



OFFICE OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

July 2, 2010

TO: Thomas J. Dagley, Inspector General

FROM: Timothy L. Firestine, Chief Administrative Officer

SUBJECT: OIG Follow-Up Review of the Tuition Assistance Program

I am writing in response to your June 7, 2010 memorandum (attached) requesting an update on timesheet reviews relating to the Tuition Assistance Program (TAP). I am happy to provide you with an update on the timesheet reviews conducted by the Police Department, Finance Department, and Office of Human Resources (OHR). However, I am concerned with the implication in your memorandum that we have already missed a deadline in responding to you on this issue.

Your memorandum, which you inexplicably forwarded to the County Council and which was the subject of a June 9, 2010 *Washington Examiner* article (attached), implies that Executive staff were required to provide you with the results of their timesheet analyses by April 30, 2010, and that Executive staff were remiss because they did not comply with that deadline. In fact, April 30 was an arbitrary deadline chosen by you for completion of Executive branch work. I find it troubling that you seem to feel it is your role to unilaterally establish deadlines for the work of the Executive branch rather than, as envisioned by your authorizing legislation, work collaboratively and cooperatively on such issues with me and my office. I would remind you again that the law establishing the Inspector General requires that you communicate directly with me regarding any concerns you have with receiving information. I don't believe the authors of the law would view simultaneous release of such communication to the media as being consistent with the spirit, if not the letter, of the law.

As I explained in my March 8, 2010 response to your TAP report, the Police Department was, at that time, in the midst of reviewing timesheets for all police officers who attended TAP training in fiscal years 2007, 2008, and 2009. That review was part of an administrative investigation being conducted by the Department's Internal Affairs Division, which began in the summer of 2009. I explained that, once the administrative investigation was completed, appropriate measures would be taken, in collaboration with the Office of Human Resources (OHR), the Office of the County Attorney (OCA), and the Finance Department (Finance), to address any violation of law or policy. I also advised you that the Finance

Department and OHR would work together to review a sample of non-police County employee timesheets for those employees who were approved for TAP training during the same three-year period. Finally, I agreed to keep your office apprised of the progress of both timesheet reviews. As promised, the following is a summary of the status of these reviews.

Police Timesheets

The County's Collective Bargaining Agreement (CBA) with the Fraternal Order of Police, Montgomery County Lodge # 35, Inc. (FOP) (see Article 39, Tuition Assistance, Section A.4) provides:

"A unit member receiving tuition assistance must attend the activities for which they are receiving tuition assistance during the unit member's off duty hours."

In light of issues raised in investigations coordinated by OCA and the Inspector General, the Police Department has attempted to determine, to the extent possible, if Police Department employees attended tuition assistance activities on work time. If they did, the Department would seek to recapture that time under the CBA.

In fiscal years 2007 through 2009, Police Department employees submitted 1,496 applications for tuition assistance. Of this total, 957 were Job Improvement Tuition Assistance Program (JITAP) applications and 539 were Educational Tuition Assistance Program (ETAP) applications. The Police Department used two different methodologies to analyze the timesheet data due to the differences in the programs.

For both ETAP and JITAP classes, police employee timesheets were compared against class date/time data that was available. If it is suspected that an employee's timesheet hours may have overlapped with tuition assistance class hours, this was identified as a "potential timesheet conflict". It is important to note that the police employee timesheets do not show actual times that were worked (e.g., 0800-1600); rather, they show a gross total of hours worked during the day (e.g., 8). Although there were some other data (e.g., shift differentials) available, this data did not provide enough evidence to identify with certainty the actual hours worked during a particular day.

The ETAP program consists of college classes taken over extended periods of times in connection with obtaining a degree. The Police Department reviewed a sample of 50 of these applications. The Department's analysis was subject to the following limitations:

- Most college courses were taken over a six-month period.
- Dates and times of the classes were not required on the applications.
- Transcripts of college classes list only class numbers, not section numbers.
- Registrars could not provide dates and times without section numbers.

