

CITY OF ANN ARBOR
REPORT OF CONFIDENTIAL INVESTIGATION

ATTORNEY-CLIENT PRIVILEGED

To: Stephen K. Postema, City Attorney
From: Jennifer B. Salvatore, Salvatore Prescott Porter & Porter, PLLC
Subject: Independent Investigation Report – Crawford follow-up investigation
Date: December 7, 2021

Introduction

I have been retained to conduct a follow-up investigation arising out of an investigation conducted earlier this year into inappropriate comments made by former Ann Arbor City Administrator Tom Crawford. Following the conclusion of that investigation, which was limited in scope to the specific alleged comments that had been reported, the City asked that I conduct a follow-up investigation into additional matters raised during the course of or immediately following that investigation but outside the scope of that inquiry.

Investigation Process

Salvatore Prescott Porter & Porter, PLLC was retained to conduct this follow-up investigation on August 27, 2021. Between August 27 and December 6, 2021, I conducted interviews with fourteen individuals, including with Mr. Crawford and with those who worked closely with him as a part of the City’s “executive team.” I also conducted two follow-up interviews. All of the interviews were conducted via zoom or phone from a private location. I did not record the interviews, but I did take detailed contemporaneous notes. I informed each witness that I had been retained by the City to conduct an independent investigation and that I would provide a report to the City regarding my findings. All of the witnesses were cooperative and professional.

In addition to the witness interviews, I also reviewed a number of documents related to a hiring decision regarding the [REDACTED] position, including emails and candidate resumes.¹

¹ As I was concluding this investigation, the City’s Director of Human Resources and Labor Relations on October 1, 2021 filed a complaint alleging misconduct by John Fournier, who at the time was the acting City Administrator. I was then engaged to conduct that investigation. Because of the time-sensitivity of the issues raised in that complaint, I conducted and completed that investigation before returning to finalize this follow-up investigation and report.

Relevant Policies

In assessing whether any City policies were violated, I reviewed and considered specifically the following policies:

Employee Non-Discrimination Policy (Policy No. 2.2)

The City's September 10, 2018 Employee Non-Discrimination Policy addresses discrimination, harassment and retaliation. Generally, the policy "prohibits discrimination against any employee on the basis of a person's protected classification under state, federal or local law." Discrimination "includes bias or prejudice based on a person's protected class, which results in an adverse employment impact, including, but not limited to, discipline, demotion, failure to hire or failure to promote." (Section 3.1).

Potentially relevant portions of this policy include the following: "All supervisors, managers and Service Area Administrators are responsible for ensuring that no discrimination of any kind occurs or persists in the workplace. It is the responsibility of management to create an atmosphere free of unlawful discrimination, and to implement this policy within their area." (Section 4.2).

Equal Employment Opportunity Policy (Policy No. 3.2)

The City's October 30, 2005 Equal Employment Opportunity Policy makes clear that the City of Ann Arbor including management and individual employees "will not discriminate on the basis of actual or perceived race, color, religion, national origin, sex, age, height, weight, condition of pregnancy, marital status, physical or mental limitations, source of income, family responsibilities, educational association, sexual orientation, gender identity, familial status, disabilities or HIV status." (Section 3.1).

Investigation Report

There were two primary issues that were the subject of this investigation. One involved the hiring process for the [REDACTED] position in early 2020 and the other involved several aspects of the salary and benefits offered to Tom Guajardo, the Director of Human Resources and Labor Relations upon his hire in January of 2021. Both of these issues were identified either during or after the initial Crawford investigation but were outside the scope of what I was originally retained to investigate. In addition to these issues, I also interviewed members of the City's "executive team" to determine if there were any additional equity-related employment concerns stemming from Mr. Crawford's tenure. I address each issue separately below.

