



OFFICE OF INSPECTOR GENERAL

Thomas J. Dagley
Inspector General

MEMORANDUM

October 16, 2009

TO: Hon. Phil Andrews, President, County Council
Hon. Isiah Leggett, County Executive

FROM: Thomas J. Dagley
Inspector General

SUBJECT: Interim Report – Review of Fire and Rescue Service (FRS) Vehicle
Accident and Related Investigations

Please reference my September 14, 2009 memorandum transmitting the Office of Inspector General's draft Interim Report and my notice earlier this week that the report would be released no earlier than October 16. A copy of the report and management responses, dated September 11 and October 15, 2009, will be released later today.

Please do not hesitate to contact me at 240-777-8241.

Attachment
Re: #0037

cc: County Council Members
Steve Farber, Director, Council Staff
Timothy L. Firestine, Chief Administrative Officer





OFFICE OF INSPECTOR GENERAL

Thomas J. Dagley
Inspector General

MEMORANDUM

September 14, 2009

TO: Hon. Phil Andrews, President, County Council
Hon. Isiah Leggett, County Executive

FROM: Thomas J. Dagley
Inspector General

SUBJECT: Interim Report – Review of Fire and Rescue Service (FRS) Vehicle
Accident and Related Investigations

In accordance with reporting criteria set forth in the County's Inspector General law, please find attached a copy of the confidential final draft report and management response regarding our review of a FRS vehicle accident and related investigations. The report and management response are to be kept confidential until released to the public by the Inspector General.

With regard to the release of this report to the public, the services of the County Attorney and other officials will continue to be used to ensure compliance with the State public information act and other reporting requirements.

Please do not hesitate to contact me at 240-777-8241.

Attachment
Re: #0037

cc: County Council Members
Timothy L. Firestine, Chief Administrative Officer
Leon Rodriguez, County Attorney
Mike Faden, Legislative Attorney





OFFICE OF INSPECTOR GENERAL

Thomas J. Dagley
Inspector General

MEMORANDUM

August 25, 2009

TO: Timothy L. Firestine
Chief Administrative Officer

FROM: Thomas J. Dagley
Inspector General

SUBJECT: Interim Report - Review of Fire and Rescue Service (FRS) Vehicle
Accident and Related Investigations

In accordance with Montgomery County Code, Section 2-151, the Office of Inspector General (OIG) is conducting a review of a FRS vehicle accident on November 30, 2008 involving four vehicles. Our review is based, in part, on the receipt of allegations in early December 2008 from County employees and others that the accident was not being properly investigated, and that alcohol consumption by the driver of the FRS vehicle was being covered up as the primary cause of the accident.

This interim report includes two findings, and recommendations. Please provide a written response no later than September 8, 2009. The response will be included as an attachment to the report when the report is issued to the Council and County Executive in accordance with Section 2-151.

Background

The FRS Honor Guard was invited by the Washington Redskins to present the colors in the pre-game ceremony at FedEx Field for the 1:00 p.m. game on November 30, 2008. The Honor Guard for the game consisted of five FRS employees: an Assistant Fire Chief, (who served as the commander of the Honor Guard); a FRS Captain; and three firefighters. After the presentation of the colors, the Honor Guard was provided complimentary tickets to the game by the Redskins.

At approximately 8:00 p.m. that evening the Assistant Fire Chief, driving the FRS vehicle, was involved in a motor vehicle accident on I-270 that involved: the FRS vehicle; a Police vehicle; and two privately-owned vehicles. The FRS vehicle and one of



the privately-owned vehicles had to be towed from the accident scene and were a total loss. The Police vehicle and the other privately-owned vehicle were damaged but were driven from the accident scene. The estimated dollar loss for all four vehicles was more than \$25,000.

According to State of Maryland Motor Vehicle Accident Report No. 11688310, completed by a Montgomery County Police Officer, alcohol consumption by the driver of the FRS vehicle was not a contributing cause of the November 30, 2008 accident. In the Report, the officer classified the physical condition of this driver as “apparently normal.” With regard to alcohol/drug testing conducted at the accident scene, the police officer reported “not applicable.” The driver of the FRS vehicle was issued a traffic citation for “Failure to Control Vehicle Speed on Highway to Avoid Collision” and fined \$130. He pled guilty to the violation and paid the fine on December 31, 2008.