- Many schools do not maintain old schedule data.
- Registrars would not provide information on students without a subpoena.
- Many college classes were taken on-line.

Because of the obstacles listed above, the Department was able to conduct a complete analysis on only four of the 50 applications. For those four applications, there were no potential timesheet conflicts. For the other 46 applications, no conclusions could be reached concerning potential timesheet conflicts.

All 957 JITAP applications were reviewed. The Police Department investigation identified 359 employees with potential timesheet conflicts. The majority of these potential conflicts (189 or 53%) related to timesheets for employees who attended training provided by the companies that were the subject of the County Attorney's TAP investigation and the OIG's TAP investigation. Based on its JITAP review, the Police Department determined that 7,822.5 tuition assistance class hours have potential timesheet conflicts.

The next step is to confirm with the employee that the potential timesheet conflicts are actually confirmed conflicts between class time and County work hours, and if so, how the overlapping hours would be recovered by the County. Before taking this step, the Police Department consulted with the OCA to determine the most appropriate method of achieving this goal. OCA advised the Police Department to pursue recoupment of leave through the "overpayment" procedure outlined in Article 36 of the CBA. The Police Department has started this Article 36 recovery of overpayment process. Because of the employee notice requirements in Article 36, the Department expects that it will take several more months to complete this process. Article 36 requires each employee be given notice of a potential violation of County policies, and instructions regarding the responsibilities of each party under the CBA. A sample copy of the notice, including a copy of Article 36 is attached.

Non-Police Timesheets

Finance, in coordination with OHR, reviewed a sample of non-Police employee timesheets for employees who had been approved for TAP course work during fiscal years FY2007, FY2008, and FY2009 to determine if there were any potential timesheet conflicts – i.e., hours reported as worked on a timesheet during times when an employee was scheduled to be taking a TAP funded class. Finance and OHR determined that the results of the ETAP timesheet analysis conducted by the Police Department was representative of the results that would be found for non-Police timesheets, due to the nature of and documentation supporting the ETAP classes. They also determined that, due to the nature of JITAP classes and based on the results of the timesheet analysis conducted by the Police Department, the risk of timesheet conflicts would be greater for JITAP classes. Therefore, the sample selection was limited to JITAP classes and vendors.

Finance determined that it could not identify any potential timesheet conflicts, but also could not confirm that none had occurred. This is because class times were often not provided on JITAP training materials. Regarding time actually worked, most County departments do not maintain the type of data that the Police Department used in its timesheet review, such as data on hours work that was gleaned from a combination of posted shift schedules, the Computer Aided Dispatch (CAD) system, and other records. In addition, departments generally do not retain records on whether an employee flexed his or her time on the day that JITAP training occurred.

However, Finance was able to determine that recently implemented changes to the TAP program have strengthened controls over timesheet reporting. Specifically, by requiring that all employees receive supervisor and director approvals on TAP applications, the County ensures that senior managers are aware of proposed TAP course, and is directly involved in enforcing program requirements, including approval of timesheets that reflect actual hours worked. Also, the County now requires that an employee submit supporting documentation, including the date and time of a class, that will provide supervisors with additional information needed to track when employees are not on duty, and help ensure accurate timesheet reporting.

Attachments

cc: Nancy Floreen, Council President
Phil Andrews, Councilmember
Roger Berliner, Councilmember
Marc Elrich, Councilmember
Valery Ervin, Councilmember
Michael Knapp, Councilmember
George Leventhal, Councilmember
Nancy Navarro, Councilmember
Duchy Trachtenberg, Councilmember
Joseph Adler, Director, Office of Human Resources
Jennifer Barrett, Director, Department of Finance
Kathleen Boucher, Assistant Chief Administrative Officer
Marc Hansen, Acting County Attorney
J. Thomas Manger, Chief of Police