

Investigative Report

Austin Fire Department: Misuse of City Resources for Secondary Employment

May 2019



We found evidence that Brian Kline, an Equipment Technician II in the Austin Fire Department, misused his City computer and email for his wife's business where he worked. Specifically, we found evidence that Kline used his City email account to arrange purchases from City vendors for his secondary employment, and that Kline, through his secondary employment, performed work for at least one of these vendors. Included in the evidence we found are two emails in which Kline asked a City employee who makes stickers and vehicle decals in a different department to make stickers for his secondary employment.

We were unable to determine whether Kline abused his position in the City to provide special treatment to City vendors in return for favors related to his secondary employment.

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Cover: Aerial view of downtown Austin, iStock.com/RoschetzkyStockPhoto

Allegation

In April 2018, the Office of the City Auditor received an allegation that Austin Fire Department (AFD) employee Brian Kline was abusing his purchasing responsibilities over two City vendors to benefit his personal business. According to the allegation, Kline was giving these companies special treatment in return for job recommendations. The informant expressed concern that this situation disadvantaged other companies that wanted AFD's business.

Background

The Austin Fire Department (AFD) aims to create "safer communities through prevention, preparedness and effective emergency response." Brian Kline is an Equipment Technician II in AFD. In this role, Kline is responsible for planning, scheduling, and performing "tasks in the assembly, repair and maintenance of complex or intricate electromechanical equipment." Specific duties include ordering and issuing parts and supplies, maintaining an inventory of parts, and performing "welding, braising or fabrication of some parts."

Kline has secondary employment through a business owned and directed by his wife. As described on the company's website, the business is "a one stop shop for all your 4x4 and overlanding needs as well as emergency vehicle outfitting." The company provides services that include "metal and plastic fabrications" and "custom welding." When we spoke with Kline, he informed us that the company also makes custom knives.

Investigation Results Summary

We found evidence that Brian Kline, an Equipment Technician II in the Austin Fire Department (AFD), misused his City computer, internet, and email for secondary employment with a business owned and directed by his wife. Included in this evidence are emails from Kline's City email account to City vendors that arranged purchases for his secondary employment. We also found two emails in which Kline asked a City employee who makes stickers and vehicle decals in a different department to make stickers for his secondary employment. Additionally, we found that Kline, through his secondary employment, performed paid work for at least one of these vendors. Furthermore, Kline informed us that a City vendor directed other Texas fire departments' business to Kline's secondary employment.

We were unable to determine whether Kline abused his position in the City to provide special treatment to City vendors in return for favors related to his secondary employment. In addition, due to the overlap between Kline's City work and his outside employment, we were unable to determine the total extent to which Kline misused his City internet and computer, or to determine whether Kline misused his City credit card to make purchases for his secondary employment.

Finding 1 Misuse of City Resources

Brian Kline has secondary employment with a company owned and directed by his wife, and he was listed as "Governing Person 2" on the company's Certificate of Formation that was filed with the Office of the Secretary of State of Texas. We found evidence dating back to 2014 that Kline misused his City email account, internet access, and computer for this business.

From March 2014 to August 2018, we found 26 email threads related to Kline's secondary employment that contained more than 100 emails:

- We found a long email thread between Kline and a City vendor in which Kline makes purchases for his secondary employment. The thread spans more than two years and includes emails that appear to be related to Kline's City job, but also includes emails directly related to Kline's secondary employment. At one point, Kline inquired about purchasing a specific item from the vendor. Kline exchanged several emails with the vendor about the item and then wrote, "this is for personal use and [I] would like to set up and account there is that possible? My own company." Approximately one month later, Kline placed another order with the vendor and wrote, "This is not for AFD but personal again[.]" Each of these emails included Kline's City email signature, which identified him as an Austin Fire Department employee. In an email from the vendor from 2016, the vendor indicated that they provided Kline with a tax-exempt form for his purchases. Purchases with vendors by the

City are entitled to sales tax exemption under state law, however, purchases by Kline's personal business would not be eligible for this exemption. While we were not able to determine whether Kline inappropriately submitted the paperwork to obtain the tax exemption in 2016, the offer of the exemption form highlights the perception issues created by Kline's decision to operate in dual roles with City vendors. Kline was able to provide our office with two invoices from 2018 from the same vendor that showed that taxes were charged and paid for.

