

KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

August 14, 2013

Mr. Marc Hamaji
Grand Jury Foreperson
725 Court Street
Martinez, CA, 94553-0091

Dear Mr. Hamaji,

This letter constitutes the response of the Kensington Police Protection and Community Services District (“KPPCSD” or “the District”) to the Grand Jury Report No. 1311, “Assessing Fiscal Risk” (“the Report”) filed by the Grand Jury on June 3, 2013. The Report sets forth findings and recommendations related to the District and this response addresses each in turn.

FINDINGS/DISTRICT RESPONSE

Finding 1

“Kensington Police Protection and Community Services District”

“In 2010, the independent auditor identified as an internal control weakness the issue of unsubstantiated credit card purchases. Subsequently, there were allegations of improper credit-card spending. The District had to incur approximately \$25,000 in costs related to an additional independent, forensic audit of the spending allegations as a result of the lack of functioning of internal controls.”

Relevant Facts

The District’s financial records and practices for Fiscal Year 2010 were reviewed as part of its annual audit. The auditor did not find a deficiency with respect to the District’s financial practices or that the District failed to have proper internal controls related to its financial activities. In Section IX of the auditor’s report, Current Year Recommendations, the auditor commented:

“Credit card expenditure receipts missing”(Constructive recommendations).

“Based on the fieldwork performed for the 2010 audit, I found several instances of the tested credit card charges not having credit receipts or proof of purchase attached to the credit card statements. *In my opinion, these credit card charges missing receipts are immaterial since they were all pertaining to training and*

small office/field supplies. However, it is always good practice to have all receipts or expense reports attached to the statements at all times. Recommend to institute more thorough review procedures for processing credit card payments to ensure all purchases and reimbursement reports are reconciled and have sufficient supporting documents before payments are made.” [emphasis added]

With respect to costs incurred by the District related to credit card accounting, two of the District directors alleged, for political reasons, a concern over credit card charges. The District conducted an investigation of the allegations. As part of the investigation, the Board directed a forensic audit of the credit card charges. In an e-mail that I sent to Mr. Webber in response to his request for the amount that has been incurred in accounting fees and legal fees related to responding to the credit card allegations, I wrote, “As far as legal fees associated with the credit card investigation, Hemming Morse was paid \$10,000 and Hanson Bridgett was paid \$14,742 in legal fees associated with that investigation.”

Hemming Morse was paid to conduct the forensic audit that was requested by our Board of Directors in response to the politically motivated allegations made by two sitting directors. The \$14,742 in legal fees associated with that investigation were related to the possible violations of District employee’s employment rights as a result of the politically motivated allegations made by the two directors.

District Response

Pursuant to Section 933.05(a) of the California Penal Code, KPPCSD disagrees with the foregoing finding.

The District’s audit report does not include any adverse findings regarding credit card charges and does not cite a failure/lack of internal controls or “internal control weakness of unsubstantiated credit card purchases.” This statement is an opinion made by the grand jury’s report writer that is contrary to and not supported by any evidence.

The report’s comments that, “The District had to incur approximately \$25,000 in costs related to an additional independent, forensic audit of the spending allegations as a result of the lack of functioning of internal controls” is similarly factually inaccurate and without evidentiary basis. Moreover, the statement is a misrepresentation of the information provided to Paul Webber on March 6, 2013. The expenditure in question did not result from a lack of internal control or failure of policy; rather, the expenditures were necessary to respond to a specious allegation, initiated for political purposes, which allegation was ultimately not sustained by the investigation. Consequently, the statement asserting that costs were incurred by the District as a result of the lack of functioning internal controls is a misrepresentation of fact and opinion which the report has no basis or fact to rely upon.

Finding 2¹

“KPPCSD has not completed a timely audit for either 2011 or 2012 due to the credit card charges allegations and investigations. Due to the inability to produce audited financial statements on a timely basis- there is deemed to be a Material Weakness.”

Relevant Facts

In the Controlled Environment Survey Questionnaire that was completed on November 26, 2012, I provided the following information in regards to the allegation of credit card misuse:

“In July of 2011, KPPCSD Directors Cathie Kosel and Mari Metcalf accused General Manager/Chief of Police Greg Harman of misuse of the District’s credit card, specifically, using the card for personal goods and services. A forensic audit was conducted by Hemming Morse following the accusations and was completed in December 2011 with a finding of no wrongdoing, however, best practices could be improved. This confidential personnel investigation is attached.”

“Following the finding of no wrongdoing by the forensic auditor, KPPCSD Director Cathie Kosel filed a complaint in January 2012 with the Contra Costa District Attorney’s Office. In October 2012, The Contra Costa District Attorney’s Office concluded their investigation with a finding of no criminal complaint.”

On February 4, 2013, at 4:28 PM, I received an e-mail from Paul Webber requesting our finalized 2011 and 2012 audits. My response to him at the time was:

“Please note that our Fiscal Year ending June 30, 2011 audited financial statement has not been completed as of this date due to a District Attorney Office investigation into credit card usage. Our auditor, Steven Chang, has scheduled December 11th and December 12th, 2012, as meeting dates in order to complete the audit.”

“Steven Chang has been retained to complete our Fiscal Year ending June 30, 2012 audit.”

