



Report to:

The City of Calgary

Per: **Liz Ormsby, Acting City Auditor**

May 7, 2021

Assessment of Whistle-blower Program

Prepared by:

Liliane Gingras, LL.B.
RUBIN THOMLINSON LLP
20 Adelaide Street East, Suite 1104
Toronto, Ontario M5C 2T6
Telephone: (416) 847-1814
Email: info@rubinthomlinson.com
www.rubinthomlinson.com

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EXECUTIVE SUMMARY

The City of Calgary retained Rubin Thomlinson LLP to do an assessment of its Whistle-blower Program (the “WBP”). This is a program that gives employees, members of the public, and others an avenue to report wrongdoing at the City confidentially. The City Auditor’s Office runs the WBP and reports on its activities to Council, through the Council’s Audit Committee.

We conducted the assessment by reviewing documents relating to the WBP and interviewing individuals whom we selected based on their involvement in WBP-related work. We then prepared a draft report with our recommendations, which we gave to the City Auditor. Our final report incorporates the City Auditor’s responses to the recommendations.

Our overall assessment was that the WBP is a comprehensive program with a solid structure in place. We found that there are many things that the WBP does really well. For example:

- The WBP has well-documented processes and tools (e.g., a reporting portal for whistle-blowers) to ensure its proper functioning.
- The WBP staff tracks the status of files closely, pays attention to timeliness, and uses a risk-based approach to prioritize its work.
- Many measures are in place to ensure that WBP matters remain confidential.
- Important decisions about each file are consistently documented.
- The WBP has an effective website which clearly sets out how to report wrongdoing.

We also heard many positive comments about the WBP and its staff from those whom we interviewed.

We made 24 recommendations in the report which are intended to strengthen the program even further. These are the following:

- **Seven recommendations about amending different aspects of the City’s Whistle-blower Policy.** For example, we recommended clarifications about what can be reported under this policy and when the City Auditor can decline to investigate a whistle-blower report.
- **Four recommendations about amending the WBP’s procedure manual.** We recommended, for example, that the intake, assessment, and triage process in this manual be clarified.
- **Three recommendations relating to decision-making.** We recommended that the template for investigation reports be simplified. We also recommended that the document that is used to record intake decisions be reviewed to ensure that it aligns with the requirements of the Whistle-blower Policy. Finally, we recommended that breaches of law be considered when deciding whether a named individual (i.e., the person who is the subject of an investigation) engaged in wrongdoing.
- **Two recommendations about the investigation process and investigation management.** We recommended that named individuals be notified in writing of the allegations against them. We also recommended that the City Auditor’s Office review the amount of administrative work for the investigation files to determine whether it can be reduced.

- **Four recommendations about how the City Auditor’s Office communicates with whistle-blowers.** We recommended that the WBP website be amended to ensure that it aligns with the requirements in the Whistle-blower Policy and that it does not contain language to discourage whistle-blowers from coming forward. We also recommended that the City Auditor’s Office review its written communications to whistle-blowers to make sure that they are in plain language. Finally, we recommended that a yearly “check in” with City Administration be established for the City Auditor’s Office to review what is being done to inform employees and others about the WBP.
- **Four recommendations about Audit Committee and City Administration reporting.** We recommended that a reporting threshold be set for what should be reported verbally to the Audit Committee. We also recommended minor adjustments to the documents that are used to communicate information about the WBP to the Audit Committee and City Administration.

The City Auditor’s Office agreed with all our recommendations and has developed an action plan to address each, which we have incorporated in the report.

I. MANDATE

On December 10, 2020, The City of Calgary (the “City”) retained Rubin Thomlinson LLP to conduct an impartial assessment of its Whistle-blower Program (the “WBP”). The scope of the assessment is set out in Appendix A of the report.

We first set out an overview of the WBP. This context is necessary to understand the steps that we took to complete the assessment (section III) and the general observations and recommendations that follow (sections IV and V).

II. OVERVIEW OF THE WBP

In general terms, the purpose of the WBP is to receive reports of potential wrongdoing, investigate these, and make findings about whether there has been wrongdoing. These reports can be made by City employees, contractors, suppliers, or members of the public.

The City Auditor’s Office operates the WBP. We understand that the mission of the City Auditor’s Office is to provide independent and objective assurance, advisory, and investigative services to add value to the City and enhance public trust. (Any reference to the City Auditor’s Office in this report refers only to the investigative services of the WBP; it does not refer to the assurance and advisory activities.)

The City Auditor’s Office reports on the activities of the WBP directly to Council, through the Council’s Audit Committee. This reporting is done in quarterly Audit Committee meetings, and annually, through the annual report of the City Auditor.

The Whistle-blower Policy (CCo26), which is a Council policy (the “Policy”), governs the WBP.

The City Auditor has decision-making authority for the WBP and operates it with the help of WBP staff from the City Auditor’s Office. The management of the day-to-day activities of the WBP lies with the Manager, Whistle-blower Program, under the oversight of the City Auditor. The Manager also investigates whistle-blower reports, along with one other investigator, who reports to the Manager. The City Auditor’s Office has a procedure manual that describes how it does its WBP work (the “Manual”).

Under the Policy, the City Auditor’s Office and City Administration have joint responsibility for the WBP. For example, the City Manager¹ is responsible, under the Policy, for ensuring that administrative policies are in place and maintained to define the conduct that is expected of City employees. City Administration also communicates information about the WBP to City staff.

The City Auditor may at times involve City Administration in the triage and investigation of whistle-blower reports. However, the City Auditor retains decision-making authority for these reports and any resulting investigations.

There are two WBP-related committees which contribute to the collaboration between the City Auditor’s Office and City Administration. The first is the Whistle-blower Triage Team which generally meets weekly to discuss new whistle-blower reports and how to handle these. It is made up of WBP staff from the City Auditor’s Office and staff from City

¹ The City Manager is the chief administrative officer for the City who oversees the operation of all City departments (i.e., City Administration). The City Manager reports to Council.

Administration. The second is the Whistle-blower Oversight Group on which the City Auditor and some of the more senior members of City Administration sit. As noted in the Terms of Reference for the Whistle-blower Oversight Group, its purpose is to “support improved governance on outcomes resulting from whistle-blower activity and internal investigations.”

III. ASSESSMENT PROCESS AND LIMITATION

There were three stages to our assessment. During the first stage, we reviewed documents about the WBP that the City Auditor’s Office gave us. We requested additional documents which we also reviewed.

For the second stage, we interviewed 10 individuals about the WBP. We selected the following individuals based on their involvement in WBP-related work:

- The City Auditor and the WBP staff from the City Auditor’s Office
- Two members of the Audit Committee
- Management-level employees from the office of the City Manager, Legal Services, Human Resources (“HR”), and two business units

In the final stage of the assessment, we prepared a draft report and gave it to the City Auditor’s Office so that the City Auditor could review our recommendations and respond to them. The City Auditor’s responses have been incorporated in this final report; they appear after each recommendation.

There is one limitation to our assessment, which is that we did not review the WBP files of the City Auditor’s Office. Such a review was not included in

the mandate. We understand that this was because it would have required the City Auditor’s Office to give us access to confidential information, including the identity of those who make whistle-blower reports.

IV. GENERAL OBSERVATIONS

Overall, there is a solid structure in place for the WBP. The City Auditor’s Office has well-documented processes for its WBP work and tools to ensure its proper functioning (e.g., a reporting portal for whistle-blowers). We did not find that the processes were so rigid as to render the WBP ineffective or overly bureaucratic. This is important, given that there are unique circumstances for each whistle-blower report and that flexibility is often required.