- Also included were two emails asking a City employee who makes stickers and vehicle decals in a different department to make stickers for Kline's secondary employment. In one of those emails, titled "FW: STICKER," Kline wrote, "Think you can make these?" and attached the business' logo. In the other email, Kline wrote, "Hey can you make this sticker?" and attached the logo of a 4x4 off-road club. Kline sent both emails in early 2014; we were not able to substantiate whether the stickers were made.
- Additionally, we found two distinct email threads in which Kline inquired about taking custom knife-making classes. Based on the emails, it does not appear that he took either class.
- Furthermore, we found emails in which Kline was communicating with a representative of a City vendor's "municipal sales" group about a purchase for his secondary employment, as well as emails to a different company where he was commissioning a stamp with the business' logo.

Investigation Criteria:

"No City official or employee shall use City facilities, personnel, equipment or supplies for private purposes, except to the extent such are lawfully available to the public."

City Code: Standards of Conduct
§2-7-62(J)

See Investigation Criteria Section for
More Details

From April 2017 to May 2018, we identified over 6,500 web browser hits that do not appear to be related to Kline's City work. These hits include:

- over 3,700 hits to an online auction site,
- over 1,400 hits to social media websites,
- over 1,300 hits related to a brand of off-road vehicles, and
- over 100 hits to an online gun dealer.

AFD management confirmed that none of the websites in question appeared to be related to Kline's City responsibilities.

In addition, we identified six files on Kline's City computer that appear to have been for his secondary employment. These files include:

- two files containing the business' logo,
- three photos of off-road vehicles, and
- one image of knife designs.

When we spoke with Kline, he told us that he tried to keep his City work and his secondary employment "completely separate," and that he tried not to conduct his personal business while working for the City "at all." However, he said that because his secondary employment occasionally involves performing work for other area fire departments, he has had to use some of the same vendors as AFD. Kline told us that he tried "not to make mistakes."

Kline's misuse of City resources for his secondary employment appears to constitute violations of the following criteria:

- City Code §2-7-62(J): Standards of Conduct
- City Personnel Policies – I.G: Use of City Resources

Finding 2

Inconclusive Abuse

Kline was a member of AFD's Apparatus Committee, which helps determine which fire engines to purchase and what their specifications should be. Although Kline was not responsible for signing off on or approving the fire engines the department purchased, AFD management described him as "integral with the head of operations support" and said that due to his expertise, management sought his advice.

Kline told us he had performed work through his secondary employment for the City's fire engine vendor. Kline provided us with two invoices dated September 2016 and May 2018 in which the business performed work for the City vendor. Kline's business charged \$2,315 and \$3,900, respectively, for the two jobs. Kline also told us that this vendor and another City vendor have referred other area fire departments to the business.

When we spoke with Kline, he stated that his wife's business had never received discounts or other special privileges from any City vendor due to his job with AFD. Ultimately, we were unable to determine whether Kline abused his City position to provide special treatment to City vendors in return for favors related to his secondary employment.

Appendix A - Subject Response

To whom it my concern:

In regards to the City of Austin Investigation of myself (Brian Kline), First off I'd like to say that I've been employed by the City of Austin for close to seventeen years and in that time with Fleet Services and the Austin Fire Department I've been a top employee still to this day with countless awards, employee of the year, SSPR's and recognitions to prove my accountability for the City Of Austin. As far as the city computer use with emails I've owned this and sincerely apologies for that It was a simple mistake with few emails one including a knife for my Cousin who lives in Florida. City of Austin also found that I was using a City of Austin computer for personal use which also I owned but will add that "web Browsing" is something we all do regardless personal or work related and I find this to be absolutely ridiculous that the audit office is even using this as one of their "Finding's". The other "Finding" was that I sent email's requesting stickers to made from another division of the City of Austin which again is nothing more than assumption's, Not one stickers was ever made for me or my company, I have all receipts for stickers, T-shirts ,merchandise with the appropriate Texas sales Taxes. The audit office simply assumed a question of "can you make sticker" or "think you can make these" of myself asking to make the sticker in which I know better to even ask, these questions are asking a person who makes stickers about colors ,fonts, wording, shading, etc.. It had nothing to do with getting free stickers and honestly the audit office only asked me one questions about stickers which I believe was who is ?, the person in the email. No other questions in which I would've happily answered. The audit office couldn't find any type of sticker too be made because there's wasn't not one sticker ever made!

