



Final Investigative Report Concerning Ombudsman Complaint 2024-0162

COMPLAINT

Multiple current and former Municipality of Anchorage (MOA) employees contacted the Ombudsman, alleging that the MOA Human Resources Department (HR), Labor Relations (LR) had failed to investigate the complaints that the employees had filed with HR/LR regarding the alleged inappropriate behavior of an MOA department director, including distribution of penis shaped cookies at City Hall.

FINDINGS

The Ombudsman makes a written finding, based on the evidence obtained during an investigation, that a complaint or allegation is:

1. Justified, if the ombudsman determines or believes the complainant's criticism is valid;
2. Partially justified, if the ombudsman determines or believes that the complaint is justified and action or inaction by the complainant affected the outcome; or constraints of law, policy or procedure limited agency response; or only a portion of the complainant's criticism is valid;
3. Not supported, if the ombudsman determines or believes the complainant's criticism is not valid; or
4. Indeterminate, if investigation does not provide sufficient evidence for the ombudsman to determine conclusively whether the complainant's criticism is valid or not valid.

Based on his investigation and the preponderance of the available evidence, the Ombudsman has determined that the allegations that the Municipality of Anchorage, Human Resources Department, Labor Relations failed to investigate employee complaints alleging inappropriate behavior by a municipal department director are NOT SUPPORTED.

BACKGROUND AND ANALYSIS

Multiple current and former MOA employees contacted the Ombudsman alleging inappropriate behavior by an MOA department director. The individuals alleged that the director had "yelled, cursed, and screamed at them" and stated that the director's behavior was "aggressive, intimidating, and disruptive". The employees alleged that the director had bullied and harassed them, including distributing penis shaped cookies in City Hall. They alleged that the director had created a hostile and toxic work environment. The Ombudsman ascertained that the employees

had not filed complaints with the MOA Human Resources Department and referred them to HR to file complaints. Some of the employees filed complaints with HR, while others did not, stating to the Ombudsman that they thought it would be a waste of time, as it was rumored that the mayor had a “no fire list” and that the director was on the list. Multiple employees who filed with HR/LR later contacted the Ombudsman, alleging that HR/LR had not taken their complaints seriously and had not investigated them. The Ombudsman believes that these allegations are an appropriate subject for review, and on his own motion, as allowed by AMC 2.60.110.B, opened an investigation of the allegations.

MOA Policy & Procedure 40 – 37, Bullying in the Workplace states that “It is the policy of the Municipality to provide a harmonious work environment free from workplace bullying. All employees have the right to be treated with dignity and respect at work.” P&P 40 - 37 defines workplace bullying as “a pattern of repeated behavior that a reasonable person would find, hostile, offensive, and unrelated to the Municipality’s operational interests. Workplace bullying behavior may take many forms, including physical, verbal, or written acts. A single, physical, verbal, or written act generally will not constitute workplace bullying unless especially severe and egregious.”

MOA Policy & Procedure 40-38, Unlawful Discrimination and Harassment, states that “It is the policy of the Municipality to provide a harmonious work environment free from discrimination or harassment”. Section 6 of P&P 40 – 38 states that it is the responsibility of agency heads to 1) Ensure that all employees are familiar with this policy and 2) Report allegations of discrimination or harassment to the Employee Relations Department. Section 8 of P&P 40 – 38 states that “Employees have the option to file a complaint with a Compliance Agency. Contact the Compliance Agencies for information about Complaint procedures and filing deadlines.” When the Ombudsman and Associate Ombudsman interviewed the director as part of another Ombudsman investigation, the director had stated that they were unaware of P&P 40 – 37 and P&P 40-38, and they volunteered that they had never harassed any municipal employees. Unfortunately, P&P 40-38 only prohibits discrimination or harassment based on the victim being a member of a protected class – the policy does not deal with general workplace harassment. While P&P 40-38 only addresses discrimination and harassment based on protected classes, it is the policy of the MOA to provide a harmonious, respectful, and harassment free work environment.