There is no question that those directly involved in the operation of the WBP care about the program. There is a continuing focus on improvement. We understand that the program has come a long way from what it was five or six years ago and that significant efforts have been made to bring more rigour to it (for example, hiring additional resources, updating the Manual, enhancing the Triage Team and establishing the Whistle-blower Oversight Group). These efforts have resulted in the comprehensive program that is in place today.

Those from outside the City Auditor’s Office whom we interviewed generally had positive feedback about the WBP. For example, we heard the WBP described as “mature” and “professional” and WBP staff from the City Auditor’s Office as “solution oriented” and “collaborative.” One interviewee described having a “high level” of confidence in the WBP.

There are many things that the City Auditor’s Office is doing well with the WBP. Here are some of the highlights:

- In managing its case load, the City Auditor’s Office uses a risk-based approach. It has developed a “risk priority scoring” form, which must be completed for each file that requires investigation. The purpose of this form is to assess objectively the risk level of a new matter by taking into account various factors (for example, the seriousness of the alleged wrongdoing). While this form is completed at the outset of a matter, we understand that the City Auditor’s Office may reassess the risk profile of a matter while it progresses. We find this to be prudent, given that the level of risk may easily change during the life of an investigation.
- There are appropriate measures in place to ensure that WBP matters remain confidential. For example:
 - the Policy requires that employees keep the details and results of an investigation confidential;
 - as required by the Manual, the investigators tell witnesses to keep the investigation confidential;
 - the name of the whistle-blower is not generally disclosed, and we understand that file materials that may reveal the identity of a whistle-blower are typically redacted before being shared with anyone; and,
 - the electronic files for the WBP can only be accessed by those in the City Auditor’s Office who do WBP work.
- The City Auditor’s Office effectively keeps track of the status of each WBP file and there is a good amount of reporting/communication

between the City Auditor and the WBP staff. This is a good practice, given that the City Auditor is the decision-maker for the WBP files.

- The City Auditor’s Office consistently records important decisions (this is typically the decision whether to investigate a new report and the decision after an investigation). This is an effective way of ensuring that the City Auditor has something to rely upon should the City Auditor ever have to explain why a decision was made on a file.
- The City Auditor’s Office has an effective record-keeping system to ensure that file materials, including the evidence, are kept in order. Each investigation has its own file folder (both electronic and physical) and there is a consistent subfile structure in place to ensure that materials are organized within each file. This is important to maintain continuity should an investigation ever need to be transferred from one investigator to the other or if an investigation is ever challenged. We also note that the investigators use a consistent practice for receiving evidence and ensuring its safekeeping.

Given that there is already a good structure in place for the WBP, the recommendations in the next section of this report are proposed as “tweaks” to some of the components of the WBP. We are by no means suggesting an overhaul of the program, but we believe that our recommendations can strengthen it further and mitigate some of the risks we have identified.

V. RECOMMENDATIONS

In this section, we have made 24 recommendations based on our assessment of the WBP. We have grouped the recommendations into the following five categories:

- The Policy and the Manual
- Decision-making
- Investigation process and investigation management
- Communication with whistle-blowers
- Audit Committee and City Administration reporting

1. Recommendations about the Policy and the Manual

Our most extensive recommendations in this report relate to the Policy. This is because the Policy is what sets the parameters of the WBP. While the Policy does have some good features (like whistle-blower protections), we found that some of its components are not sufficiently clear. We have made recommendations to address this.

We have also made recommendations regarding the Manual, which is another important document as it describes how the work of the WBP is done. These recommendations are intended to clarify and simplify some of the processes that are set out in the Manual.

a) Amend the Policy

i. Clarify in the Policy what can be reported under the WBP

The Policy governs how the WBP must operate. Among other things, it defines what can be reported under the WBP. This is standard and should be included in the Policy.

However, in the Policy, there are inconsistencies about what can be reported and some overlap in the definitions. For example:

- in the introductory sections, the Policy refers to reports of “waste and wrongdoing”; elsewhere in the same sections, it refers to waste and wrongdoing, and “matters of public concern” (p. 1)
- in the definition of “Whistle-blower Program,” it refers to the City Auditor’s Office as receiving reports regarding activities that may be considered “dishonest, unethical, wasteful, improper, or a matter of public concern or illegal” (p. 2)
- the definition of “wrongdoing” includes the misappropriation or misuse of funds, equipment, and other assets, which is already included in the definition of “waste” (p. 3)

The issue with this is that it is difficult to know what kind of wrongdoing was contemplated as being within the scope of the program. For that reason, we recommend that the Policy be amended to clarify what can be reported under the WBP. We recommend that this be done by having one, clear definition of “wrongdoing.” There is no need to separate “waste” or “matters of public concern” into their own category; they can be included as part of the definition of wrongdoing. The definition of “wrongdoing” can include, for example:

- breaches of policy
- breaches of law (more on this in recommendation 2(d) below)
- grave danger to health and safety or the environment
- mismanagement or misuse of City assets

The current definition is quite broad as it includes any “inappropriate” conduct. We recommend moving away from such a broad definition as it

makes it difficult for the City Auditor to determine what should or should not be investigated (and conversely, for whistle-blowers to know what they can report).

City Auditor’s Response:

Agreed. The Policy is scheduled for updating in 2021 and a draft updated policy is anticipated to be completed by end of Q4 2021.

Action Plan	Responsibility
1 (a)(i) Ensure that the updated policy draft clarifies reporting requirements and consistent definitions.	<p>Lead: City Auditor</p> <p>Support: Manager, Whistle-blower Program</p> <p>Commitment Date: December 31, 2021</p>

ii. Clarify in the Policy when the City Auditor can decline to investigate a report

The Policy is also unclear about when the City Auditor can decline to investigate a report. The “General Policy Statements” section of the Policy states that the City “will fully investigate any suspected acts or allegations of waste and/or wrongdoing” (p. 3). However, clauses elsewhere in the Policy suggest that there are situations where the City Auditor may not be required to investigate; these are inconsistent with the statement that any suspected acts or allegations will be investigated.

Moreover, the exclusions in the Policy are inconsistent. For example, the Policy states:

- “[The WBP] will not accept items that are considered to be activism and/or challenges to the appropriateness of Council policy decisions.” (p. 3)
- “All allegations made in good faith through the Whistle-blower Program, and not raised solely for self-interest or representing a political agenda, will be subject to a timely assessment, and investigation and resolution, as appropriate.” (p. 5)
- “All reported allegations received in good faith, and not under review by other mechanisms, will be assessed and investigated as appropriate.” (p. 7)

Also, exceptions are listed in section 7.3.1 of the Manual. Several of these are different than the exceptions noted in the Policy.

To resolve these inconsistencies, we recommend that there be one complete list of exceptions and that this list be included in the Policy, rather than in the Manual.

