



*The Oakland Super Heroes Mural can be found at 35th and Market street. Photo by Spencer Whitney*

# Whistleblower Program 2016 Annual Report



CITY OF OAKLAND

OFFICE of the CITY AUDITOR

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## Background

In January 2009, Oakland voters established the City's Whistleblower Program (Whistleblower Program),<sup>1</sup> formerly known as the Fraud, Waste + Abuse Program, as a function of the Office of the City Auditor. The Whistleblower Program receives reports of complaints and allegations from City employees and residents, referred to as cases, on the quality and delivery of services, wasteful practices, misuse of funds, and the improper activities of government officials, employees, and contractors.

The Office of the City Auditor may coordinate each case investigation with other City departments or, if necessary, jurisdictions outside of the City of Oakland. All cases are given thorough consideration and closed only upon the satisfaction of the City Auditor.

A critical component of a whistleblower program includes providing a way to report suspicious activity. According to the Association of Certified Fraud Examiners (ACFE), tips are the most common method for the detection of fraud. ACFE also found that organizations with a hotline have a 47% likelihood of detecting fraud from a tip, compared to 28% in organizations without one.<sup>2</sup>

The City Auditor is committed to promoting the Whistleblower Program to City employees and residents, as Whistleblowers play an important role in keeping government accountable.

## 2016 Whistleblower Program Outreach

The City Auditor conducts fraud awareness training at monthly New Employee Orientations to promote the Whistleblower Program to City employees, who are a valuable source of information for discovering potential fraud. According to the 2016 Report to the Nations on Occupational Fraud and Abuse, tips are, by far, the most common means of detection of fraud or wrong-doing, and employees are the source of almost half of all tips.

Fraud awareness training offers several benefits. Well-trained employees can identify and report suspect activity. This emphasizes the City's commitment to high ethical standards and promotes compliance with regulations and standards. When employees feel

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<sup>1</sup> Whistleblower Protection Act, CA Government Code 53087.6, Whistleblower Protection Ordinance (OMC 2.38)

<sup>2</sup> Association of Certified Fraud Examiners, 2016 Report to the Nations. [www.acfe.com](http://www.acfe.com)

confident their concerns are heard and taken seriously, morale improves and productivity is increased.

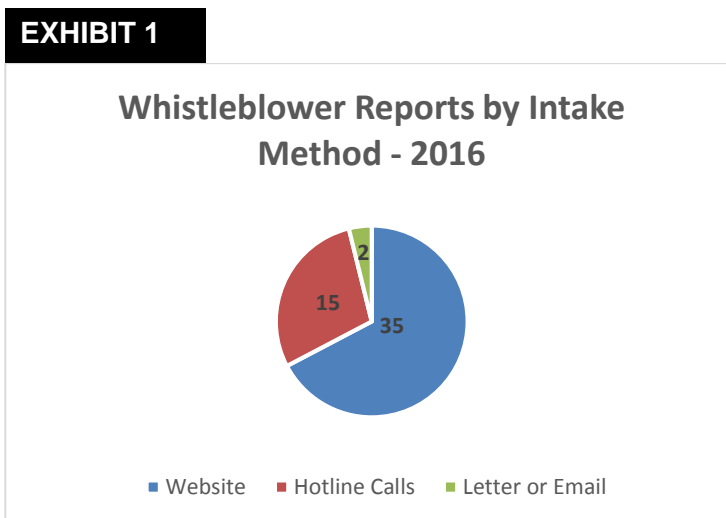
The City Auditor's Office presented a Fraud Awareness Training in 2016 to 409 employees at New Hire Orientation classes and to 38 employees at Supervisory Academies.

The City Auditor's Office also promoted the sponsorship of the International Fraud Awareness Week November 13 - 19, 2016 including daily informational emails to all City of Oakland employees. Its global objective is to minimize the impact of fraud through prevention and detection. As a sponsor of International Fraud Week, the City Auditor's emails included tips, fraud facts, and suggestions for defending against fraud as well as information about the City's Whistleblower Program.

The Whistleblower Program is also promoted through various presentations to City Council, Council Committees and various community groups throughout Oakland.

## Filing a Whistleblower Report

The City's confidential Fraud, Waste and Abuse Report Online Form and toll free Hotline number are accessible on the City Auditor's website. In 2016, almost all reports (50 of 52) were submitted through these methods. Whistleblowers may also choose to meet with the City Auditor or her staff in person, bringing evidence with them to support their case. The City Auditor welcomes other submission options to ensure accessibility. The majority (75 percent) of the whistleblowers in 2016 chose to report anonymously. All cases remain confidential throughout the investigative process, regardless of whether the reporter chooses to remain anonymous.