(1) [REDACTED] Hiring Process

Following the publication of the Crawford report, a concern was raised about the hiring process for the [REDACTED] position, which had occurred in late 2019/early 2020 during Mr. Crawford's tenure as Chief Financial Officer for the City.²

When the position of [REDACTED] was posted, the salary range was listed as \$76,000 - \$97,000.³ [REDACTED] led the hiring process, under Mr. Crawford's oversight and with the assistance of the City's Human Resources staff. A ten-person hiring committee met and reviewed 87 applications for the position. The committee selected five finalists, including a female candidate who had served as a [REDACTED] in another municipality for a decade as well as a male candidate who had previously been a finalist for the [REDACTED] position and had extensive finance experience, but not in a municipal context. The male candidate was a [REDACTED] of Tom Crawford's and Mr. Crawford had previously made it known that he had viewed this person as a front-runner for the [REDACTED] position.

After two separate panels interviewed the finalists for [REDACTED] they unanimously recommended the female candidate with municipal experience for the position. She was offered the position at a salary of \$85,000. During discussions about the offer, the candidate requested a higher starting salary (\$90-95,000) to offset a loss she would be taking on the value of her benefit package compared to her then-current position. [REDACTED] advocated for her to be paid the higher salary, but was told by Mr. Crawford that HR would not approve a salary above \$86,000 given that she was then making in the \$66-67,000 range. After offering \$86,000, the City was unwilling to go higher. As a result, Mr. Crawford told [REDACTED] that the City needed to move on to the next candidate.

Despite the fact that the hiring committee had endorsed another female candidate as their second choice for the position, Mr. Crawford then expressed reservations about this second-choice candidate. [REDACTED] reports that Mr. Crawford instead pushed for the selection of the male candidate who had previously applied for [REDACTED] role. [REDACTED] did not agree, noting that this candidate had not interviewed particularly well, had no public sector experience, and had little supervisory experience. [REDACTED] recalls that the discussion got heated and [REDACTED] then suggested that they bring in John Fournier to the discussion (who was then acting head of Human Resources). Mr. Crawford objected, telling [REDACTED] that he had to "choose a side: you're either on John's team or my team." At that point, [REDACTED] relented and told Mr. Crawford to go ahead and hire the male candidate, but noted that he would be upset if he was offered more than what had been offered to the female candidate. A week or so later, Mr. Crawford is reported to have called [REDACTED] and told him that he wasn't going to be happy but Human Resources had agreed to a salary of \$95,000 for the male candidate, given his prior salary history

² Mr. Crawford became the City Administrator in or around February of 2020, replacing former City Administrator Howard Lazarus.

³ The salary range posted for this position mistakenly listed the full salary range for the position, rather than following past practice of listing starting salary ranges from the bottom to the mid-point of the range.

and work experience. This was \$9,000 above what the City had been willing to offer the first-choice female candidate. The male candidate accepted the offer.

Although [REDACTED] indicated that the candidate hired into [REDACTED] role has ultimately done a good job, has worked hard, and he has enjoyed working with him, the process itself was deeply troubling. [REDACTED] never spoke with John Fournier about these issues directly to know whether in fact what Mr. Crawford was telling him about HR's position on the various salary offers was accurate. But he felt there was a lot of interest on Mr. Crawford's part in hiring the male candidate, and he was concerned both with how the process played out and the disparity between what was offered to the male and female candidates.

With respect to the process, Mr. Crawford said that his role as CFO was simply to finalize the decision. He says he supported the first-choice candidate and was excited to make an offer to her. However, he says that HR came out with a fairly narrow range for her salary offer. He recalls that the candidate then came back and said she wanted more money, but he didn't recall any details of the process beyond that point. He said that those details about starting salary are made in collaboration with HR and are based on a number of factors. Mr. Crawford said that the decision about what to offer her would, he assumes, have been made between [REDACTED] as the hiring manager and Human Resources. He recalled that he was consulted on the decision, but he did not remember what HR told him and he did not recall any argument or conflict with [REDACTED] over any issues during this process. When asked about whether he had a preference for the male candidate or had a personal friendship with him, Mr. Crawford said that although the candidate [REDACTED] they are just acquaintances. In general, Mr. Crawford said he could not recall any details about the process beyond what is described above and suggested that the decisions regarding compensation levels of both the female and male candidates were made by [REDACTED] and HR, not by him.⁴

