

**FINAL REPORT
CASE #0404 CITY OF TRACY**

REASON FOR INVESTIGATION:

On July 15, 2004, the San Joaquin County Civil Grand Jury received complaints directed against the Tracy City Manager's Office as follows:

1. All complainants alleged a) that the Assistant City Manager used her influence to hire a former colleague of hers over more qualified candidates, and b) that, in doing so, she violated City of Tracy policy and procedures, c) that there was racial discrimination involved in the appointment.
2. One of the complainants further alleged that a) when the new hire failed to perform her job satisfactorily and was terminated, the Assistant City Manager was involved in rehiring her to a new position in another department, and b) that the Assistant City Manager initiated fruitless investigations of the Human Resources Department using expensive outside investigators on matters more properly handled in house.

BACKGROUND:

The City Council of Tracy appoints the City Manager based on executive and administrative qualifications and ability. The City Manager is the administrative head of the city's government under the direction of the City Council. He or she is ultimately responsible for all the operations of the city, but can delegate his/her authority to the Assistant City Manager and to the department and division heads. The City Manager's powers and responsibilities include:

- The power to appoint, remove, and demote any and all Officers and employees of the city except the City Clerk, the City Attorney and the City Treasurer
- The duty to keep the City Council advised on the financial condition and needs of the city
- The duty to present the annual budget to the City Council for approval
- The duty to enforce all of the City of Tracy's administrative policies and procedures

The Assistant City Manager, who is the focus of our investigation, serves as the department head of Human Resources Division, and oversees the City Clerk's office, the Cultural Arts program, and other tasks as delegated by the City Manager.

On 6/11/2001 the City of Tracy, Human Resources Division placed an advertisement for a Human Resources Analyst as a result of which a list of qualified candidates was completed. As a part of the hiring process, The Human Resources Manager, who works under the Assistant City Manager, developed, and then validated an oral examination test of 11

questions based on the analyst job description. The oral interview is the final step in the lengthy process of hiring a new employee.

Subsequently, the Assistant City Manager removed several test questions and replaced them with specialized questions related to police work that reflected the work experience of one of the three candidates under consideration. This candidate was previously trained by and worked under the direct supervision of the current City of Tracy Assistant Manager when both worked for the City of Milpitas. When the Qualifications Appraisal Board met to make the final selection of the three candidates in consideration for the analyst position, it was this amended examination that was used.

According to the City of Tracy Policies and Procedures: “The Qualifications Appraisal Board may be composed entirely of City Employees, provided that such persons are neither the appointing authority for the positions being examined, nor are currently the immediate supervisor of a candidate.”

Because one of the Appraisal Board members cancelled, the Assistant City Manager served as one of the three members of the Qualifications Appraisal Board on the day of the test. She did not interview or rate two of the candidates, one of whom was a current Human Resources employee and the other, the person with whom she had previously worked. She did, however, lead the discussion during the debriefing and may or may not have influenced the ratings in favor of the candidate previously known to her.

All three candidates passed the oral interview examination, but on February 12, 2002 the Human Resources Manager, with the approval of, and allegedly under pressure from, the Assistant City Manager, hired the candidate who had previously worked for the Assistant City Manager in another city.

Approximately five months later, in July 2002 the Human Resources Manager recommended extending the probationary period for the new analyst because of her poor performance. Subsequently, the Human Resource Analyst filed a hostile work environment complaint directed against the Human Resources Manager. The Assistant City Manager then hired external investigators on July 22, 2002 to look into the Human Resources Manager’s decision to extend the analyst’s probation and a second investigation regarding the hostile work environment.

The Human Resources Manager recommended the termination of the analyst to the Assistant City Manager in late November of 2002. The analyst submitted a letter of resignation on December 12, 2002 with the effective date of December 31, 2002. The Human Resources Analyst was still on probation at the time of her resignation.

The Assistant City Manager conducted an exit interview with the analyst in late December, in which the analyst stated that the reason for her resignation was to pursue a different line of work and to go to college.

On January 2, 2003, the Assistant City Manager wrote a memorandum to the Human Resources Manager which stated that the analyst “. . . will now be working part-time in the Community Development Department.” This part-time position changed to a permanent position when the former analyst was hired full time in the Community Development

Department in July 2003.

