressive or hostile action, intentional damage to company property, and possession of any weapon, regardless of government licensing.
- Claims relating to unfair labor practices.
- Perform that violates [Company Name] rules, policies or standards of perform or the law.

Third-party investigator requirements

The vice president of HR or the HR department designee will approve the retention of any third party for purposes of performing a [Company Name]-initiated investigation regarding employee misperform. The third party must be professionally licensed if required by state statutory requirements and must provide evidence of professional liability insurance (i.e., errors and omissions coverage) prior to performing any company-initiated investigation.

Confidentiality

[Company Name] investigator(s) will inform the complainant(s) that the [Company Name]-initiated investigation will be handled on a need-to-know basis; however, if information is learned that personnel action or legal action is required, there is a potential that disclosure of this information may occur in the process.

Retaliation

[Company Name] prohibits retaliation including making threatening communication by verbal, written or electronic means against any individual who reports or provides any information concerning unlawful discrimination, harassment or other violations of company policies, rules and standards of perform. Any employee found to be engaging in retaliation will be subject to disciplinary action up to and including termination.

Risk assessment

[Company Name] investigator(s) will make a reasonable effort to ensure that the complainant(s) or person(s) providing information during an investigation are not exposed to any threats of violence, intimidation or personal risk. If any such situations are identified or have occurred, [Company Name] will proceed with the appropriate response, as advised by the HR department, legal department, security department or other professionals. Any [Company Name] employee found to have engaged in

threatening behavior will be subject to disciplinary action up to and including termination, in accordance with [Company Name]’s workplace violence prevention policy.

Administrative leave

Subjects of the investigation may be placed on [paid/unpaid] administrative leave during the investigatory process as deemed appropriate by the vice president of HR and/or legal counsel. Administrative leave procedures are outlined in a separate company policy.

Investigative timeline

[Company Name] will make all reasonable efforts to initiate an investigation into the allegation(s) and conclude the investigation in a timely fashion, as appropriate.

Investigative tasks

The following steps should be undertaken as appropriate for the particular investigation:

Step	Action
1.	Obtain verbal and written statements from all parties involved, including the complainant and accused. Secure all publicly available reports from police or other agencies concerning the reporting (<i>if applicable</i>).
2.	Take photographs/video of any injury or damage (<i>if applicable</i>).
3.	Preserve all evidence and secure the evidence in a locked location. Document all evidence obtained. The [Company Name] investigator will be responsible for maintaining the chain of custody for the evidence.
4.	Determine if there is a potential for risk occurrence. If there is a potential, take all measures appropriate to protect employees, visitors and property.
5.	Complete an investigation report, and provide all relevant and necessary information, including findings.

Documentation of findings

Based on the investigation, [Company Name] investigator(s) should determine whether the allegation(s) were founded, unfounded or inconclusive. This determination should be documented in writing and made part of the investigative report. The determinations are as follows:

- **Violation found.** Where a violation of [Company Name] policies, workplace rules or law is found to have occurred, the accused should be notified of the finding and of the specific or corrective actions to be taken. The accused employee’s supervisor will also be notified if appropriate. No details about the nature or extent of disciplinary or corrective actions will be disclosed to the complainant(s) or witness(es) unless there is a compelling reason to do so (e.g., personal safety).
- **No violation found.** In this situation, the complainant and the accused should be notified that [Company Name] investigated the allegation(s) and found that the evidence did not support the claim.
- **Inconclusive investigation.** In some cases, the evidence may not conclusively indicate whether the allegation(s) was founded or unfounded. If such a situation occurs, the notification to the complainant and the accused should state that

[Company Name] completed a thorough investigation but has been unable to establish the truth or falsity of the allegation(s). [Company Name] will take appropriate steps to ensure that the persons involved understand the requirements of [Company Name]'s policies and applicable law, and that [Company Name] will monitor the situation to ensure compliance in the future.

Retention of investigative records

Unless advised otherwise by the legal department or the HR department, [Company Name] will retain records relative to a [Company Name]-initiated investigation for the greater of a period of five years or the minimum retention period required by law.