Objectives and Methodology

Our review is targeting two broad objectives: 1) determine the credibility and significance of all reported allegations; and 2) determine whether management’s methods to investigate the accident and any improper conduct on the part of others involved in this accident are consistent with generally accepted investigative standards to ensure legal, fiscal, and ethical accountability in MCG organizations.

To accomplish our objectives, we took into consideration there were two investigations: one by FRS, and the other by the Police Department’s internal affairs unit. The FRS investigation was completed in February 2009. At the conclusion of our field work in June 2009 for the FRS investigation, we discussed preliminary findings and detailed supporting evidence with the Fire Chief, an Assistant CAO, and representatives of the County Attorney’s Office.

With regard to the Police Department’s investigation, we were advised by the Police Department that the internal affairs investigation was recently completed. The results of our review of this investigation will be included in our final report.

Conclusions

Finding 1

FRS controls for investigations and accident reporting need to be strengthened.

Although FRS promptly initiated an internal investigation into the November 30, 2008 motor vehicle accident, the policies and procedures used to investigate the accident and related allegations of employee misconduct resulted in deficiencies and discrepancies which include the following:

1. FRS investigative field work did not include interviews of all known individuals present at the accident scene, or other key individuals who processed and reported the

accident and related activities. Those not interviewed include: the first police officer to arrive at the accident scene (an off-duty Corporal); the drivers of the two privately-owned vehicles involved in the accident; a FRS Honor Guard member who participated in official activities at FedEx Field with the driver of the FRS vehicle; and personnel from the Office of Medical Services (OMS), Office of Human Resources, who are responsible for administering the drug/alcohol testing program. The investigator(s) should have interviewed these individuals or documented why they were not interviewed to assure management that all relevant evidence was obtained to support the investigation's findings and conclusions.

2. FRS investigative field work did not determine whether drug/alcohol test equipment and procedures used by OMS personnel or contractors for this incident complied with all County requirements and U.S. Department of Transportation regulations (i.e., training and certification requirements of individuals who administered breath alcohol tests; periodic calibration testing of equipment to ensure the accuracy of results). The investigator(s) should have assessed compliance to ensure that the evidence used to report their findings and conclusions was sufficient, competent, and relevant.

3. The undated FRS Detailed Vehicle Collision Report (#03.2008.289), completed by the FRS accident investigator and provided as a "confidential" document to the FRS Collision/Incident Investigation Review Committee, was not thorough. As a result, all relevant information was not reported to the FRS Committee; thus, Committee members were not capable of making an informed decision regarding this accident's preventability and severity. For example:

- According to FRS Policies and Procedures No. 605, "Vehicle Accident and Investigation," dated March 11, 1992, a purpose of FRS vehicle accident investigating and reporting is "to ensure that all vehicle incidents and accidents involving Department of Fire and Rescue Service employees are properly reported, thoroughly investigated, and appropriately documented by qualified personnel." No. 605 also states that all accidents involving FRS employees ... "will be completely investigated and reported in accordance with the procedures established in this policy."

The Report includes statements by the driver of the FRS vehicle and the police officer whose vehicle was hit by the FRS vehicle; however, the Report does not include any statements by the two drivers of the privately-owned vehicles. One of these drivers provided a recorded statement to the FRS insurance claims management company on January 6, 2009 alleging he smelled alcohol on the driver of the FRS vehicle and that he believed this driver showed signs of intoxication. In addition, although FRS officials learned the night of the accident that alcohol consumption by the driver of the FRS vehicle may have contributed to the accident, the Report does not include any statements by these FRS officials.

In order to provide all relevant information to the Committee, the FRS accident investigator's Report should have included statements by the drivers of the privately-owned vehicles and FRS officials or been properly referenced to identify any limitations in the investigator's authority or methodology to access and report all material facts.