Mr. Fournier, for his part, recalled with respect to this hiring process that "Mr. Crawford was in the driver's seat on the entire thing." Because his approach as Interim HR Director was to let the hiring manager make the actual decision absent a policy/process issue, Mr. Fournier said that he let Mr. Crawford ultimately make the decision. He did recall the issue of the female candidate wanting a higher salary, but he did not recall the exact details. He said that generally the City's rule was that they would post up to the mid-point of the range but could make an offer that was higher than that if the hiring manager felt it was appropriate. Mr. Fournier did recall a discussion about the position with Mr. Crawford in his office where Mr. Fournier said he told Mr. Crawford that "we'll hire the person you want to hire, but you're hiring a lot of white men and you need to find a way to cultivate more diverse candidates." Mr. Fournier offered to have HR help Mr. Crawford identify more diverse candidates going-forward. Mr. Fournier recalled that his involvement in the process ended with the final offer of \$86,000 to the female candidate.

⁴ Mr. Crawford's lack of recall is consistent with what other witnesses in the original Crawford investigation reported about Mr. Crawford in terms of him having significant and concerning memory issues that were a regular source of frustration for his colleagues.

(2) Tom Guajardo compensation/benefits

The second issue that arose during the course of the initial Crawford investigation involved various aspects of the compensation and benefits provided to Mr. Guajardo upon his hire as Director of Human Resources and Labor Relations. Indeed, Mr. Guajardo noted that upon his January 2021 hire: (1) his offered salary was 20% lower than what other executives were paid and was less than the prior Director of HR made; (2) Mr. Crawford tried to revoke the retirement benefit that Mr. Crawford had been offered, which was the same defined benefit plan that was provided to the prior HR Director, the Assistant City Administrator and the Police Chief; (3) Mr. Guajardo was not provided the severance benefit provided to other executives; and (4) he was not provided a parking pass, which he noted has been given to other executives.

With respect to the issue of Mr. Guajardo's starting salary, that issue was investigated and addressed in my November 24, 2021 report following my investigation of Mr. Guajardo's October 1, 2021 complaint against John Fournier. In summary, I did not find that the City's offer of a \$125,000 starting salary to Mr. Guajardo was discriminatory, but was in fact consistent with the City's compensation policy of setting starting salaries at the low end of the scale. Moreover, Mr. Guajardo did not initially negotiate for a higher salary and when he did later request an equity adjustment, a significant one was promptly provided following receipt of the pay equity report he conducted.

With respect to Mr. Crawford attempting to rescind Mr. Guajardo's offer to be included in the same defined benefit plan as the Police Chief and the Assistant City Administrator, Mr. Crawford's explanation for that decision was that he felt the benefit level was higher than what other communities provided to comparable employees. However, once he learned from the City's legal department that Mr. Guajardo's entitlement to that benefit could not be changed, Mr. Crawford did not in fact rescind it. So Mr. Guajardo was ultimately provided that benefit.

Similarly, although Mr. Guajardo was initially provided a parking pass, he was told by one of the benefits staff doing his orientation that Mr. Crawford had "changed his mind" and Mr. Guajardo would not be getting a parking pass. Mr. Crawford did not recall denying Mr. Guajardo a parking pass and says that when he learned approximately six months after he started that Mr. Guajardo didn't have one, he arranged for Mr. Guajardo to get a parking pass.

Finally, Mr. Guajardo's offer letter did not contain the promised nine months of severance that other employees have been provided upon termination without cause. Mr. Guajardo raised the issue with Mr. Crawford during the course of the Crawford investigation. Mr. Crawford said that he doesn't believe any executives other than the Police Chief and the City Administrator had been provided severance as a part of their employment agreements, but admitted that other executives had been given it when they asked. Thus, although he did not think it was standard practice for an HR Director to receive a severance benefit, he did recommend ultimately during his transition out of City employment for Mr. Guajardo and one other staff member to receive that benefit as a matter of equity. The severance benefit was then provided at that time.