In his July 13, 2023 EEO/AA Policy Statement, Mayor Bronson noted that “Inappropriate or bullying behavior that may not rise to the level of illegality is equally unacceptable and will not be tolerated. I am personally committed to ensuring a workplace based on fairness, dignity and respect for all MOA employees and customers. I ask for all your support as we continually work together to make the MOA an environment free of discrimination and harassment for all employees and members of the community we serve, where everyone may feel safe, secure, and strong”. This EEO/AA Policy Statement was emailed to all MOA Directors on January 2, 2024. The mayor’s EEO/AA Policy Statement sets a high bar for the MOA and confirms the MOA’s commitment to a workplace based on “fairness, dignity and respect”. Unfortunately, with how the MOA’s employee disciplinary process is structured, the MOA has not always

managed to meet the standards articulated in the Mayor’s EEO/AA Policy Statement; MOA employees and the community deserve better.

Any allegations of harassment or bullying in any MOA workspace must be swiftly responded to and investigated. If an allegation is substantiated, appropriate disciplinary action needs to be taken. Prompt, professional, impartial investigations and swift, appropriate disciplinary action are the cornerstones of any effective zero-tolerance harassment and anti-bullying policies, regardless of who the transgressor might be. LR staff, when investigating employee complaints filed with them, should conduct their investigations using industry best practices. LR staff should be interviewing complainants and those accused of inappropriate behavior, and any potential witnesses. LR staff should always provide complainants with complaint closure letters that 1) inform the complainant that their complaint has been investigated and closed, 2) whether their complaint was substantiated or not substantiated, 3) if recommendations were made, and 4) if any action was taken.

AMC 3.30.092 – Forms of discipline states that “Progressive discipline shall be followed when practicable. When the severity of the inappropriate conduct warrants and it is in the best interest of the municipality, the director may permit any of the following forms of discipline to be imposed at any time so long as such discipline is supported by just cause:

- A. Oral reprimand.
- B. Written reprimand.
- C. Suspension without pay.
- D. Demotion.
- E. Dismissal.”

The unfortunate reality is that progressive discipline for the same, repeated infractions does not specifically apply to MOA executives, although nothing prevents the MOA from applying progressive discipline to executives. Historically, substantiated employee complaints involving MOA executives have usually resulted in termination, so progressive discipline has not been part of the equation for disciplining MOA executives. AMC 3.30.176.A – Dismissal, demotion, suspension, reclassification and reassignment; notice of action to the assembly, states that “Employees occupying an executive position are appointed by, and serve at the pleasure of the responsible official for the appointing authority. As such, the responsible official may dismiss, demote or suspend any employee occupying an executive position for any reason, or no reason, without right of grievance or appeal”.

During his investigation, the Ombudsman met with several current and former MOA employees to discuss their allegations of non-investigation of their complaints by LR. The Ombudsman and Associate Ombudsman met with the HR Director multiple times to review the HR/LR files regarding the employee complaints filed regarding the alleged inappropriate behavior of the director. The files contained memorandums, emails, and written investigator notes. The Ombudsman’s Office also reviewed multiple other documents related to whether HR investigated the employee complaints regarding the alleged behavior of the director. The documents reviewed by the Ombudsman’s Office and their interviews with current and former

MOA employees, demonstrated that LR had taken the employee complaints seriously and that they had investigated all the employee complaints that had been filed with them regarding the alleged inappropriate behavior of the director, including the alleged distribution of penis shaped cookies at City Hall.

Based on their review of the available evidence and the preponderance of the evidence, the Ombudsman's Office determined that:

1. HR/LR had investigated all the employee complaints filed with them alleging inappropriate behavior by the director.
2. HR/LR had substantiated all the complaints that employees had filed with HR/LR regarding the alleged inappropriate behavior of the director.
3. HR/LR had made recommendations for each substantiated complaint.
4. Action was taken regarding each of the substantiated complaints.