- The Report does not address if the FRS employee involved in the accident on November 30, 2008 violated any specific FRS policies or procedures. According to FRS Policies and Procedures, No. 606, "Vehicle Accident/Incident Review and Disposition," dated March 11, 1992, the FRS Collision/Incident Investigation Review Committee is responsible for determining if specific FRS policies or procedures were violated by an operator incident to awarding preventability penalty points.

Our review found that the FRS driver involved in the accident may have violated several policies applicable to FRS employees, including: Personnel Regulations, Section 33-5(1); FRS Code of Conduct, Policy and Procedure #502; "FRS Executive Regulation Code of Ethics and On-Duty Personal Conduct;" and FRS Policy and Procedure #602, "Assignment and Use of FRS Administrative & Support Vehicles." By not addressing these issues in the Report, the FRS accident investigator failed to provide the Committee members with all relevant information needed to properly complete their duties.

4. The FRS Collision/Incident Investigation Review Committee for this accident, composed of a Battalion Chief and a representative from the International Association of Fire Fighters (IAFF)-1664, completed a review of the FRS accident investigator's Report on December 19, 2008. According to FRS Policies and Procedures No. 606, "Vehicle Accident/Incident Review and Disposition," dated March 11, 1992, the Committee makes the final determination with regard to both the finding of preventability of an accident/incident and the assessment of preventability and severity penalty points.

- Our review of the FRS Detailed Vehicle Collision Report and other information relied upon by the Committee found that the Committee did not have complete and accurate information to make a determination on the preventability and severity of the accident. For example, official records examined during our review stated that the FRS vehicle and one of the privately-owned vehicles had to be towed from the scene, and one of the privately-owned vehicles was determined to be a total loss by the driver's insurance company on December 3, 2008, three days after the accident. This information was not included in the Collision Report provided to the Committee. In addition, according to FRS insurance claims management files, as of December 18, 2008, "each of the occupants of the three vehicles has indicated minor to moderate injury." The FRS accident investigator's Collision Report documents no injuries as a result of the accident.

Recommendation

FRS management should strengthen controls over investigative and accident reporting by reviewing all official FRS reports related to the November 30, 2008 accident. FRS management should ensure appropriate reports are modified to resolve all deficiencies and discrepancies and the investigation of this accident is properly documented.

Finding 2

County government personnel regulations and related policy regarding the investigation of improper acts should include quality standards.

Montgomery County Personnel Regulations (MCPR) do not require personnel responsible for investigating allegations of improper employee conduct to comply with generally accepted quality standards¹ applicable to a full range of government investigations related to: allegations reported by whistleblowers; administrative and programmatic matters; and special circumstances. Specifically, although MCPR Section 3-2, "Disclosure of Illegal or Improper Acts in County government", identifies a variety of individuals responsible for investigating alleged misconduct (i.e., employee's immediate supervisor, department director, Chief Administrative Officer, County Council, Inspector General, MSPB, and Ethics Commission), the Regulations do not require management or the assigned investigators to comply with quality standards that address investigator qualifications, independence and due professional care (e.g.: thoroughness; appropriate techniques; objectivity; ethics; timeliness; accurate and complete documentation).

In our review of FRS records and inquiries with the Fire Chief and other MCG officials, we found that FRS management's approach to investigate this accident was restricted to the Fire Chief's \$5,000 purchasing authority ceiling² to select a private firm to conduct their investigation. The Fire Chief advised the OIG that he believes this approach resulted in management's receipt of all information needed to make informed decisions on a corrective action plan. However, we found deficiencies and discrepancies in the investigation of the accident and allegations of employee misconduct that were attributable, at least in part, to executing an investigative contract with a \$5,000 spending limit, and the absence of MCPR or other MCG policies that required compliance with generally accepted quality standards appropriate for the complex set of circumstances presented by this incident.

¹ The President's Council on Integrity and Efficiency issued general and qualitative investigative standards in December 2003 that outline generally accepted standards applicable to any investigative organization. The standards are comprehensive and relevant to all forms of misdemeanors and felonies, and apply to among other types of investigations, background and security inquiries, whistleblowers, and misconduct issues.