Release of investigative records

[Company Name] will not release any investigative files, including interviews and findings, unless authorized by the HR department or the legal department or pursuant to a court-authorized request (i.e., subpoena, court order).

Any information obtained and reported by third parties employed or engaged by [Company Name] concerning an employee's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living will be considered to be a "consumer report" under the Fair Credit Reporting Act. Accordingly, [Company Name] will provide notice to the employee that such reports have been received. The employee may request and obtain a copy of the consumer report.

Notice to government agencies

Before notifying any government agency concerning a [Company Name]-initiated investigation, the legal department will perform a full review of the investigation and will determine what information, including documents, should be released to the government agency. Examples may include state licensing agencies or immigration officials when terminating foreign employees.

Disclosures to third parties

No [Company Name] employee or agent may make any disclosure to third parties (e.g., lawyers, investigators, insurance representatives, media reporters) regarding the particulars of any [Company Name]-initiated investigation without prior approval from the legal department.

Appendix B

Sample Non-Union Grievance Procedures

Purpose

[Company Name] recognizes that there are times when the need arises for employees to express concerns or complaints in a formal manner. The following procedures will ensure that non-union employees receive a fair and unbiased review of workplace concerns.

Employees with union representation should refer to the grievance procedures outlined in the respective collective bargaining agreement.

Procedures

Step 1: Informal discussion with supervisor

Employee concerns should first be discussed with the employee's immediate supervisor. Many concerns can be resolved informally when an employee and supervisor take time to review the concern and discuss options to address the issue.

Step 2: Written complaint to supervisor

If the employee is not satisfied with the results of the informal discussion in Step 1, the employee may submit a written complaint within five days to his or her immediate supervisor to include:

- The nature of the grievance.
- Detailed information including evidence of the issue, witnesses, related policies, etc.
- The remedy or outcome desired.

The immediate supervisor will have five working days to respond to the employee in writing. If the employee complaint is regarding illegal harassment, discrimination or retaliation, the employee should submit the written complaint directly to Human Resources.

Step 3: Written complaint to senior management

If the employee is not satisfied with the response from the immediate supervisor, the employee may submit a written complaint to senior management for review. A copy should also be sent to Human Resources. The request for review should include:

- An explanation of the grievance and details of all previous efforts to resolve the issue.
- A copy of the written complaint submitted to the immediate supervisor.
- A copy of the immediate supervisor's written response to the employee's complaint.
- Detailed information regarding the employee's dissatisfaction with the immediate supervisor's response.

Senior management will consult with the employee's immediate supervisor, Human Resources and any other relevant parties to evaluate the grievance and provide a written response to the employee within five days. The outcome of the review by senior management will be final unless new evidence or other circumstances warrant additional review of the complaint.

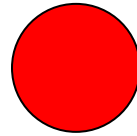
Recordkeeping

Human resources will maintain records of the grievance process confidentially and securely.

Statements and Audit Considerations

I. Internal Control Rating and Criteria

Internal Control Rating: Inadequate



Internal Control Rating Criteria:

<u>Legend</u>			
<u>Criteria Issues</u>	<u>Satisfactory</u> Not likely to impact operations.	<u>Needs Improvement</u> Impact on operations likely contained.	<u>Inadequate</u> Impact on operations likely widespread or compounding.
<i>Controls</i>	Effective.	Opportunity exists to improve effectiveness.	Do not exist or are not reliable.
<i>Policy Compliance</i>	Non-compliance issues are minor.	Non-compliance issues may be systemic.	Non-compliance issues are pervasive, significant, or have severe consequences.
<i>Image</i>	No, or low, level of risk.	Potential for damage.	Severe risk of damage.
<i>Corrective Action</i>	May be necessary.	Prompt.	Immediate.

II. Prior Audit Issues

The Office of Internal Audit has not performed any previous reviews of the Louisville Metro Government - Non - Union Employee Complaint Process.