We do consider this list of exceptions as being a necessary component of the WBP. This is because not all matters are suitable for investigation under the WBP. The following are examples of matters that may not be suitable, which the City can consider excluding (these are suggestions and not an exhaustive list):

- The whistle-blower provided insufficient information
- The subject matter of the report is, or was, before a court or another decision-making body

- The subject matter of the report relates to an employment or labour matter that can be grieved
- The subject matter of the report relates to harassment and discrimination (more on this in recommendation 1(a)(iii) below)
- The matter is being dealt with by law enforcement
- There has been a delay in reporting (more on this immediately below)
- The matter is being dealt with through another City process
- The subject matter of the report relates to a policy decision
- The report is frivolous, vexatious, or made in bad faith

With respect to delay in reporting, we were asked to consider how much time has to pass between when the matter arose to when it was reported for it to be considered too “old” to be investigated. There is no magic number here and we recommend against including a strict limitation period. This is because, while a matter may be dated, an investigation may still be relevant (for example, the employee may still be with the City). The delay in reporting, however, can still be included as an exception, but we recommend that it be listed along with other factors. For example, there is a delay in reporting and:

- the investigation would serve no useful purpose as a result of the delay
- the named individual is no longer an employee

- evidence can no longer be obtained as a result of the delay

Finally, as part of the list of exceptions, the City could also include a clause that allows the City Auditor to use discretion to exclude any other matter that is not suitable for investigation, if a valid reason exists to do so.²

City Auditor’s Response:

Agreed. The Policy is scheduled for updating in 2021 and a draft updated policy is anticipated to be completed by end of Q4 2021. The recommended clarity supports the City Auditor’s commitment to transparency and will also support consistent decision-making.

Action Plan	Responsibility
1 (a)(ii) Ensure that the updated policy draft clearly outlines the City Auditor’s authority and discretion to assess a report as not meriting further investigation.	Lead: City Auditor Support: Manager, Whistle-blower Program Commitment Date: December 31, 2021

iii. Include an exclusion in the Policy for harassment and discrimination matters

Currently, matters involving harassment and discrimination can be reported through the WBP. The City Auditor’s Office typically sends these matters to HR for investigation (the City Auditor is permitted under the Policy to rely on City resources to conduct investigations). The City Auditor

² Such a clause exists, for example, in the federal and Ontario whistleblowing legislation: see clause f of section 24(1) of the *Public Servants Disclosure Protection Act* and clause 9 of section 117 of the *Public Service of Ontario Act*.

retains decision-making authority over these matters. HR submits an investigation report that the City Auditor has to approve.

Our view is that, generally, HR matters are not well-suited for whistleblowing. This is because they usually cannot be investigated without disclosing the name of the whistle-blower (the matters typically relate to one-on-one issues between employees). Also, there are usually established channels for reporting harassment and discrimination matters.

We understand, for example, that City employees can report harassment and discrimination matters to HR and to the City's Respectful Workplace Office. We also understand that this office did not exist at the time the City implemented the WBP.

We were advised that City employees sometimes report their concerns of harassment and discrimination to both the WBP and the City's Respectful Workplace Office and/or HR. This means that there can be duplication of work and unnecessary time spent trying to decide who will do what. We also question the efficiency of having the City Auditor and the WBP staff oversee harassment and discrimination matters when these are normally handled elsewhere within the City without this oversight.

For these reasons, we recommend that there be an exclusion in the Policy for harassment and discrimination matters. Alternatively, the City could place parameters around when employees can use the WBP for these matters. For example, a report of harassment or discrimination may be suitable for the WBP when it is alleged that the conduct is such that it is interfering with the work of the City (for example, an allegation that a manager is so abusive that the unit can no longer operate effectively).

City Auditor’s Response:

Agreed. The Policy is scheduled for updating in 2021 and a draft updated policy is anticipated to be completed by end of Q4 2021.

Action Plan	Responsibility
1 (a)(iii) Engage in discussions with City Administration in order to obtain support for the change and to ensure that broader messaging is provided to City employees regarding the reporting and escalation process when reporting to HR. Subsequently, any change in process would require alignment with the Policy draft, WBP website, and the Manual.	<p>Lead: City Auditor</p> <p>Support: Manager, Whistle-blower Program, Human Resources</p> <p>Commitment Date: December 31, 2021</p>

iv. Set out in the Policy how much information whistle-blowers have to provide when making a report

We understand that at times, whistle-blowers do not provide enough information when making a report. This can make investigations very challenging (and at times, impossible). For example, a whistle-blower may not even name the person who is alleged to have engaged in the wrongdoing.

We recommend that the Policy be amended so that whistle-blowers are required to provide as much information as possible when making a report. It is helpful to be able to rely on this language when trying to get more

information from whistle-blowers. (As noted in recommendation 4(a)(ii), however, employees should not be encouraged to seek out evidence.)

City Auditor’s Response:

Agreed. The Policy is scheduled for updating in 2021 and a draft updated policy is anticipated to be completed by end of Q4 2021. Some relevant guidance is currently provided on the WBP webpage regarding reporting.

Action Plan	Responsibility
1 (a)(iv) Ensure that the updated Policy draft includes language regarding minimum information requirements, and how the absence of key details can result in the City Auditor’s decision to not consider a report for investigation, in alignment with Recommendation 1(a)(ii).	Lead: City Auditor Support: Manager, Whistle-blower Program Commitment Date: December 31, 2021

v. Clarify in the Policy what the City Auditor can do with new reports

The Policy requires employees to “cooperate fully in any City investigations or **reviews** arising from reports” (emphasis added) under the WBP. It is not clear from the Policy what a “review” is.

We understand that the City Auditor makes one of the following decisions after assessing a new report: (1) directs that an investigation be undertaken; (2) declines to investigate; or, (3) refers the matter to City Administration for their consideration (without retaining oversight of the matter).

We recommend that the Policy be amended so that there is transparency about these different avenues. We also recommend that some parameters be put in place about when a matter may be referred. It was not entirely clear to us when this can be done. In our view, a matter should be referred only if it falls short of wrongdoing (i.e., it does not fall within the Policy) and there is a reason why City Administration may need to know about it.

City Auditor’s Response:

Agreed. The Policy is scheduled for updating in 2021 and a draft updated policy is anticipated to be completed by end of Q4 2021. It is noted that assessment decision outcomes are currently provided on the WBP webpage.

Action Plan	Responsibility
1 (a)(v) Ensure that the updated Policy draft includes transparency of process, in alignment with completion of Recommendation 1(a)(ii).	Lead: City Auditor Support: Manager, Whistle-blower Program Commitment Date: December 31, 2021

vi. Extend reprisal protection in the Policy to witnesses

The Policy puts in place protections for whistle-blowers. First, it requires that the identity of the whistle-blower be kept confidential to the extent possible. Second, the Policy prohibits retaliation against whistle-blowers. However, the same protections do not apply to witnesses.

To encourage witnesses to participate fully in the investigation process, we recommend that the reprisal protections in the Policy be extended to witnesses (provided that these witnesses are employees).

City Auditor’s Response:

Agreed. The Policy is scheduled for updating in 2021 and a draft updated policy is anticipated to be completed by end of Q4 2021. In alignment with the current Policy, which clearly requires City employees to cooperate with whistle-blower investigations, language regarding reprisal protection should be clearly extended to witnesses interviewed during a whistle-blower investigation.

Action Plan	Responsibility
1 (a)(vi) Ensure that the updated Policy draft includes language to extend protection to witnesses supporting a whistle-blower investigation.	Lead: City Auditor Support: Manager, Whistle-blower Program Commitment Date: December 31, 2021

vii. Remove mandatory police reporting in the Policy

The Policy states that where “the results of the investigation find reasonable grounds to indicate that a fraud or criminal act may have occurred, the file will be turned over to The Calgary Police Service.” The Policy leaves no room for discretion; the City must turn over its file to police.

In some situations, however, the City may wish to deal with matters internally even if there are reasonable grounds to indicate that there was a crime; for example, in the case of a very minor theft of City property.

Accordingly, we recommend that the language in the Policy be amended so that police reporting is not mandatory.

City Auditor’s Response:

Agreed. The Policy is scheduled for updating in 2021 and a draft updated policy is anticipated to be completed by end of Q4 2021. The recommended action aligns with procedures currently in place within City Administration and provides more consistency in how the organization as a whole responds to such matters.