## Investigation Process

The City Auditor and staff *thoroughly review every report*, oversee all investigations (even when the case is referred to another City department for assistance), and coordinate resources as necessary so each case is resolved timely.

Once a case is opened, auditors send an acknowledgement to website and hotline reporters encouraging them to check back for follow-up questions regarding the investigation. The confidential reporting process precludes the City Auditor's Office from providing the whistleblower with any updates, conclusions or actions taken to resolve the case.

The two factors most impacting the progress of each investigation include (1) the complexity of the case, and (2) the availability of witnesses and evidence.

The City Auditor's Office categorizes cases as follows:

**Substantiated:** the case was determined to have merit when investigated and recommendations for remediation were made to the City Administrator and to the appropriate City department.

**Unsubstantiated:** the case was determined not to have merit when investigated and was closed.

**Insufficient Information:** the whistleblower did not provide sufficient information or follow-up information to questions to proceed with the investigation.

**Frivolous:** City Auditor's Office preliminary fact finding indicated the report was without merit, or not serious enough to use City resources to investigate.

**Referred to Another Department or Jurisdiction:** the case was referred to other City departments, requesting assistance with the investigation, or to jurisdictions outside the City of Oakland.

Exhibit 2 shows the number of cases referred to other departments or agencies in 2016.

<b>EXHIBIT 2</b>	
<b>Department</b>	<b>Total</b>
Oakland Police Department	6
Department of Public Works	2
Planning & Building	2
Finance Department	1
City Attorney's Office	1
City Administrator's Office	1
<b>Total Referred Cases</b>	<b>13</b>

## Reports Received in 2016

The City Auditor's Office received 52 reports through the Whistleblower Program in 2016, and between 52 and 79 reports annually since 2011. Exhibit 3 shows the number of cases by type of reported violation.

<b>EXHIBIT 3</b>	
<b>Report Type</b>	<b>Total</b>
Misuse of City Assets, Theft, Embezzlement	13
Violation of City Policies	12
Time Abuse	7
Hiring Irregularities	5
Confidentiality and Data Privacy	3
Contract Compliance	3
Retaliation	2
Nepotism	1
Inquiry	1
Other	5
<b>Total Reports</b>	<b>52</b>

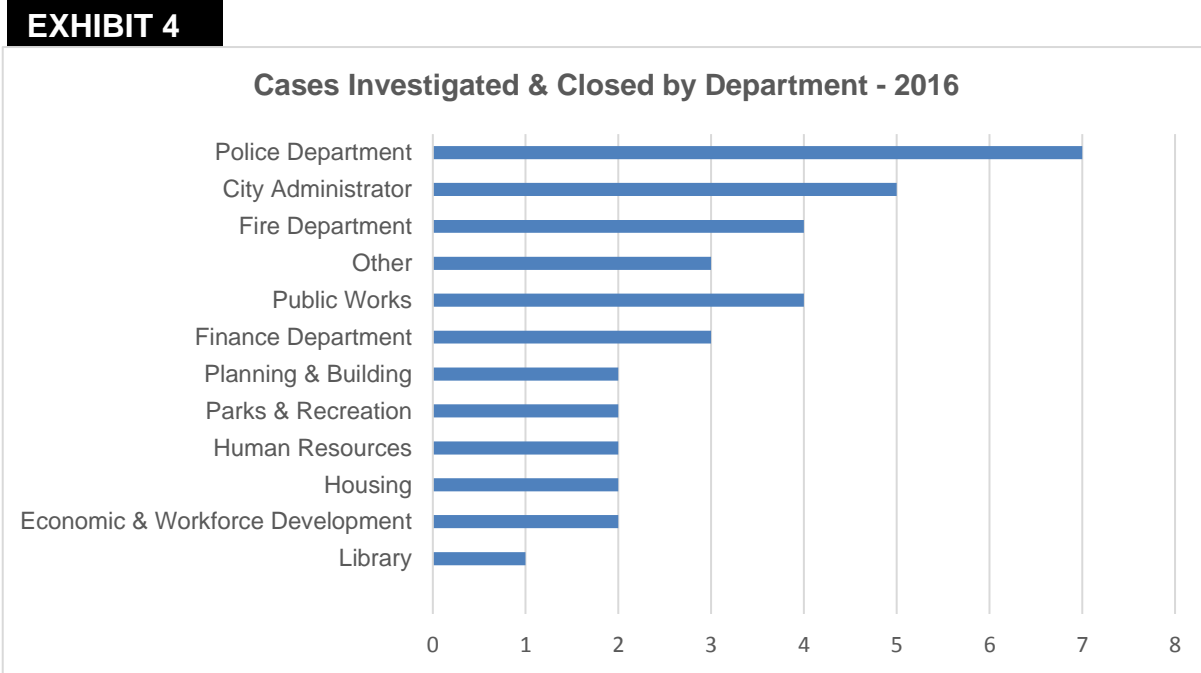
## 2016 Case Highlights

The following are highlights of the Whistleblower program in 2016. The nature of these cases demonstrates the value of the City's Whistleblower Program:

