



# Whistleblower Program 2017 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> 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.

## 2017 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.

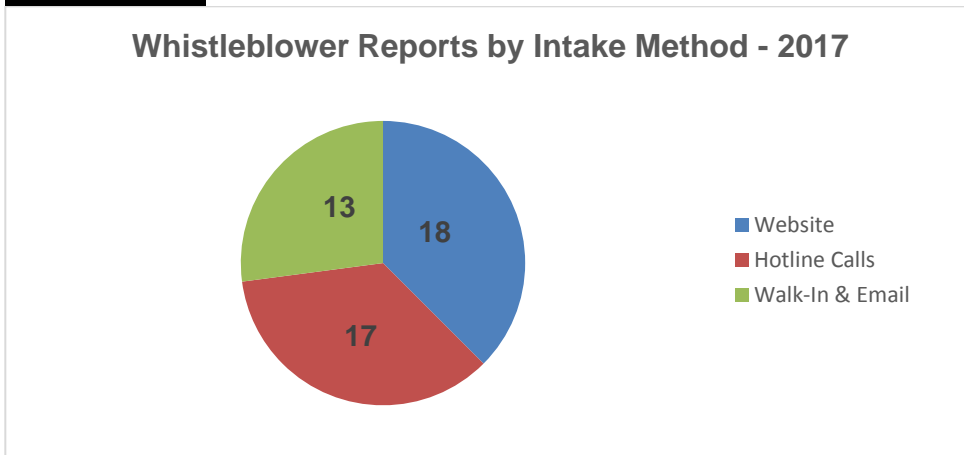
The City Auditor's Office presented 14 Fraud Awareness Trainings in 2017 to employees at New Hire Orientation and the Supervisory Academies.

The City Auditor also promotes the Whistleblower Program 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 2017, most reports (35 of 48) 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. More than half (60 percent) of the whistleblowers in 2017 chose to report anonymously. All cases remain confidential throughout the investigative process, regardless of whether the reporter chooses to remain anonymous.

### EXHIBIT 1



## 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 2017.

EXHIBIT 2	
Department	Total
Police/Fire Department	4
Public Works and Planning & Building	3
Other City Departments	3
City Attorney's Office	1
Equal Employment Opportunity Commission	1
Federal Agency	1
<b>Total Referred Cases</b>	<b>13</b>

## Reports Received in 2017

The City Auditor’s Office received 48 reports through the Whistleblower Program in 2017, and between 48 and 79 reports annually since 2011. Exhibit 3 shows the number of cases by type of reported violation.

EXHIBIT 3	
Report Type	Total
Misuse of City Assets, Theft, Embezzlement	16
Violation of City Policies	13
Time Abuse	4
Hiring Irregularities	4
Inquiries and Suggestions	3
Environmental Protection, Health or Safety Law Violation	3
Retaliation	3
Other	2
<b>Total Reports</b>	<b>48</b>

### 2017 Most Common Cases

The most common Whistleblower case types in 2017 are described here and were either substantiated, in full or in part, and resulted in a department taking some corrective or preventive action. The nature of these cases demonstrates the value of the City’s Whistleblower Program.

- **Misuse of City Assets**, such as vehicles, computers, cell phones and other property as defined in *Administrative Instruction 4402 Use of City Vehicles* and *Administrative Instruction 977 Electronic Job Related Tools*. Use of City of Oakland assets for personal use is contrary to City policy and creates an impression that City employees, as public servants, are not using taxpayer provided resources as intended.
- **Time Abuse**, including falsifying time cards, abusing overtime and improper receipt of pay premiums. Salary and related expenditures are the City’s largest expense.
- **Nepotism**, the hiring or special treatment of family members and is defined in *Administrative Instruction 72, as an anti-fraternization policy*. Familial relationships between supervisors and their subordinates may lead to actual or perceived unfairness, conflict of interest, partiality or favoritism in the workplace.

## Closed Cases as of December 31, 2017

We investigated and closed 64 cases in the 12-month period ending December 31, 2017, which included cases in progress from the prior year. Exhibit 4 summarizes the number of cases investigated and closed in 2017:

### Exhibit 4



## Open Cases as of December 31, 2017

The office of the City Auditor is currently investigating 21 cases. Exhibit 5 summarizes the open cases, as of year-end 2017, by type of reported violation.

EXHIBIT 5	
Case Type	Total
Time Abuse	7
Violation of City Policies	4
Misuse of City Assets, Theft, Embezzlement	3
Retaliation	3
Conflict of Interest	2
Other	2
<b>Open Cases</b>	<b>21</b>

## Reports of Retaliation

There were only a few reports of retaliation in 2017. 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.

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).*





## Stand up for Our City

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

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