As far as my Families Business goes let this be known that I started my business on the mere fact that I was simply trying to make ends meet. In regards to my current employer I've asked for several years to possibly get a promotion, new job description, even overtime in which I've been denied for years. I've tried ever approach or angle to find some sort of supplemental income within my job and absolutely nothing happened and raising two small kids, trying to support my family the City of Austin left me with no choice to look outside the department, and that's why our company started. Yes I use some of the same vendor's as we do with the department, there's only a handful of vendors who sale items for Fire trucks or Emergency vehicles with only just a few that are made in the USA and have a lifetime warranty policy in place so when I'm working for the Austin Fire Department or myself I will only put on what's best on the market. All of my vendor accounts are separated and I pay much more than the City of Austin which I was completely fine with, I've also paid Taxes from day one. I have no interest in getting kick-backs, Discounts, promotions, whatever. My City job was and still is a passion for me and I had no desire to receive anything else other than a paycheck from the City of Austin.

In regards to myself using a city vendor to my benefits which would be a Fire Truck apparatus manufacture, again the audit office didn't in my opinion didn't ask questions, didn't do the research on this "Finding". 1st – the City of Austin has been using the ^{3rd Party} brand far before I was even an employee with the City of Austin and if you look around within and outside of Austin,Tx. And even way beyond that ^{3rd Party} is one of the top rated builders. Right now there are only two manufactures that are local and used within the central Texas area which are ^{3rd Party} and ^{3rd Party} in which I do work for both, ^{3rd Party} is a local dealer that does the same thing I do for fire trucks and adds the custom work to the price, that being said this is why I get more work for ^{3rd Party} then others but I work on Fire trucks, police, SWAT, all types of emergency vehicles within the State of Texas and I'm extremely proud to be able to assist our local first responders in getting their vehicles up and running to serve their community. This also goes with all the tools the Fire Department uses currently,

Appendix A - Subject Response Continued

every piece of tool and manufacture where used way before my time, I'm only going with what the history of tools being used.

I have no interest in working at 3rd Party, local food chains, minimum wage salaries, or whatever it may be to satisfy the City of Austin policy on secondary employment. It's not fair that I've tried every avenue to get a little extra income within the company and then have to abide by a policy just to make ends meet. No one should take away an individual's dreams to make a community a better place by serving as a family owned business with countless years of experience and providing a very technical and skilled job.

Lastly,

I am only a Technician for the Austin Fire department! I can't and won't sign checks, sign off on equipment or firetrucks for approvals, I only make recommendations for this department based on my experience, research and data of all products, warranties, and manufactures history of their products. The decision are also not solely based on myself we have committee's in place, meetings, discussions about every piece of equipment, tool, vehicle, etc. before any approval is even in the picture.

I'm not interested in favors, Special treatments, Kick-backs, or anything in that same area. I'm simply doing my job with what's presented to me and my work ethic and history within the City of Austin has proving this.

Respectfully,

Brian Kline

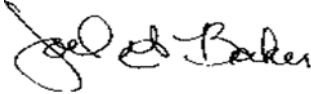
Appendix B - Office of City Auditor's Response to Subject Response

We have reviewed the subject's response. We believe our findings stand.

Appendix C - Management Response



TO: City Auditor's Office

FROM: Fire Chief Joel G. Baker 

DATE: May 17, 2019

SUBJECT: Investigation 18015 – Brian Kline

The Austin Fire Department (AFD) has reviewed the results of the Auditor's Office investigation and the subject's response and we concur with the findings. Finding 1 regarding the Misuse of City Resources describes activity on a city owned computer that is neither condoned or tolerated within AFD. While Finding 2 is inconclusive, it is troubling to suspect Mr. Kline conducted City business under circumstances that would constitute a conflict of interest. AFD has a handful of civilian employees who work in remote locations with minimal supervision. Brian Kline is generally viewed as a good employee, however, he is working in an autonomous job assignment. In response to the investigation findings, AFD will review the working conditions and supervision of employees in similar situations.

As an aside, Mr. Kline's response that he started his business because AFD ignored his requests for a promotion or supplemental income is unfounded. Over the last seven years, AFD Human Resources reviewed several requests from Mr. Kline and his supervisors to increase his pay and each time it was determined that an independent pay increase was not warranted. AFD has numerous employees who are invaluable to our operations, but we do not increase their pay outside the proscribed guidelines for cost of living, reclassification or a market study.