- *Conflict of Interest* – a City employee used his position to influence a property owner to gift real estate property to him. The case was referred to the City Attorney for resolution. The employee terminated his employment with the City.
- *Contractor Conflict of Interest* – a management employee involved in a large RFP subsequently went to work for the winning vendor and may have attempted to influence the award process. The case was referred to the City Administrator for resolution and to incorporate controls to mitigate these risks.
- *Cash Handling Controls* – a critical lack of controls over cash handling that may have resulted in embezzlement was reported. The City Auditor elevated this to a full audit in 2017. Stronger controls over cash handling have been put into place.
- *Time Abuse* – A City employee conducts his outside business while in full employment by the City. He is compensated both by the City and his business. Upon investigation, the case was substantiated and referred to the City Administrator, to the City Attorney and to Human Resources. The employee was ultimately terminated from City employment.
- *City Program Bias* – Rent Adjustment Board and management alleged to favor tenants in disputes and education outreach, rather than remain impartial. Specifically, the Board was not administering the program as required; Board meetings were canceled, delaying the adjudication process; grievances are not handled and processed according to required protocol; and, appeals are not handled as required. The City Auditor referred this to a full audit in 2016.

## Closed Cases as of December 31, 2016

We investigated and closed 37 cases in the 12-month period ending December 31, 2016, which included cases in progress from the prior year. Exhibit 4 summarizes the number of cases investigated and closed in 2016:



## Open Cases as of December 31, 2016

At year end, the City Auditor has 37 ongoing cases. Exhibit 5 summarizes the open cases, as of year-end 2016, by type of reported violation.

**EXHIBIT 5**

Case Type	Total
Violation of City Policies	10
Misuse of City Assets, Theft, Embezzlement	10
Time Abuse	8
Contract Compliance	3
Hiring Irregularities	3
Retaliation	2
Other	1
<b>Open Cases</b>	<b>37</b>



## Reports of Retaliation

There were only a few reports of retaliation in 2016. Retaliation against whistleblowers is illegal and is defined as any adverse employment act, including discharge, discipline or demotion. It is further defined by Oakland Ordinance 2.38.040, as follows:

*No officer or employee of the City of Oakland shall use or threaten to use any official authority or influence to restrain or prevent any other person who is acting in good faith and upon reasonable belief as a whistleblower.*

*No officer or employee of the City of Oakland shall use or threaten to use any official authority or influence to cause any **adverse employment action** as a reprisal against a City officer or employee who acts as a whistleblower in good faith and with reasonable belief that improper conduct has occurred. [emphasis added]*

An **adverse employment action** for purposes of a retaliation claim includes firing and demoting; a lateral transfer; an unfavorable reference (that had no effect on a prospective employer's hiring decision); and the imposition of a more burdensome work schedule.

To establish retaliation, the whistleblower must demonstrate by a preponderance of evidence, the complainant's engagement in a protected activity was a substantial motivating factor for an adverse employment action.

## Conclusion

The Whistleblower Program continues to be an asset to the City of Oakland, encouraging ethical behavior and accountability and helping to create community trust in our government and its officials. Additional program benefits include:

- **Providing an anonymous means for employees and the public to submit reports**, which protects whistleblowers' confidentiality and encourages individuals to report improper activities.
- **Deferring future fraudulent behavior** by increasing the perception by potential perpetrators that the acts they have engaged in or are contemplating will be detected and punished.
- **Providing data that can be used to identify systemic problems** in a department or program.

# Stand up for Our City

Whistleblower Program **Hotline** (888) 329-6390

[www.OaklandAuditor.com](http://www.OaklandAuditor.com)

For questions regarding this report, please contact City Auditor, Brenda Roberts, at [cityauditor@oaklandnet.com](mailto:cityauditor@oaklandnet.com) or (510) 238-3378.



*If you would like to learn more about the Whistleblower Program, please visit our website at <http://www.oaklandauditor.com/> or contact our office directly at [cityauditor@oaklandnet.com](mailto:cityauditor@oaklandnet.com).*