The reality is that the MOA's employee disciplinary process leaves it up to supervisors/directors/agency heads to implement any recommended disciplinary action. Supervisors/directors/agency heads may reduce the recommended disciplinary action, or choose to not take any disciplinary action. Their decisions regarding disciplinary action could be influenced by their personal or political relationship with the offending employee. How the process is structured, and functions often leads MOA employees and members of the public to believe that HR/LR is not following through with employee complaints. The HR/LR investigative process is like an internal combustion engine – when an engine is firing on all cylinders, it will operate efficiently and effectively; if one or more cylinders misfires or doesn't fire, the engine will operate inefficiently and ineffectively, or may not work at all. For the MOA's HR/LR investigative and disciplinary process to operate efficiently and effectively, it must be firing on all cylinders – everyone must do their part, including supervisory/directors/agency heads. Otherwise, the investigative process will be inefficient and ineffective, and inappropriate behavior will not be dealt with appropriately, which could lead to continued harm to MOA employees and generate legal and financial liability for the MOA and taxpayers. Sadly, the lack of appropriate disciplinary action can give transgressors a sense of security and a belief that the rules don't apply to them, which only emboldens and enables them to continue their inappropriate behavior.

CONCLUSIONS

Based on their investigation and the available evidence, the Ombudsman's Office determined that HR/LR had taken seriously and investigated all the employee complaints that were filed with them regarding the director's alleged inappropriate behavior. LR investigated the allegations, substantiated the allegations, made recommendations, and action was taken for all the substantiated employee complaints. Unfortunately, MOA employees and members of the public have a perception that HR/LR has not been responsive to employee complaints that have been filed with them regarding the director's alleged inappropriate behavior. Based on his

investigation, the Ombudsman determined that this perception is incorrect. HR/LR has been investigating the complaints and has been making recommendations – it is up to the supervisor/director/agency head of the employee against whom a substantiated complaint is filed to accept and implement HR/LR’s disciplinary recommendations.

The Ombudsman believes that it is important that HR/LR inform employee complainants in writing when the investigation of their complaints is concluded, if their complaints were substantiated or unsubstantiated, if recommendations were made to the supervisor/director/agency head, and if any action was taken. HR/LR cannot inform complainants regarding what specific recommendations were made or what specific action was taken – they can only inform them that recommendations were made, and that action was taken. The employees who filed complaints with HR/LR regarding the alleged inappropriate behavior of the director were not provided with adequate information regarding how HR/LR had processed and investigated their complaints, which led them to believe that HR/LR did not investigate their complaints.

If MOA employee complainants are not provided with this information, they will not have confidence that complaints they file with HR will be investigated, and consequently, MOA employees may not contact HR with their concerns regarding perceived inappropriate workplace behavior by other MOA employees. An inaccurate perception of how HR is responding to employee complaints can lead MOA employees to believe that they have no possible avenue to have their concerns addressed. It is important that MOA employees contact HR and file complaints, so that their concerns can be investigated, documented, and hopefully dealt with in a manner that will swiftly terminate any substantiated inappropriate MOA workplace behavior. MOA employees may file a complaint with HR/LR on the MOA intranet at https://moaonlineforms.formstack.com/forms/employee_complaint_form, or may contact any HR/LR employee by phone, email, or Teams with any questions regarding filing a complaint, or to obtain more information regarding how the complaint process works. There is a link to an HR/LR employee contact list on HR’s intranet page – employees need to click on the “HR Department Assignments” link. Employees may also visit HR/LR in-person in Suite 610 of City Hall.

Some employee concerns, including those involving the director, might be a “Matter of Public Concern”, as defined in AMC 3.75.020 – Definitions, or as outlined in Policy & Procedure 40-14, “Reporting Matters Of Public Concerns”. MOA employees should familiarize themselves with P&P 40 – 14, to understand their rights and responsibilities under P&P 40 – 14. P&P 40 – 14 defines “matter of public concern” to include “clear abuse of authority”, and Section 7.a outlines how MOA employees may report a matter of public concern. Section 7.b outlines how MOA officials, officers and agencies should respond to MOA employee reports of matters of public concern.