Action Plan	Responsibility
1 (a)(vii) Ensure that the updated Policy draft replaces the obligation to report to police to one of consideration, where appropriate. Discussions with Law and Corporate Security will occur to ensure consistency within the organization.	Lead: City Auditor Support: Manager, Whistle-blower Program, City Solicitor, Chief Security Officer Commitment Date: December 31, 2021

b) Amend the Manual

i. Update and simplify the content of the Manual

The Manual contains many of the same provisions that are included in the Policy. If the Policy is updated to satisfy the recommendations set out

above, we recommend that the Manual be updated at the same time to avoid it being inconsistent with the Policy.

That said, we found that the Manual is quite dense. While it is good to be thorough, we do not think that it is necessary to reproduce information that is included in other WBP documents. For example, the Manual includes a list of the Triage Team members. These names, however, already appear in the Triage Team terms of reference document. (As an aside, it is a good idea to avoid including names in the Manual as it can cause it to become outdated quickly – for example, when an individual leaves their position.)

The purpose of the Manual should be to set out the processes that the City Auditor’s Office applies when doing its WBP work. It does not need to be all-encompassing and can be instead read in conjunction with other WBP documents. While the Manual can certainly reference other WBP documents, there is no need to replicate the wording from these.

We recommend, therefore, that when updating the Manual, the City Auditor’s Office consider simplifying it by removing duplicative information.

City Auditor’s Response:

Agreed. The Manual is an ongoing work in progress and routine, minor updates are made on an annual basis. This recommendation requires a full update following the update of the Policy.

Action Plan	Responsibility
1 (b)(i) Update and simplify the Manual to reflect changes in practice, to provide clarity and to remove	Lead: City Auditor Support: Manager, Whistle-blower Program

duplication and information that is no longer relevant and/or required.	Commitment Date: September 30, 2022
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ii. Clarify intake, assessment, and triage process in the Manual and the WBP Decision Tree

The Manual is not entirely clear about what process is followed at the intake/assessment stage (i.e., the period after a new whistle-blower report is received, but before a decision is made about what to do with a report).

The Manual separates this initial phase into three components: (1) report intake and eligibility; (2) preliminary assessment; and, (3) WBP triage process. There seems to be duplication in these categories as eligibility, assessment, and triage are all part of the same process of deciding what to do with a new whistle-blower report.

To eliminate this confusion, we recommend that the process be collapsed into two components: (1) intake and (2) assessment.

For the “intake” stage, we recommend that the Manual set out the process that the City Auditor’s Office follows to record and acknowledge receipt of a report.

For the “assessment” stage, we recommend that the Manual set out the process that the City Auditor’s Office follows to decide what to do with a new whistle-blower report. For example, the process can include the following components:

- obtaining more information from the whistle-blower
- conducting background research

- consulting the Triage Team
- considering whether any exclusions apply
- completing the form which records the decision of what to do with a new report (this is called the “Preliminary Assessment Decision” form or the “PAD”)

The process should set out which steps are mandatory and which are not. For example, the Manual is unclear as to when a matter is brought to the Triage Team for discussion. We understand that not every new report is discussed with the Triage Team. That being the case, the Manual should set out some general guidance about when to involve this team.

Ultimately, the goal of the assessment is to decide what the City Auditor will do with a new whistle-blower report and this decision must be made in a way that complies with the Policy. The assessment process is to gather information to decide whether the City Auditor may accept it for investigation. We encourage the City Auditor’s Office to describe the assessment process in the Manual in these terms.

Finally, we note that there is a “WBP Decision Tree” which is incorporated by reference into the Manual. This document is a flow diagram of the WBP processes. We understand that it does not entirely reflect the current processes. Given its importance, and that it forms part of the Manual, we recommend that it be updated and also kept up-to-date. Moreover, we note that the intake/assessment/triage components are, like the Manual, not entirely clear; a person with no prior knowledge of the WBP would find it difficult to follow the process. As such, we recommend that these components of the WBP Decision Tree also be simplified.

City Auditor’s Response:

Agreed. The Manual is a work in progress and routine, minor updates are regularly made and approved on an annual basis. The recommended clarity will support consistent decision-making. As a supporting document, the WBP Decision Tree requires an update to clarify current practices and will be updated in alignment with the Manual.

Action Plan	Responsibility
1 (b)(ii) Update the WBP Decision Tree to illustrate and clarify current practice and approach, in alignment with Recommendation 1(b)(i).	Lead: City Auditor Support: Manager, Whistle-blower Program Commitment Date: September 30, 2022

iii. Provide guidance in the Manual about the collection of evidence

Knowing what evidence to collect is one of the most challenging aspects of conducting investigations. It is not an exact science and a case-by-case approach is necessary. On the one hand, an investigator must avoid embarking on a “fishing expedition”; that is, obtaining evidence that does not have a link to what is being alleged. On the other hand, an investigator must ensure that there are no gaps in the evidence.

In our experience, there are some general guiding principles that can help investigators decide what evidence to collect. Given the importance of evidence collection, we recommend that the following two be included in the Manual:

- To collect evidence in an investigation, it has to be relevant to an allegation at issue. This is the main consideration when deciding what evidence to collect. The evidence is relevant if it makes what is being alleged more or less probable.
- The investigation must also be timely, fair, thorough, and confidential. These factors must also be weighed in determining whether to obtain evidence.

City Auditor’s Response:

Agreed. Adding guidance to the Manual will support appropriate on-going consideration of the need for evidence on a case-by-case basis by the lead investigator.

Action Plan	Responsibility
1(b)(iii) The Manual will be updated to include language as suggested above, in alignment with work to be completed in addressing Recommendation 1(b)(i).	Lead: City Auditor Support: Manager, Whistle-blower Program Commitment Date: September 30, 2022

iv. Provide guidance in the Manual about how much information is communicated to whistle-blowers

We understand that the practice of the WBP is to provide only high-level information to whistle-blowers about the progress and outcome of investigations. We support this practice as this is important to maintain the confidentiality of investigations and the named individuals.

Given the importance of confidentiality in these investigations, we recommend that guidance about the level of information that is provided to whistle-blowers be included in the Manual.

City Auditor’s Response:

Agreed. Adding guidance to the Manual will support a consistent approach.

Action Plan	Responsibility
1(b)(iv) The Manual will be updated to include guidance regarding messaging communicated to whistle-blowers, in alignment with work to be completed in addressing Recommendation 1(b)(i).	Lead: City Auditor Support: Manager, Whistle-blower Program Commitment Date: September 30, 2022

2. Recommendations about decision-making

In this section, we have made recommendations that relate to the City Auditor’s decision-making.

First, we have made recommendations about changes to two documents that capture key decisions about whistle-blower reports: the Preliminary Assessment Decision Form and the investigation report.

Second, we were asked to assess the standard of proof that the City Auditor applies when deciding, at the end of an investigation, whether allegations are substantiated. As set out below, our assessment is that the current standard (“balance of probabilities”) be maintained.

Finally, we were also asked to consider whether determinations of wrongdoing should be restricted to City policies or be expanded to include breaches of law. We have recommended that breaches of law be considered when determining whether there is wrongdoing.

a) Review the Preliminary Assessment Decision form to ensure that it reflects Policy requirements

The Preliminary Assessment Decision form (the “PAD”) captures the City Auditor’s decision about what to do with a new matter. We understand that the form has to be completed for each new matter. The use of this form is an excellent practice and should be maintained. Importantly, it gives the City Auditor something on which to rely if an assessment decision is ever challenged (for example, a decision not to investigate a report).