Near the end of the Auditor's investigation, Mr. Kline resigned from the City of Austin Fire Department effective May 31, 2019. A copy of his resignation letter is attached. If, for some reason, Mr. Kline does not separate from AFD as planned, we will pursue disciplinary action in response to Finding 1.

Appendix C - Management Response Continued

April 2, 2019

Captain Lance Zenkner
Austin Fire Department
2011 E. 51st Street
Austin, Texas

Re: Letter of Resignation

Dear Captain Zenkner,

Please accept this letter as notice of my resignation from my position with the Austin Fire Department. My last day of employment will be May 31, 2019.

I have a passion for working on emergency vehicles as well as custom vehicles. It has always been a dream of mine to work for myself. As difficult as it was to make this decision, a lot of thought and consideration went into it. I have made the decision that this is the time for me to make the move.

It has been a pleasure to work for the Austin Fire Department and the City of Austin over the last 17 years. I've have received a great amount of satisfaction from being involved with the fire apparatus over the years.

During my last two months, I will do my best to complete my duties and train my replacement and or my coworkers.

Please let me know if there is anything else I can do to assist with the transition.

Sincerely,

Brian Kline

A handwritten signature in black ink, appearing to be 'BK', with a long horizontal line extending to the right.

Investigation Criteria

Finding 1

City Code §2-7-62 – STANDARDS OF CONDUCT

(J) No City official or employee shall use City facilities, personnel, equipment or supplies for private purposes, except to the extent such are lawfully available to the public, or to the extent that facilities, equipment or supplies are allowed to be used in a limited or de minimis manner in accordance with City policy.

City Personnel Policy – USE OF RESOURCES

(G) Employees are prohibited from using City facilities, equipment, supplies, employee time, or any other City resource for personal use, except to the extent that such resources are available to the public. City resources which may not be used by employees for personal use include, but are not limited to, the following: computers, internet accounts, e-mail and voice mail systems, telephones, facsimile machines, copiers, postage machines, vehicles, office space, desks, and filing cabinets. These resources are dedicated to City business, and City Management shall have full access to both the resources and any contents thereof at all times. Employees have no legitimate expectation of privacy when using these resources. Department Directors may allow employees limited use of telephones for local calls while ensuring that the operational needs of the department are being met.

Finding 2 Inconclusive

City Code §2-7-62 – STANDARDS OF CONDUCT

(O) A City official or employee may not engage in fraud or abuse as defined in City Code Chapter 2-3 (City Auditor) as the use of a City office, employment, contract, or other position with the City to obtain personal gain or favor from a citizen or other City employee or vendor.

City Code §2-3-5 – POWERS AND DUTIES

(A)(1) ABUSE mean the use of a City office, employment, contract, or other position with the City to obtain personal gain or favor from a citizen or other City employee or vendor.

Methodology

To accomplish our investigative objectives, we performed the following steps:

- reviewed applicable City Code and policy,
- conducted background research,
- analyzed Kline's computer forensic data,
- reviewed Kline's City credit card purchases,
- requested and reviewed supporting documentation from Kline's wife's business,
- interviewed City staff, and
- interviewed Kline.

CAIU Investigative Standards

Investigations by the Office of the City Auditor are considered non-audit projects under the Government Auditing Standards and are conducted in accordance with the ethics and general standards (Chapters 1-3), procedures recommended by the Association of Certified Fraud Examiners (ACFE), and the ACFE Fraud Examiner's Manual. Investigations conducted also adhere to the quality standards for investigations established by the Council of the Inspectors General on Integrity and Efficiency (CIGIE), and to City Code.

The Office of the City Auditor, per City Code, may conduct investigations into fraud, abuse, or illegality that may be occurring. If the City Auditor, through the Integrity Unit, finds that there is sufficient evidence to indicate that a material violation of a matter within the office's jurisdiction may have occurred, the City Auditor will issue an investigative report and provide a copy to the appropriate authority.

In order to ensure our report is fair, complete, and objective, we requested responses from both the subject and the Department Director on the results of this investigation. Please find attached these responses in Appendix A and C.

The Office of the City Auditor was created by the Austin City Charter as an independent office reporting to City Council to help establish accountability and improve city services. We conduct investigations of allegations of fraud, waste, or abuse by City employees or contractors.

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