III. Statement of Auditing Standards

The audit was performed in accordance with Government Auditing Standards issued by the Comptroller General of the United States and with the International Standards for the Professional Practice of Internal Auditing issued by the Institute of Internal Auditors.

IV. Statement of Internal Control

An understanding of the internal control structure was obtained in order to support the final opinion. The objective of internal control is to provide reasonable, but not absolute, assurance regarding the achievement of objectives in the following categories:

- Achievement of business objectives and goals
- Effectiveness and efficiency of operations
- Reliability of financial reporting

- Compliance with applicable laws and regulations
- Safeguarding of assets

V. Statement of Irregularities, Illegal Acts, and Other Noncompliance

The review did not disclose any instances of irregularities, any indications of illegal acts, and nothing was detected during the review that would indicate evidence of such. Any significant instances of noncompliance with laws and regulations are reported in the Observations and Recommendations section of this report.

VI. Statement of Limitations

There are inherent limitations in any system of internal control. Errors may result from misunderstanding instructions, mistakes of judgment, carelessness, or other personnel factors. Some controls may be circumvented by collusion. Similarly, management may circumvent control procedures by administrative oversight.

VII. Views of Responsible Officials / Action Plan

A draft report was issued to Human Resources on February 28, 2022. An exit conference was held on March 28, 2022. Attending were Ernestine Booth and Ann Triesch representing Human Resources and May Porter and Jaqueline Lewis representing Internal Audit. Final audit results were discussed.

The views of Human Resources officials were received on March 29, 2022 and are included as corrective action plans in the Observations and Recommendations section of the report. The plans indicate a commitment to addressing the issues noted.

LMCO §30.36(B) requires Louisville Metro Agencies to respond to draft audit reports in a timely manner. It specifically states that

“The response must be forwarded to the Office of Internal Audit within 15 days of the exit conference, or no longer than 30 days of receipt of the draft report.”

Human Resources’ response was provided within this required timeframe.

VIII. Office of Internal Audit and Audit Team

The Office of Internal Audit was created by Louisville Metro Government Ordinance, Chapter 30 as an independent office reporting to the Metro Council and the Mayor’s Office to help establish accountability and improve Louisville Metro Government programs, processes, and services. Audits are performed to review aspects of a process, program, or service and provide recommendations for improvement.

Engagement Audit Team

Lead Auditor: Tiffany V. Smith

Project Manager: Jacqueline Lewis, CIA, CPA

Internal Audit Director:

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Copies of our audit Reports are available at: <https://louisvilleky.gov/government/internal-audit/audit-reports>

Report Issue Date: April 22, 2022



The purpose of this survey is to solicit your opinion concerning the quality of the **Louisville Metro Government – Non-union Employee Complaint Process** audit report. Please feel free to expand on any areas that you wish to clarify in the comment area at the end. Please return the completed survey electronically to IAUDITIMB@Louisvilleky.gov or to ATTN: Internal Audit 609 W. Jefferson St Louisville, KY 40202. We sincerely appreciate your feedback. The survey can also be completed online at the following link: <https://louisvilleky.wufoo.com/forms/audit-report-satisfaction-survey/>

Survey

1. The audit report thoroughly explained the scope, objectives, and timing of the audit.

Strongly Agree
 Agree
 Neither Agree or Disagree
 Disagree
 Strongly Disagree

2. The audit report reflects knowledge of the departmental/governmental policies related to the area or process being audited.

Strongly Agree
 Agree
 Neither Agree or Disagree
 Disagree
 Strongly Disagree

3. The audit report is accurate and clearly communicated the audit results.

Strongly Agree
 Agree
 Neither Agree or Disagree
 Disagree
 Strongly Disagree

4. The audit recommendations were constructive, relevant, and actionable.

Strongly Agree
 Agree
 Neither Agree or Disagree
 Disagree
 Strongly Disagree

5. **Was there anything about the audit report that you especially liked?

6. **Was there anything about the audit report that you especially disliked?

Office of Internal Audit

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