We like that the PAD:

- captures what steps were taken to do the assessment
- identifies the category of wrongdoing
- identifies the risk level of the report
- confirms that an acknowledgement of receipt was sent to the whistle-blower and that the whistle-blower was advised of the City Auditor’s decision about how to handle the matter
- requires the City Auditor’s sign-off

We recommend that, after the Policy is updated, the PAD be reviewed to ensure that it captures that the decision was made in accordance with the Policy requirements. This is to ensure that the City Auditor’s decision about how to proceed with a whistle-blower report can withstand scrutiny. Based

on the changes to the Policy that we have recommended in section 1, we suggest that the following three elements be clearly communicated in the PAD:

- Is the person about whom the report is made subject to the Policy?
- Did the reporter disclose behaviour that, if true, is potentially “wrongdoing” under the Policy?
- Is there a reason why the City Auditor should refuse to investigate?

The answer to these questions should be more than just a “yes” or “no.” We suggest that an explanation be provided for each component. We provide two examples to illustrate this (these are entirely fictional and not based on the current version of the Policy):

Example 1:

The City Auditor’s Office receives a report that a manager has hired their child to work for the City. The City Auditor decides to investigate the matter because it falls within the Policy. The PAD should indicate how each of the components is satisfied:

- The report is about an employee of the City, and is, therefore, a person to whom the Policy applies
- The report discloses behaviour that, if true, is potential wrongdoing (a breach of City policy). This is because hiring a family member is a conflict of interest, which is prohibited under the City’s Code of Conduct (the section of the Code would be noted)
- None of the exclusions apply

The allegation going forward for investigation is the following:

- It is alleged that Employee X hired their child, in breach of section XYZ of the Code of Conduct.

Example 2:

The City Auditor’s Office receives a report telling the City Auditor to investigate Employee Y for a “grave paperwork error.” No other details are provided and the whistle-blower is not responding to communications. The City Auditor declines to investigate. The PAD should state:

- The report is about an employee of the City, and is, therefore, a person to whom the Policy applies.
- However, there is insufficient information to determine whether there is potential wrongdoing under the Policy as there is no description of the “grave paperwork error.” Therefore, the City Auditor is declining to investigate the matter.

Finally, we recommend that the City Auditor’s Office avoid language that could suggest that the outcome of a matter has been pre-determined. For example, the one completed PAD we reviewed indicated that the activity in question appeared to be a “non-compliance activity...” This type of language should be avoided as it may give the impression that the City Auditor is not neutral.

City Auditor’s Response:

Agreed.

Action Plan	Responsibility
2 (a) Update the Preliminary Assessment Decision form template to	Lead: City Auditor Support: Manager, Whistle-

<p>ensure those elements noted above which are not on the current template, are added, specifically:</p> <ul style="list-style-type: none"> - Whether the person about whom the report is made is subject to the Policy - whether there is a reason why the City Auditor should refuse to investigate and whether that reason aligns to Policy <p>Additionally, the City Auditor will enforce consistency in the use of the template.</p>	<p>blower Program</p> <p>Commitment Date: June 30, 2022</p>
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b) Simplify the investigation report template

The City Auditor’s Office gave us their investigation report template (the current template and a proposed updated template) and one redacted investigation report, which appears to have been written using the current template. Based on our review of these, we can provide some general guidance about the report format which we think can help the City Auditor’s Office when revising its current template.

The use of a template is prudent as it helps to maintain consistency and ensures that important elements are included in the investigation report; the City Auditor’s Office should continue using one. However, we do think that the template can be improved to clarify what decisions were made and how they were made.

Our recommendation is to simplify the report template.

The proposed template has many different sections and the way they are ordered is difficult to follow. For example, the sources of evidence are listed at the end of the report; we would expect to see these (along with a summary of evidence) before the findings are made. As another example, in the sample report we reviewed, there were two conclusion sections, in different places in the report.

The sections of the report can look something like this (in the order presented here):

- Confidentiality explanation
- Background
- Purpose of the investigation³
- Investigation steps
- Evidence
- Findings of fact
- Analysis
- Recommendations

Regardless of what section headings are used, the template should be set up so that the report clearly sets out: (a) the relevant evidence collected for each allegation; (b) the decision about what happened (i.e., the findings of fact) for each allegation; and, (c) whether, based on the findings of fact, the named individual engaged in wrongdoing. We have provided further

³ The purpose of the investigation can be stated as follows: The purpose of the investigation was to make findings of fact about the following allegations and determine whether the named individual engaged in wrongdoing, as that term is defined in the Policy: [...]

guidance about this below, as it may assist the City Auditor’s Office when revising the template.

For clarity, “evidence” is information that is relevant to the allegations which is collected from various sources (e.g., witnesses, documents). A “finding of fact” is a determination that is made, taking into account the evidence that was collected, about whether an alleged event happened. For example, if the allegation is that an employee hired a family member, the finding of fact would be whether the employee did this or not. In the investigation reports, care must be taken to separate the evidence from the findings of fact.

The investigation report should first summarize what relevant evidence was collected and from what sources, for each allegation.

After the evidence is summarized, findings of fact need to be made. To keep the evidence separated from the findings, appropriate subheadings can be used. For a decision to be legally defensible, the City Auditor needs to set out the evidence relied upon to make findings. If there is competing evidence (i.e., two sources of evidence on the same point state different things), the City Auditor needs to decide what evidence is preferred and give a reason why. This explanation would be set out in the “findings of fact” section.

Once the City Auditor has made findings of fact, a determination needs to be made about whether the person engaged in wrongdoing. This is what we call the “analysis” portion of the report; it needs to be separated from the evidence and the findings of fact. The purpose of the “Analysis” section is to set out the decision about whether the person under investigation engaged in wrongdoing, as defined in the Policy. The section can contain the relevant

policy language (if the matter relates to a breach of policy), the decision about whether there was wrongdoing, and reasons for that determination.

City Auditor’s Response:

Agreed. The updated investigation report template currently in draft is a result of a commitment to continued improvement, and this guidance will be helpful in finalizing the document.

Action Plan	Responsibility
2 (b) Complete updated version of investigation report template to simplify and improve readability.	Lead: City Auditor Support: Manager, Whistle-blower Program Commitment Date: December 31, 2021

c) Maintain current standard of proof for making decisions

We were asked to consider what standard of proof should be applied to the WBP matters. We understand that the “balance of probabilities” standard is currently applied. For the reasons that follow, our assessment is that this should continue to be the standard that is applied when making findings of fact.

In simple terms, the standard of proof describes the level of satisfaction that the decision-maker must reach to decide that the alleged behaviour happened. Different standards of proof can be applied. In criminal court, for example, the prosecution needs to put forward enough evidence that the judge or jury is satisfied “beyond a reasonable doubt.” This is a very high standard because there is typically so much at stake for the accused. In civil

matters (i.e., matters that do not involve criminal or quasi-criminal charges by the Crown), it is well established that the standard of proof is the balance of probabilities.⁴ These civil matters include, for example, court matters involving litigation between two parties and matters heard by adjudicative bodies (like human rights tribunals). The balance of probabilities is also the accepted standard in workplace investigations.

Essentially, the balance of probabilities standard requires that the decision-maker decide whether it is more likely than not that whatever is being alleged happened.

The matters that are reported through the WBP are not criminal matters in that they do not involve charges by the Crown. While matters reported through the WBP could potentially result in criminal charges if the City referred a matter to police, this does not change the standard of proof when the matter is in the hands of the City Auditor. The decision-maker at that stage is the City Auditor – not the criminal court or any other adjudicative body. For that reason, the City Auditor need not, and should not, consider the standard of proof that these other decision-makers may apply.