METHOD OF INVESTIGATION:

The Grand Jury conducted interviews with . . .

- Fred Diaz, City Manager
- Julie Yuan-Miu, Assistant City Manager
- Dan Bilbrey, Mayor
- Brent Ives, Council Member
- Suzanne Tucker, Council Member
- Debra Corbett, City Attorney
- Several current and former employees of the City of Tracy Human Resources Department

The Grand Jury also reviewed . . .

- City of Tracy Personnel Rules and Regulations dated November 1997/May 1, 1998
- City of Tracy Administrative Policies and Procedures dated November 1997
- City of Tracy Municipal Codes
- The City of Tracy's hiring process for the positions of Human Resources Analyst and Community Development Analyst for the past five (5) years, including the following documents:
 - Bid Announcements for the above positions
 - Lists of qualified candidates for the above positions
 - Original Oral Board Examination questions for the position of Human Resources Analyst compiled by Pamela Taconis and validated by the Human Resources Manager.
 - Amended Oral Board Examination questions for the position of Human Resources Analyst as amended by Assistant City Manager
 - City of Tracy Appraisal Interview Rating Sheet for Human Resources Analyst for each candidate including their scores
 - Job applications from each candidate for the position of Human Resources Analyst
 - Selection letters to qualified candidates for the above positions
 - Letters to candidates who were not selected

FINDINGS:

The 2004-2005 Civil Grand Jury finds the following:

1. The Assistant City Manager has wielded her authority over the Human Resources Manager in a way that undermined decisions made in her division.
2. The former Human Resources Analyst, whose work in Human Resources was deemed deficient by the Human Resources Manager, resigned knowing that a position would be made available to her in the Community Development Department. Based on documentation and testimony, it appears that this was accomplished with the knowledge and cooperation of the Assistant City Manager.

3. The City Attorney's Office and the City Manager's Office were non-responsive to numerous requests for specific information. Although we made specific requests, they sent reams of unnecessary material.
4. The Grand Jury finds that the Assistant City Manager displayed what appears to be a marked pattern of favoritism & cronyism, a) by changing the Oral Board Examination questions and tailoring them to favor the candidate with whom she had a previous work relationship, and b) she appears to have engineered the transfer of the analyst to the Community Development Department.
5. There were no improper or unfair employment practices exercised against minorities as alleged in the original complaints.
6. The Assistant City Manager used poor judgment in sitting on the Qualifications Appraisal Board of her former subordinate from another city, and participating in the debriefing process.

RECOMMENDATIONS:

The 2004-2005 Civil Grand Jury recommends the following:

1. The Human Resources Division should be made a Department with its own department head, such as in other cities surveyed. The department should be autonomous from the Assistant City Manager and be on the same level as other departments in the city and have equal authority and power.
2. Paragraph 6.8 of the Policy and Procedural manual is ambiguous in stating the "Qualifications Appraisal Board may be composed entirely of City employees, provided that such persons are neither the appointing authority for the positions being examined, nor are currently the immediate supervisors of a candidate." It is recommended that the policy be clarified so the direct supervisor and/or anyone in the direct line of authority would not sit on the qualifications appraisal board in the hiring of future candidates directly under his/her charge.
3. Those in direct line of supervision and/or the hiring process should recuse themselves from any involvement in the testing process or test preparation when an applicant is known to such person. This will eliminate the perception of cronyism and/or favoritism.

RESPONSE REQUIRED:

Pursuant to Section 933.05 of the Penal Code

The City of Tracy shall respond to the Presiding Judge of the San Joaquin Superior Court, in writing and within 90 days of publication of this report, with a response as follows:

As to each finding in the report a response indicating one of the following:

- a. The respondent agrees with the finding.
- b. The respondent disagrees with the finding, with an explanation of the reasons therefore.

As to each recommendation, a response indicating one of the following:

- a. The recommendation has been implemented, with a summary of the action taken.
- b. The recommendation has not yet been implemented, but will be with a time frame for implementation.
- c. The recommendation requires further analysis, with an explanation of the scope of the analysis and a time frame not to exceed (6) six months.
- d. The recommendation will not be implemented, with an explanation therefore.