(3) Additional issues

The only other issues or concerns raised in the course of this investigation were generalized concerns about pay equity raised by some female employees and an issue related to a promotion for the City's ██████████ that was not implemented as promised by Mr. Crawford. No one reported any additional concerns about inappropriate comments or conduct by Mr. Crawford.

With respect to the pay equity issues, several female employees expressed concern about some inequities that existed with respect to their or others' pay. It was noted that these issues in many instances pre-dated Mr. Crawford and were described as "larger than any one person." Moreover, by the time this investigation was being conducted, the City was already in the process of implementing an equity adjustment to rectify pay disparities that had been identified and confirmed by a study done by the HR Director in the summer of 2021.

With respect to the promotion issues, the City's ██████████ had received a job offer at some point in 2020 from another employer. As part of the negotiations to keep her with the City, the City had committed to expand her responsibilities and upgrade her position by June 1, 2021. However, that change did not happen by the promised date. Mr. Crawford says that he had been in contact with the Manager about the transition but that it was taking longer than expected as a number of senior executives had to work on creating a plan to transfer existing responsibilities, a new job description had to be drafted, and a compensation review had to be done all before he could go to Council with this change. When he became acting City Administrator upon Mr. Crawford's resignation, Mr. Fournier says that he began working on the new job description for this position. And this position was moved into a ██████████ pay-grade as part of the pay equity adjustments made for a number of City employees. It appears that the expansion of this role is thus in-process, albeit not finalized as of this writing.

Conclusions

Based on the information gleaned from witness interviews and a review of other evidence, as well as an analysis of relevant City policies and consideration of comments admitted by Mr. Crawford and/or credibly reported by others during the initial Crawford investigation, it is my determination that implicit gender bias likely played a role in the City's hiring process for the ██████████ position. I did not find Mr. Crawford's claim that he was not significantly involved in that process to be credible, particularly given the detailed recollections of ██████████ key aspects of which were supported by Mr. Fournier. And while it is of course difficult to ascribe discriminatory motivations to anyone with certainty in the absence of direct evidence, I do find that a preponderance of circumstantial evidence supports that gender bias played a role in both the compensation decisions made in this process and in the selection of the final candidate ultimately hired. This finding is supported by the conclusions of the Crawford report, which found that Mr. Crawford at minimum has made comments that suggest the existence of implicit bias around gender issues.

Likewise, while I do not find the initial salary offered to Mr. Guajardo to be discriminatory, I am troubled by Mr. Crawford's inclination not to offer Mr. Guajardo (one of the only employees

of color on the executive team) the same benefits as were provided to other executive staff members. While many individuals noted that Mr. Crawford comes out of a finance role and is notoriously cost conscious, I do think that the combination of adverse inclinations in this regard with respect to Mr. Guajardo reflects more than just a desire to save money and – particularly given the comment about Mr. Guajardo that Mr. Crawford made during his hiring process⁵ - instead reflects bias. In the end, each of these benefit issues (the pension plan; the parking pass; and the severance benefit) were ultimately rectified by the City. The only issue on which I see Mr. Guajardo not being made whole is the parking costs he incurred for the six or seven months during which he was not provided a parking pass.

In sum, on both the issue of the [REDACTED] hire and the benefits offered to Mr. Guajardo, I find that a preponderance of evidence supports a violation of the Equal Employment Opportunity Policy (3.2) and the Employee Non-Discrimination Policy (2.2).

With respect to the pay equity issues, which have now been rectified, and the promotion of the [REDACTED] to an executive-level position, the evidence is inconclusive as to whether or not these decisions were discriminatory based on gender and thus violative of the City's policies. Accordingly, I do not find any policy violations with respect to these issues.

Thank you for the opportunity to work with the City on this matter. If you have questions or would like follow-up on any issues, please let me know.

Respectfully submitted,



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⁵ As described in the original Crawford report, it was reported that Mr. Crawford said “This is why you have to be careful with hiring minorities—because you can’t fire them or let them go.”