To be clear, the standard of proof is applied when the City Auditor is making a decision at the end of the investigation about whether the allegations are substantiated. Before getting to that stage, the role of the City Auditor (and by extension, the WBP staff of the City Auditor’s Office) is to collect evidence that is relevant to the allegations⁵ so that the City Auditor can make a decision. The standard of proof does not factor into the

⁴ *F.H. v. McDougall*, [2008] 3 S.C.R. 41.

⁵ As noted above, evidence is relevant to the allegations if it makes what is being alleged more or less probable.

collection of evidence. This is because the City Auditor is neutral and is not trying to achieve or drive any particular outcome.

In sum, our assessment is that the City Auditor should continue to apply the balance of probabilities standard of proof when deciding whether alleged wrongdoing is substantiated. This standard should be applied in all cases, regardless of what the whistle-blower is alleging or the likelihood that the matter may at some point be before a different decision-maker.

d) Consider breaches of the law when deciding whether wrongdoing exists

We were asked to consider whether, when deciding whether there was wrongdoing, the City Auditor should consider breaches of law, or only breaches of City policy and procedures.

The answer to this depends on whether a breach of the law is a potential wrongdoing under the Policy. While the Policy does not explicitly set out that a breach of the law is potential wrongdoing, from the broad definition of wrongdoing currently in the Policy, we believe it is included. (It would be peculiar if it was not, as this is one of the most important types of wrongdoing that can be uncovered through a whistle-blower program.)

If we accept that a breach of a law is a type of wrongdoing that can be reported under the Policy, then it follows that, when this type of allegation is made, the ultimate conclusion will need to be whether: (a) the person engaged in the behaviour (the findings of fact), and if so, (b) whether the behaviour contravenes the law such that it is “wrongdoing” under the Policy (the analysis).

That said, we understand that the City has many policies in place. These policies may incorporate matters that are also covered by legislation. If that

is the case, the City Auditor’s Office may decide that when both a policy and a law applies, it will resort to the policy to determine whether there was wrongdoing.

However, if a City policy does not cover the type of wrongdoing that was reported, but legislation does, then we recommend that the City Auditor’s Office consider in its analysis whether there was a contravention of the legislation. The City Auditor’s Office may wish to consider whether it can draw upon the City’s legal resources to help with this work.

City Auditor’s Response:

Agreed.

Action Plan	Responsibility
2 (d) Engage in an appropriate discussion with Law, Corporate Security and HR, as necessary, to ensure consistency, and update Manual as required.	Lead: City Auditor Support: Manager, Whistle-blower Program Commitment Date: June 30, 2022

3. Recommendations about the investigation process and investigation management

Given that we did not review the investigation files of the WBP, we asked a lot of questions about how the investigators do their investigations. For example, we asked about potential sources of evidence, how witnesses are approached, and how interviews are conducted. Generally, the investigation process and investigation management seemed to be effective and sound, with one exception relating to the notice of allegation that is given to the

named individual (i.e., the person whose conduct is at issue). Our recommendation about this is below.

We had also been asked to assess the timeliness of the WBP investigations. We did not take issue with timeliness generally and our assessment is that the WBP should maintain its current focus on completing files in a timely manner.

Finally, we made one recommendation about investigation management, which relates to the administrative work associated with the investigation files.

a) Provide notice of allegations to named individual in writing

One of the elements we considered during the assessment was whether the named individual in a whistle-blower report is treated fairly.

We understand that the City Auditor's Office does not typically advise the named individual at the outset of the investigation that they have been named in a whistle-blower report.⁶ This is because the City Auditor's Office first collects evidence to assess whether the wrongdoing may be potentially substantiated. If there is insufficient evidence, then the investigation is closed, and the named individual is not told of the investigation. We were advised that this is to protect the reputation of the named individual and to avoid putting them through the stress of an investigation unnecessarily.

⁶ We understand that the practice may be different for harassment and discrimination investigations that are reported through the WBP.

We have not found a legal principle that requires that the person who is the subject of an investigation be told about it at the outset. Due to this, we are not recommending that the City Auditor's Office change its practice.

There is, however, one risk that the City Auditor's Office should consider with its approach. The risk is that the named individual will find out about the investigation informally, which would be unfair to them. If the City Auditor's Office is investigating "behind the scenes" (for example, by collecting documents), then the risk is low. However, if the City Auditor's Office interviews witnesses, then there is a possibility that one of them will tell the named individual about the investigation. While each witness is told to keep the fact of the investigation confidential, it is not a guarantee that everyone will comply with this.

If the named individual has not yet been informed of the investigation, before interviewing any witnesses, the City Auditor's Office may wish to consider:

- the likelihood of an employee disclosing the fact of the investigation to the named individual (for example, interviewing a close colleague of the named individual may be a problem)
- whether the witness can be interviewed without that witness figuring out what the matter is about
- the seriousness of the matter (for example, more caution may need to be exercised for an allegation that could result in a termination of employment)

The City Auditor’s Office can decide, with these factors in mind, whether it is prudent to interview witnesses before the named individual is notified. This can be done on a case-by-case basis.

The approach of the City Auditor’s Office is to advise the named individual of the investigation before adverse findings are made against them and to allow them to respond to the allegations and the evidence. This practice should continue as it is necessary for the investigation to be procedurally fair.

However, we were advised that the City Auditor’s Office does not always give the allegations to the named individual in writing. This means that a named individual may know very little about what the investigation is about before they are interviewed. This carries some risk that the named individual will complain that the process was unfair. While under the stress of the interview, the individual may not understand the allegations. They may also feel that the interview is an “ambush” and that they were not given the opportunity to respond properly.

To guard against this, we recommend that the City Auditor’s Office give the named individual the list of allegations before the interview, in writing. In deciding how far in advance of the interview the allegations should be given, the City Auditor’s Office should consider the circumstances of the case. For example, for very serious allegations, or cases that require the named individual to locate a lot of documents, the City Auditor’s Office may wish to give the named individual ample notice before they are interviewed.

City Auditor’s Response:

Agreed. The recommended practice is important in ensuring fairness and transparency. It is acknowledged that current practice regarding what is

disclosed, and when, can at times be inconsistent.

Action Plan	Responsibility
<p>3 (a)</p> <p>(a) Implement in practice as soon as possible by way of direction provided by the Manager, Whistle-blower Program; and,</p> <p>(b) Formally document the procedure in the Manual as part of routine annual update, clearly outlining what information shall be provided, when, and in what format.</p>	<p>Lead: City Auditor</p> <p>Support: Manager, Whistle-blower Program</p> <p>Commitment Date: December 31, 2021</p>

b) Maintain current focus on timeliness

We were asked to comment on the timeliness of the investigations. We were advised that on average, investigations take about 180 days to complete. We understand that through the efforts of the City Auditor’s Office, the average completion time was significantly reduced over the last five to six years.

Based on our experience, we do not think that six months is out of the ordinary for public sector whistle-blower investigations. For example, the federal Office of the Public Sector Integrity Commissioner, which receives whistle-blower reports from federal public servants, sets its investigation

completion target at one year (80% of investigations must be completed within that timeframe).⁷

There are a variety of factors that play into how long it takes to investigate. For whistle-blower investigations, one main consideration is that there is often very little information to go on initially. This is very different from a harassment investigation, for example, where the complainant sets out exactly what is at issue and can tell the investigator where to get relevant evidence. Other factors can be the number of allegations reported and how dated a matter is. A case with a lot of documentary evidence will also take longer⁸ as will one where there are a lot of witnesses; in our experience, the coordination and availability of witnesses often gets in the way of a speedy investigation. The availability of resources to investigate and the challenges that come with juggling multiple files can also be a factor.

