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Conducting and Managing Internal Investigations

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When to Conduct an Internal Investigation

When to Conduct an Internal Investigation

- **Setting the Stage:**
 - On a Friday at 4:02 pm, as you are getting on the elevator, you receive the following in close succession:
 - A Google Alert hitting on the name of your agency;
 - An email from a member of your internal staff forwarding a Texas Tribune article with the note "Did you see this?"; and
 - A text message from your agency's Executive Director requesting that you "Call ASAP."
 - The title of the Texas Tribune article is "*State Agency Awards Lucrative Vendor Contract After Private Company's 'Donation' to Executive Director's Non-Profit*" citing whistleblower allegations

When to Conduct an Internal Investigation

Do you think you need to conduct an internal investigation?

When to Conduct an Internal Investigation

Yes, you should!

When to Conduct an Internal Investigation

- **Examples of other events that may warrant an internal investigation**
 - Fraud, waste, abuse, theft
 - Employee claims of harassment or discrimination
 - Data loss or breach
 - Disclosure of confidential information
 - Public distrust of a process or outcome
 - How were you not prepared for a winter storm
 - Why do you not fire people for sexual misconduct
 - Policies or practices that violate civil rights
 - Discriminatory practices
 - Chilling free speech
 - Restricting freedom of religion
 - Misusing public funds
 - Unsafe or unfair practices

When to Conduct an Internal Investigation

- **Reasons to conduct an internal investigation**
 - Determine whether there is a violation of law or policy
 - *Existence of a procurement violation*
 - Resolve a claim or controversy
 - *Resolution of Texas Tribune and whistleblower allegations*
 - Identify a bad actor
 - *Evaluate potential wrongdoing by ED, Lead Procurement Officer, or others*
 - Design an effective corrective action
 - *Potential contract cancellation and new procurement*
 - Prepare for an outside investigation
 - *Audit by State Auditor's Office*
 - Record facts for posterity
 - *Validate contract award or cancellation*
 - Achieve accountability
 - *Public reputation as good steward of public funds*
 - Comply with a law or policy
 - *Compliance with procurement and conflict of interest policies*

When to Conduct an Internal Investigation

- **Reasons weighing against an internal investigation**
 - Already under investigation by another authority
 - Timing concerns
 - Mitigate against an unfavorable factual record
 - Embarrass or harass
 - Not needed

Planning the Internal Investigation

Planning the Internal Investigation

- **Who will be on your team investigating the potential procurement violation?**
- **Hint:** *Not the Executive Director or the Lead Procurement Officer*
 - Designate a leader to manage the process
 - Pick appropriate support – lawyers, accountants, auditors, law enforcement, IT, HR
 - Have a shared understanding of the why while keeping an open mind

Planning the Internal Investigation

- **Create an investigation plan**
 - Gather and understand the known facts at the outset
 - Did agency receive any direct whistleblower complaints?
 - Did vendor actually make a donation to the non-profit? If so, when?
 - What type of procurement is at issue (best value, single source)?
 - What is the dollar value of the ultimate contract award?
 - How was the contract awarded to the chosen vendor and when?
 - Identify and prioritize people to interview
 - Executive Director, Lead Procurement Officer, others
 - Identify sources of data
 - Prepare interview questions
 - Develop a plan to record the facts
 - Start a timeline
- **Evaluate whether any immediate remedial steps are appropriate**
 - Administrative leave or contract suspension?

Planning the Internal Investigation

- **Using data to identify people for interview and establish facts**
 - Email correspondence
 - Telephone and text records
 - Door access
 - Network login
 - Time sheets
 - Calendars
- **Purpose:** evaluate initial data set, if any, reflecting existence of communications or meetings between Executive Director, procurement officer, and/or vendor during contract bidding process
- **How does the gathered data impact the procurement investigation plan?**

Conducting the Investigation

Conducting the Investigation

- **Interviews**
 - Prepare opening comments
 - Be clear about roles
 - Explain expectations of honesty and cooperation
 - Be neutral, fair, and thorough
 - Include a note taker
 - Close with instructions about confidentiality

Conducting the Investigation

- **Post Interview Practices**
 - Compare notes and impressions
 - Identify connections, inconsistencies, and trends
 - Assess the investigation plan

Conducting the Investigation

- **Maintaining records**
 - Create forms for note taking
 - Write interview summaries of impressions
 - Be thoughtful about audio or video recording
 - Have a records retention plan

Conducting the Investigation

- **Using data to prove or disprove an issue**
 - Using samples of records to test a hypothesis
 - Using data to demonstrate bookends of compliance
 - Using data to evaluate impact or harm

Conducting the Investigation

- **What does the data show in connection with the pending procurement investigation?**
- **How do the interview learnings impact the trajectory of the investigation?**

Closing an Investigation

Closing an Investigation

- **Develop Findings**
 - Reasoned conclusions
 - Relevant unknowns
 - Open issues for future consideration
 - Identify process and policy weaknesses and strengths
 - Lessons learned
 - Less on point but still helpful observations
 - Culture observations
 - Employee needs or complaints
 - Considerations to help in future investigations

Closing an Investigation

- **Write a Report**
 - Executive summary
 - Background
 - Description of process and methodology
 - Key findings
 - Factual record
 - Key documents
 - Timeline

Closing an Investigation

- **Manage Confidentiality and Disclosure**
 - Know in advance what will be a public record
 - Remove unnecessary confidential information (HIPPA, banking information, personal identifying information)
 - Follow your records retention plan
 - Create an executive summary that is acceptable for disclosure
 - Have a communications plan

Closing an Investigation

How was the procurement investigation ultimately resolved?

Q&A

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New Orleans | New York | Newark | Providence | San Francisco | Stamford | Washington DC | West Palm Beach

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