² Department directors including the Fire Chief have the authority to execute transactions up to \$5,000 without using the informal (up to \$24,999) or formal (\$25,000 and over) procurement requirements administered by the MCG Department of General Services.

Recommendation

The Chief Administrative Officer should take steps necessary to ensure that generally accepted quality standards for the investigation of alleged employee misconduct, issued by the President's Council on Integrity and Efficiency or another organization recognized for best practice investigative standards, are included in the Personnel Regulations and related MCG policies.

Ref: #0037

cc: Richard Bowers, Fire Chief
Kathleen Boucher, ACAO



OFFICES OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

September 11, 2009

TO: Thomas J. Dagley, Inspector General

FROM: Timothy L. Firestine, Chief Administrative Officer

SUBJECT: Interim Report – Review of Fire and Rescue Service (FRS) Vehicle Accident and Related Investigations

You have asked for a management response to your *Interim Report – Review of Fire and Rescue Service (FRS) Vehicle Accident and Related Investigations* dated August 25, 2009. The Interim Report indicates that the Office of the Inspector General has conducted a review of a personnel matter relating to a “FRS vehicle accident on November 30, 2008.” The Interim Report focuses on a personnel investigation of the driver of a FRS vehicle that was involved in a traffic accident, and more specifically, whether the investigation adequately reviewed whether alcohol consumption was a factor in causing the accident.

The personnel process that began after the November 30 accident, of which an investigation is only one part, has not concluded. Therefore, based on advice from the County Attorney’s Office, we are not able to respond at this time to the specific allegations, findings, and recommendations discussed in the Interim Report. Based on that same legal advice, we believe it is inappropriate for you to issue any report relating to this personnel matter until all related legal actions have finally concluded.

Thank you for the opportunity to comment on your Interim Report.



OFFICES OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

October 15, 2009

TO: Thomas Dagley, Inspector General

FROM: Timothy Firestine, Chief Administrative Officer ^{TF}

SUBJECT: Interim Report – Review of Fire and Rescue Services (FRS) Vehicle Accident and Related Investigations

The Interim Report referenced above indicates that the Office of the Inspector General conducted a review of a personnel matter relating to a “FRS vehicle accident on November 30, 2008”. The report focuses on a personnel investigation of the driver of a FRS vehicle that was involved in a traffic incident, and more specifically, whether the investigation adequately reviewed whether alcohol consumption was a factor in causing the accident.

On September 11, 2009, I provided you with a management response to the Interim Report. It is my understanding that you released the Interim Report, with a copy of my response, to the County Council on September 14, 2009. In an email dated October 2, 2009, you advised me that you plan to release the Interim Report to the public soon and asked if I would like to provide an updated response.

Since information relating to any personnel investigation is confidential under the Maryland Public Information Act, I cannot disclose any details relating to that investigation in a response that will be included in a public report. However, since the personnel matters relating to the FRS investigation were concluded after I prepared my initial response to the Interim Report, I can offer some additional comments at this time.

The vehicle accident that is the subject of your Interim Report involved a high level FRS employee and resulted in personal injury and property damage to County and privately owned vehicles. In order to insure a prompt, thorough and objective investigation, the Fire Chief immediately contracted with an independent third-party to investigate the incident. That independent investigation produced factual information that allowed the Fire Chief to make appropriate personnel decisions. There is nothing in the Interim Report that indicates otherwise.

Thomas Dagley
October 15, 2009
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The Interim Report's First Finding is that the FRS needs to strengthen controls over investigations and accident reporting. Fire Chief Richard Bowers has advised me that he is reviewing and, where appropriate, will revise collision reporting policies and procedures and strengthen the management controls associated with them. The Interim Report's Second Finding is that County government personnel regulations and related policies should include standards for investigations of improper acts that are similar to those that have been issued by the President's Council on Integrity and Efficiency for criminal investigations. We will evaluate whether those standards are appropriate for personnel investigations conducted under the laws and regulations applicable to County government personnel matters.

Thank you the opportunity to provide additional comments on the Interim Report.

cc: Joseph Adler, Director, Office of Human Resources
Chief Richard Bowers, Fire and Rescue Service