The City Auditor's Office monitors closely how long its investigations take and may reassign priorities to ensure that older investigations can be concluded promptly. We support these activities and the continued focus on timeliness.

c) Review investigators' administrative file work to determine whether it can be reduced

The goal is to ensure that the City Auditor's Office keeps the WBP files moving; they should avoid periods of time when a file lies dormant. We understand that this may at times be challenging given competing priorities and the resources of the City Auditor's Office. We do have one

⁷ Annual Report of the Office of the Public Sector Integrity Commissioner, 2019-2020, page 8: https://ispc-psic.gc.ca/sites/default/files/2020-06/2019-20_annual_report_en_-_print_o.pdf.

⁸ This is because there is usually some delay in receiving documents, and it takes time to review them. In the case of the City Auditor's Office, they have to wait to receive documents from City Administration.

recommendation that may assist with this, which is that the City Auditor's Office review the amount of administrative work for each investigation file. In our experience, administrative tasks can detract from investigative file work.

For example, we note that the City Auditor's Office keeps a physical copy of each of its files and an electronic one. The investigators have to make sure that each of these files is complete (we understand that the files essentially mirror one another). We recommend that the City Auditor's Office consider designating the electronic version of the file as the official file (for record retention purposes) and relieving the investigators of the need to keep a physical file.

We also noticed that there are some process steps that are not followed consistently. For example, we were given an investigation diary template and a document log template. The first is for documenting the investigation steps in a file, and the second is for recording evidence collected. We understand that these are used inconsistently. The City Auditor's Office should consider whether it is necessary to complete these, and if not, should remove them from its process.

City Auditor's Response:

Agreed. With current experience working remotely during the COVID-19 pandemic, WBP staff have become accustomed to relying primarily on electronic records to complete their work, and we concur that this is an appropriate time to review the practice of maintaining paper records.

Action Plan	Responsibility
<p>3 (c) The Manager, Whistle-blower Program and the City Auditor will discuss how and when to best incorporate this change in practice, ensuring alignment with the City Auditor’s Office records retention plan, City records retention policy and processes, and update the Manual as necessary.</p>	<p>Lead: City Auditor Support: Manager, Whistle-blower Program Commitment Date: March 31, 2022</p>

4. *Recommendations about communications with whistle-blowers*

In this section, we have made recommendations about how the City Auditor’s Office communicates with whistle-blowers, both on its website and during the life of a file.

We have also considered how the existence of the WBP is communicated to those who can access it (e.g., employees). We have made a recommendation to ensure that the City Auditor’s Office stays informed about how City Administration communicates information about the WBP.

a) Update and amend the City’s whistle-blower website

Generally, we think that the whistle-blower website is good. It is easy to navigate, and information contained on the website is relevant and written clearly. It is also easy for users to identify how to make a report.

We do, however, have two recommendations to make about the website, which are below.

- i. Ensure the whistle-blower website is consistent with the Policy

Like the Policy, there are inconsistent definitions on the website about what can be reported through the WBP. We also note that the list on the website of what should not be reported through the WBP is inconsistent with the exceptions in the Policy.

We recommend that, once the Policy is updated, the website be amended to ensure that it is consistent with the Policy.

City Auditor’s Response:

Agreed. Due to the language in the current Policy which directs the City Auditor to establish procedures, the language on the website is intentionally provided to align with the procedures guiding the WBP. With the planned update to the Policy and incorporation of recommendations, ensuring consistent messaging on the webpage will be necessary.

Action Plan	Responsibility
4 (a)(i) Ensure consistency in messaging on the WBP webpage and the council-approved version of the Policy.	Lead: City Auditor Support: Manager, Whistle-blower Program Commitment Date: June 30, 2022

ii. Remove language from the website that may discourage whistle-blowers from coming forward

The first item on the list of what not to report through the WBP is the following: “allegations based on rumour, hearsay, speculation, opinion and or conclusions, without evidence, or not made in good faith.”

We recommend that this language be removed. We are concerned that it will discourage individuals who may have valid concerns from coming forward. First, employees do at times hear rumours about behaviour that concerns them; we do not think there is anything wrong with them reporting this information to the WBP. Second, employees should not be expected to act as investigators. While they may come across evidence that could suggest wrongdoing, they should not try to obtain additional evidence, and should bring forward their concerns instead.

City Auditor’s Response:

Agreed. The above-referenced should be criteria considered in decision-making regarding what to do with a report and not whether a report should be submitted in the first instance. Guidance is provided on the website clearly discouraging any reporter to “investigate” or obtain information to which they have no authority to access or possess. This modification can be completed in isolation of the completion of other recommendations.

Action Plan	Responsibility
4 (a)(ii) Remove the language “allegations based on rumour, hearsay, speculation, opinion and or	Lead: City Auditor Support: Manager, Whistle-blower Program

conclusions, without evidence, or not made in good faith” from the WBP web page.	Commitment Date: June 30, 2021
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b) Ensure communications with whistle-blowers are in plain language

We reviewed the initial communication that the City Auditor’s Office sends to whistle-blowers after they have made a report. The correspondence is quite formal and contains a lot of information. We are concerned that a whistle-blower may be overwhelmed by its content.

We recommend that the correspondence be simplified and that plain, easy to understand language be used.

City Auditor’s Response:

Agreed. A review of the various communications is an outstanding work item that has been delayed due to limited resources and workload priorities.

Action Plan	Responsibility
4 (b) Review and update reporter communications to provide more concise and less formal messaging.	Lead: City Auditor Support: Manager, Whistle-blower Program Commitment Date: December 31, 2021

c) Maintain current level of communication with whistle-blowers

We were asked to assess the timing, frequency, and detail of information shared with whistle-blowers. To do this, we interviewed WBP staff, reviewed the Manual, and considered the communication templates that were provided to us.

We understand that the City Auditor's Office confirms with whistle-blowers that they have received their report and that this is usually done within one business day. This is a good practice, and in our assessment should continue. We also understand that after this, the whistle-blower is advised of the outcome of the assessment decision (i.e., the decision about whether or not to investigate). We think that this, too, is a good practice and should continue.

Once an investigation begins, we understand that the City Auditor's Office does give periodic updates to the whistle-blower and that this is done at least monthly. Some whistle-blowers may find that this is not frequent enough, while some may not care. One approach is to discuss with the whistle-blower at the beginning of the investigation the frequency with which they will be contacted so that they know what to expect. Other than this suggestion, we do not have any recommendations to make about the frequency of contact; it can be decided on a case-by-case basis.

Finally, we understand that the City Auditor's Office advises whistle-blowers of the outcome when an investigation is finished, which is also a good practice and should continue.

d) Establish a yearly “check in” with City Administration to review what is being done to inform employees and others about the WBP

Generally, those who we interviewed believe that the employees had a good awareness of the WBP. We understand that the existence of the WBP is communicated through a number of ways. For example, the WBP is accessible through the WBP website, the City’s intranet page, the “311” service, town halls, the Code of Conduct manual, and Code of Conduct training.

The communications surrounding the existence of the WBP are really important. Simply put, if employees and others do not know about the WBP, they cannot use it.

The City Auditor’s Office has a general awareness of what City Administration does to communicate information about the WBP, which is good. Given the importance of these communications, however, we recommend that the City Auditor’s Office establish a yearly “check in” with City Administration to review what is being done to inform employees and others about the WBP.