Although the District Attorney’s investigation into the allegations falsely made by Cathie Kosel was completed in October of 2012, our auditor Steven Chang was unable to complete our 2011 audit until April 30, 2013. The 2012 audit could not be started until the 2011 audit was completed.

However, both the 2011 and 2012 preliminary audit reports were filed within the required time frame with the State Controller’s Office. Only the finalized audit reports were

¹ The Grand Jury report lists this issue as a legend note to a chart in the report: “Summary of Material Weaknesses/ Significant Deficiencies.”

delayed as a result of the politically motivated allegations of misuse of the District's credit card. Our preliminary audits were accepted by the State Controller, as were the reasons for the delay in filing the finalized reports.

District Response

Pursuant to Section 933.05(a) of the California Penal Code, KPPCSD disagrees with the foregoing finding.

The Grand Jury's report's finding of, "Due to the inability to produce audited financial statements on a timely basis- there is deemed to be a Material Weakness" is incorrect and contrary to the evidence. Preliminary audits for both 2011 and 2012 were filed and accepted in a timely manner with the State Controller's Office.

RECOMMENDATIONS/RESPONSE

The Grand Jury made recommendations (1, 2, 3d and 3g) as indicated below and the District responds to each in turn.

1. Financial management of the County, all cities, all school districts and all special districts remedy within 12 months the Material Weaknesses, Significant Deficiencies, and other deficiencies in Internal Controls reported by the external auditors.

Response to Recommendation #1:

The District is not required to undertake corrective action regarding this recommendation.

As stated in the response to findings section of this reply, both the 2011 and 2012 preliminary audit reports were filed within the required time frame with the State Controller's Office. Only the finalized audit reports were delayed as a result of the politically motivated allegations of misuse of the District's credit card. Our preliminary audits were accepted by the State Controller, as were the reasons for the delay in filing the finalized reports.

The District's finalized 2011 Fiscal Year audit was completed on April 30, 2013 and filed with the County Auditor's Office.

Our Special Districts Financial Transactions Report was filed with the State Controller's Office on October 9, 2012. Our finalized 2012 audit is currently being completed by Steven Chang of Lamorena & Chang, and is scheduled to be completed in September 2013.

The District is contracting with a new auditor, Fechter & Company, Sacramento, to have its 2013 audit completed by December 2013.

2. County Organizations maintain or add audit report results to appropriate financial management's performance goals to ensure that such individuals are held accountable for promptly remedying deficiencies identified in audit reports, and consider the legality of maintaining or adding such performance goals on audit reports to financial managements' evaluations.

Response to Recommendation #2:

The District's Board of Director establishes performance goals for the General Manager/Chief of Police. The District requires the General Manager/Chief of Police to manage the District's finances and accounting, including conducting an audit of District finances/records according to law and correction of any deficiencies noted within such audit. In addition, a separate goal set for the General Manager/ Chief of Police requires that he/she prepares a Quarterly Internal Audit Report for the KPPCSD Board of Directors.

The process for this Internal Audit Report provides that the KPPCSD District Administrative Assistant is to randomly select two sets of Account Payable documents for each pay period in a quarter, to demonstrate that complete documentation is provided and that proper controls have been used, prior to checks being issued. This quarterly report is reviewed by the General Manager/ Chief of Police and provided to the KPPCSD Board of Directors and is a part of the General Manager/ Chief of Police's evaluation process.

- 3d. Governing boards of special districts appoint a formal Audit Committee from among members and provide direct oversight to district operating and financial management to ensure that Internal Control deficiencies are promptly remedied. In instances where the size of the entity precludes an adequate segregation of duties, governing board members need to consider direct involvement in key financial processes.

Response to Recommendation #3d:

KPPCSD as policy has a Finance Committee as a Standing Committee of the Board of Directors. The Finance Committee is made up of two KPPCSD directors and several members of the community. The Finance Committee is concerned with the financial management of the District, including recommendations on the annual budget and major expenditures, investment policies, long range planning, comments and recommendations regarding the annual audit and our certified public accountant.

- 3g. The Board of Supervisors have the County internal audit staff report directly to the Board of Supervisors rather than the Auditor Controller. The governing boards of other County Organizations have the internal audit groups of other County Organizations maintain their independence and not report to financial

management but instead to the City Council in the case of cities and the governing boards in the case of school districts and special districts.

Response to Recommendation #3g:

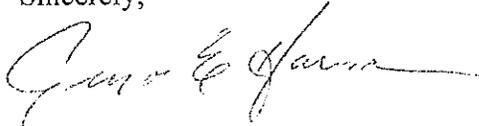
The KPPCSD Finance Committee reports directly to the KPPCSD Board of Directors. Neither the General Manager/ Chief of Police nor the District's certified public accountant is a member of the Finance Committee. They serve the Finance Committee in a staff capacity only. Finance Committee reviews of fiscal management go directly to the KPPCSD Board of Directors at a public meeting of the Board.

CONCLUSION

With this response to the Grand Jury Report No. 1311, the District requests that the Grand Jury review and reconsider its findings that the KPPCSD has not completed a timely audit for either 2011 or 2012, and that, due to the inability to produce audited financial statements on a timely basis, there is deemed to be a Material Weakness. The District also requests that the Grand Jury make the appropriate corrections to its report.

I will make myself available for any further questions or documentation that may be needed.

Sincerely,



Gregory E. Harman
General Manager/ Chief of Police