Based on the investigation of this case, the Municipal Ombudsman recommends:

1. That HR/LR conduct investigations using industry best practices including interviewing complainants, potential witnesses, and those accused of inappropriate behavior and providing complainants with complaint closure letters that 1) inform the complainant that their complaint has been investigated and closed, 2) whether their complaint was substantiated or not substantiated, 3) if recommendations were made, and 4) if any action was taken. ***The Administration accepts this recommendation.***
2. That Human Resources/Labor Relations, when an employee complaint is closed, provide employee complainants with information regarding compliance agencies, including informing them that the compliance agencies have deadlines for filing complaints. While not all employee complaints might fall under the jurisdiction of a compliance agency, employees should be provided with information regarding compliance agencies so that they can make an informed decision regarding whether to contact a compliance agency. HR/LR could develop a one-page informational flyer that could be included with complaint closure letters. ***Human Resources will notice a complainant of their complaint handling options with fair employment practice agencies when the allegation directly or indirectly could be covered by those agencies. – The Ombudsman concurs that this option makes more sense than the Ombudsman original recommendation.***
3. That the Human Resources Department provide information to all municipal employees at least quarterly regarding the Municipality’s harassment and anti-bullying policies, including providing a list of compliance agencies that may be able to assist employees with their concerns and complaints, including informing MOA employees that compliance agencies have deadlines for filing complaints. ***The Administration concurs that it is essential that employees are informed of their rights. OEO and HR will continue to work together on this effort.***
4. That information regarding filing complaints, with a link to Labor Relations’ intranet page, be placed on the front page of the Human Resources intranet page. The Labor Relations intranet page should prominently display information on how employees may file complaints and information regarding compliance agencies. Links to Labor Relations’ online complaint form and a link to the “HR Department Assignments” document should be prominently displayed on Labor Relations’ intranet page. ***The Administration accepts this recommendation.***
5. That a link to MOA Policy & Procedure 40 – 14, 40 – 37, and 40 – 38 be placed on Labor Relations’ intranet page that contains information on filing MOA employee complaints. ***The Administration accepts this recommendation.***

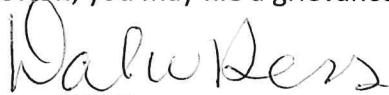
Based on these findings and these recommendations, this case is closed.

A copy of the preliminary investigative report was provided to the HR Director, Municipal Manager, and Municipal Attorney on Thursday, February 15th. The Ombudsman requested that comments regarding the report and responses to recommendations be submitted by close of business on Thursday, February 22nd. An extension was requested, and responses and comments were received from the Administration on Thursday, February 29th. The responses to

the Ombudsman's recommendations have been incorporated into this report, and the comments have been appended to the report.

The Ombudsman would like to point out that the focus of this investigation was whether HR/LR investigated the employee complaints filed with them regarding the director. The Ombudsman offers no opinion regarding the validity of the allegations involving the director and has intentionally not mentioned the department that the director oversees and has used gender neutral terms when referring to the director.

If you object to the Ombudsman's decision to decline, discontinue, or close this investigation or review, you may file a grievance with the Ombudsman as specified in A.M.C. 2.60.165.



Darrel W. Hess
Municipal Ombudsman

ADMINISTRATION COMMENTS REGARDING OMBUDSMAN COMPLAINT OM2024-0162

We request this administration comments be included in your final report:

As discussed at the regular meeting of March 21, 2023, the Administration continues to question the wisdom of changing code to provide the Ombudsman access to all privileged Municipal personnel and HR files without oversight from the Municipal Attorney. The Administration notes that the Ombudsman obtained new investigative powers to access personnel and HR department files by passage of AO 2023-27, As Amended, on March 22, 2023. This was shortly after the February 2023 set of facts reported in Complaint 2024-0162. This sequence of events has done little to allay the Administration's concerns that the Ombudsman's new powers over privileged personnel matters may need to be checked.