



October 22, 2014

Final Investigative Report Concerning Ombudsman Complaint OM20140345

COMPLAINT

The general manager of a local tow company contacted the Municipal Ombudsman's Office alleging that his company was not allowed to sign up to participate in the Anchorage Police Department's (APD) Rotational Tow Program, because the program is currently limited to only seven tow companies. The complainant noted that the program document does not state that there is a limit on the number of tow companies that can participate in the program. The complainant believes that it is not fair to "lock" his company out of the program.

FINDINGS

This complaint against the Municipality of Anchorage, Police Department is **JUSTIFIED**.

ANALYSIS AND CONCLUSIONS

The general manager of a local tow company contacted the Municipal Ombudsman's Office on April 23, 2014, regarding the Anchorage Police Department's Rotational Tow Program (program). The complainant alleged that he had attempted to sign his company up to participate in the program, but was told that the program is currently limited to seven companies, and that "no additional companies are needed at this time". The complainant noted that nowhere in the program document, "Municipality of Anchorage APD Rotational Town Program" does it state that the number of participants is limited to only seven tow companies. The complainant believes that it is unfair to "lock" his company, and other companies, out of the program, while "locking in" current participants.

The Ombudsman contacted the APD Impound/Fleet Manager (Manager) to obtain a copy of the program document. The Ombudsman's review of the document revealed that the document does not specifically reference limiting the number of participating tow companies. After reviewing the document, the Ombudsman contacted the Manager regarding the complainant's allegations. The Manager confirmed that currently only seven tow companies are participating in the Rotational Tow Program, and stated that APD does not need any additional participants at this time. The Manager also noted that the first paragraph of the program document states that "The Program is voluntary and is based on the needs of the APD." She reiterated that APD does not currently need any additional program participants.

The Manager explained that when the program was implemented on November 1, 2000, there was no limit on the number of participants; if a company was properly licensed, had the necessary equipment, signed the program agreement, and paid the annual fee, they were enrolled in the program. As long as participants followed the program rules, kept their licenses current, applied each year, and paid the enrollment fee, they could continue to participate in the program.

Initially twelve companies signed up to participate in the program. Over the years, through attrition, the number of participants dropped to seven, and the Manager decided, based on declining needs, to limit the number of participants. The Manager noted that the number of rotational impounds had dropped considerably over the years, from an average of 2,033 impounds per year in the first three years of the program, to 1038 impounds in 2013. The Manager believes that if the number of participants is not limited, as impounds decline, it will be more difficult for APD to get tow companies to sign up to participate in the program.

Year	Rotation Impounds
2001	1985
2002	2230
2003	2035
2004	1515
2005	1495
2006	1597
2007	1661
2008	1383
2009	1195
2010	1094
2011	1052
2012	1174
2013	1038

The Rotational Tow Program was implemented to address the inability of the contracted tow company at the time to handle the large volume of impound calls from APD. Also, having multiple companies committed to responding to impounds within a specific timeframe gives APD access to a large number of tow trucks on a moment's notice, in case of a significant incident involving multiple vehicles. Tow companies who sign up to participate in the program are called by APD on a rotational basis. If a company is called and is unable to respond, they lose their place in the rotation and are dropped to the bottom of the list. Initially there was not a fee to enroll in the program; later a \$500.00 participation fee was added to help cover the costs of administering the program.

For citizens the program offers the benefit of rates that are capped significantly below the rates charged by some tow companies on the open market. The rate structure is part of the program agreement that the tow company signs. Overall the Rotational Tow Program is beneficial to the APD and the public. As originally structured, the program allowed any qualified tow company to sign up to participate in the program. The program is structured such that it is not covered by Anchorage's Title 7, Purchasing and Contracts and Professional Services. The Purchasing Department has no involvement in oversight of the program. The tow companies who are part of the program do not provide services to the Municipality, but rather the public; as part of the program, they are placed in the rotation of calls for service (towing), and the Municipality does not pay them for their services, the vehicle owners do.

When inquiring into this complaint, the Ombudsman considered not only what is legal, but what is fair. Is it fair to essentially lock some companies into a Municipal program that guarantees that they will receive calls for towing services from APD, to the tune of hundreds of calls a year, while essentially

locking other qualified companies out of the program? The Ombudsman believes that local government has an obligation to not only follow the law, and rules and regulations, and codes, but to also to strive to be fair and equitable. Sometimes, it is difficult to balance needs and process with fairness.

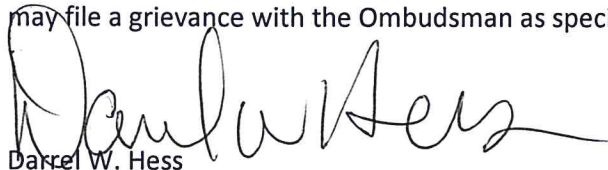
While the Rotational Tow Program provides benefits to the public and to the Municipality, the Ombudsman believes that creating two classes of tow companies, the "in" and the "out", is not fair and equitable. The Ombudsman also believes that there are reasonable and simple methods of making the program fair and equitable. One way is to open the program to any qualified tow company that would like to participate; let the market sort out the need versus the number of participants. Another possibility is to set up a simple bid process through the Purchasing Department. Or, the APD could annually determine the number of tow companies that are needed for the program for the following year, accept applications from all qualified tow companies who wish to participate, and draw names out of a hat.

Because the APD Rotational Tow Program guarantees participating companies that they will be called out by APD hundreds of times a year, and because the current structure of the program essentially locks some companies into the program, while locking other companies out, the Ombudsman finds the structure of the program to be inherently unfair and this complaint to be JUSTIFIED. A copy of the preliminary report was sent to the department on September 12, 2014, and comments were received on October 21, 2014. **Based on the investigation of this case, the Municipal Ombudsman recommends the following:**

1) that the structure of the APD Rotational Tow Program be revised to be more fair and equitable, by no longer locking tow companies in or out of the program There are multiple options for accomplishing this; the decision on which option to use is up to APD. *APD concurs that the program should be revised to be more fair and equitable. (see attached response)*

Based on this finding, and this recommendation, this case is closed.

If you object to the Ombudsman's decision to decline or discontinue this investigation or review, you may file a grievance with the Ombudsman as specified in A.M.C.R. 2.60.006.



Darrel W. Hess
Municipal Ombudsman

October 21, 2014

Response to Preliminary Report from the Ombudsman's Office- File OM20140345

Our goal with the APD Rotation is to provide a high level of service with timely responses and safe tow contractors. We continue to maintain transparency with our Guidelines and always welcome feedback from the community and other Municipal Departments.

The Municipal Clerk's office is currently working on a proposed re-write of some of the Municipal ordinances regarding impounds. Those changes are expected to be accomplished prior to the 2015 open enrollment for those tow companies wishing to participate in the rotational program.

When the ordinance changes are made, APD will make necessary adjustments to the rotational program to ensure it is fair and equitable to all tow companies wishing to participate.

We agree that the APD Rotation Guidelines do not address adding, deleting or maximum number of companies allowed. The Guidelines also do not address performance measures or open enrollment. We will be adding a section within the Agreement Guidelines to address such concerns and will clarify any misunderstandings that may exist. These changes will appear in the 2015 APD Rotation Guidelines and we welcome contractors to sign up for the APD Rotation during open enrollment which is January 1st through March 1st.

According to our in-house data it is possible, by year end, that we will have an all time low of rotational tows, reporting under 1000 tows.

We appreciate the opportunity to comment on the preliminary report.