City Auditor’s Response:

Agreed. This activity will be incorporated on an annual basis into the Whistle-blower Oversight Group agenda.

Action Plan	Responsibility
4 (d) The City Auditor will incorporate discussion regarding communication of the WBP into the final WOG agenda of each calendar year.	Lead: City Auditor Support: Manager, Whistle-blower Program

	Commitment Date: December 31, 2021
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5. Recommendations about Audit Committee and City Administration reporting

The WBP provides reports about its activities to the Audit Committee and to City Administration. We were asked to assess the effectiveness of this reporting by conducting interviews with stakeholders. In this section, our recommendations are generally based on these interviews.

a) Clarify the “Whistle-blower Program Activity” section of the quarterly report to the Audit Committee

We were advised that there is some confusion about how to reconcile the numbers reported in the “Whistle-blower Program Activity” section of the quarterly report for the following categories: New Reports, In-Progress Investigations, and Closed Investigations. We recommend that the City Auditor consider how to eliminate this confusion; an explanatory note may resolve the matter.

City Auditor’s Response:

Agreed. The portion of the report allotted to WBP activity is limited in order to provide Audit Committee with a brief document of all activity in the City Auditor’s Office. We will review the value and format of the WBP information shared.

Action Plan	Responsibility
5 (a) Review and update the WBP section of the City Auditor’s Office	Lead: City Auditor Support: Manager, Whistle-

<p>Quarterly Report to ensure relevant data shared is clear and understandable.</p>	<p>blower Program Commitment Date: December 31, 2021</p>
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b) Provide more detailed information to the Audit Committee about the type of wrongdoing being disclosed

Through our interviews, it was suggested that more detailed information be provided to the Audit Committee about the types of wrongdoing being reported to the WBP. In the quarterly reports, the categories of wrongdoing are broad; for example, “business integrity” or “HR, Diversity and Respectful Workplace.”

Accordingly, we suggest that the City Auditor’s Office accommodate this request by providing a further breakdown of the types of wrongdoing being reported. We leave it to the City Auditor’s Office to decide how best to do this (the closed meeting materials provided to the Audit Committee may be an option).

City Auditor’s Response:

Agreed. The portion of the report allotted to WBP activity is limited in order to provide Audit Committee with a brief document of all activity in the City Auditor’s Office. We will review the value and format of the WBP information shared.

Action Plan	Responsibility
<p>5 (b) Review and update the WBP section of the City Auditor’s Office</p>	<p>Lead: City Auditor Support: Manager, Whistle-</p>

<p>Quarterly Report where possible, considering the request for reporting activity based on classification rather than category (as is currently reported).</p>	<p>blower Program</p> <p>Commitment Date: December 31, 2021</p>
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c) Set a reporting threshold for what should be reported verbally during Audit Committee meetings

We understand that the City Auditor’s Office presents some confidential WBP activities during closed meetings of the Audit Committee. We recommend that the City Auditor’s Office establish a reporting threshold for what should be reported verbally during Audit Committee meetings, as we understand that no such threshold is currently in place.

City Auditor’s Response:

Agreed. We will discuss reporting with members of Audit Committee following the 2021 election.

Action Plan	Responsibility
<p>5 (c) Determine with members of Audit Committee thresholds to trigger discussions in closed meetings of the Audit Committee.</p>	<p>Lead: City Auditor</p> <p>Support: Manager, Whistle-blower Program</p> <p>Commitment Date: March 31, 2022</p>

d) Ensure that reporting letters to City Administration have sufficient information to identify what the matter was about

We heard that the reporting letters back to City Administration do not always contain the level of detail required, and it is sometimes unclear to which matter the letter pertains. We recommend that a brief description of the alleged wrongdoing be included in the letter to remind the recipient of what exactly the matter was about.

City Auditor’s Response:

Agree.

Action Plan	Responsibility
5 (d) The closing letter will be revised to reflect similar reference to the initial notification letter.	Lead: City Auditor Support: Manager, Whistle-blower Program Commitment Date: June 30, 2021

VI. CONCLUSION

To summarize, we found that there is a good structure in place for the WBP and that the program has many positive aspects, including dedicated staff. We are confident that with the implementation of the recommendations we make in this report, the WBP will continue to serve as an effective channel to report wrongdoing at the City.

APPENDIX A – SCOPE OF WORK

1. Requirements of the Consultant

- a) An existing understanding of best practices to conducting workplace investigations within a municipal government environment, with focus on investigations conducted as a result of employee hotline reporting platforms.
- b) An understanding of relevant Alberta law relating to workplace investigations.
- c) Capacity to complete field work in Q1 2021 and present findings and recommendations no later than the May 20, 2021 meeting of Audit Committee.

2. Approach

- a. Utilizing existing knowledge of best practices, Consultant will conduct an independent assessment of the City’s Whistle-blower Program (“WBP”) procedures and practices, evaluating effectiveness and efficiency, on a basis of maturity and not simply as a pass or fail.
- b. Through focused interviews with selected stakeholders and available City resources, Consultant will evaluate the relevance and effectiveness of quarterly and annual statistical reporting provided to Administration leadership and Audit Committee. Consultant may select stakeholders for interview from list of names provided or suggest alternatives.
- a. Consultant will review available information in order to consider:
 - i. How the WBP approaches, and gives appropriate consideration to, confidentiality in its day-today activities.
 - ii. How the WBP communicates with whistle-blowers (timing, frequency, detail of information shared). Will require review of current webpage and standard notifications.
 - iii. How new report submissions are assessed (including the triage process).

- iv. How assessment of risk is incorporated into decision-making and ongoing activities, including risk-based prioritization of investigations.
- v. How the WBP documents decisions and key activities.
- vi. How the WBP collects documentary evidence (differentiating between evidence and information).
- vii. Whether current practice of meeting the civil standard of proof is appropriate, or whether meeting the criminal standard is required.
- viii. Whether workplace investigators should restrict their determination of wrongdoing to City policy and procedure or expand to include potential breaches of law or legislation.
- ix. Whether the WBP should consider the option to refuse allegations which are too aged to effectively investigate, and what the time limitation should be.
- x. With an understanding of relevant Alberta law relating to workplace investigations, determine whether there are relevant legal decisions and considerations related to workplace investigations that the WBP ought to be applying to investigations, including confidentiality.
- xi. Timeliness of investigations. How the time to conclude aligns with available resources, with consideration given to what is a reasonable amount of time to investigate and conclude, on an average basis, acknowledging the varying nature and complexity of investigations.
- xii. The effectiveness and completeness of the investigation report structure.
- xiii. The completeness and effectiveness of investigation file structure. As the Consultant will not have physical access to confidential whistle-blower investigations, assessment may need to be determined by way of a specific Q&A process led by the Consultant.

3. Deliverables

- a. An evaluation of the WBP's effectiveness and efficiency in meeting best practice standards, through:
 - i. Review and assessment of the WBP policy;
 - ii. Review and assessment of the WBP Decision Tree, procedures manual, and various forms and templates utilized;
 - iii. Assessment of investigation file structure;
 - iv. Review and assessment of practices for maintaining confidentiality, communication, and transparency;
 - v. Review and assessment of investigation report format; and,
 - vi. Interviews with 7-10 WBP stakeholders (consider City Auditor; Manager, WBP; City Manager; Chair plus 1 additional member of Audit Committee; select general managers and/or directors, Law).
- b. Provide a written draft report with recommendations for improvements. Report will be independently produced, however, WBP will need to be engaged in ensuring appropriate communication of recommendations in public domain.
- c. Provide a final written report with recommendations and recommendation responses.
- d. Present (virtually) summary of results to Audit Committee.