

## Audit Report

# Criminal Background Investigations Audit

**The City has improved the CBI process, but does not ensure positions that require a CBI are effectively identified and filled by individuals who successfully completed a CBI**

May 2024



Although recent changes to the City's Criminal Background Investigation (CBI) process appear to have made the process more effective and efficient, the Human Resources Department (HRD) does not ensure departments correctly identify positions that require a CBI and does not ensure departments fill those positions with individuals who pass a CBI. This creates legal, financial, and reputational risk for the City because departments may place individuals with criminal histories into positions with financial responsibilities or those which involve contact with vulnerable populations. HRD management has described planned changes to the CBI process which may address some of these issues.

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## Objective

The objective of this audit was to determine if the City’s criminal background investigation process operates effectively and efficiently.

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## Background

City of Austin (City) employees have a wide variety of duties and responsibilities. Some have financial responsibilities, such as collecting payments from the public or paying vendors. Other times, employees interact with vulnerable populations. It creates risk for the City if employees in these positions have a criminal history. To mitigate this risk, the City’s Human Resources Department (HRD) has developed procedures for conducting criminal background investigations (CBIs) as part of the hiring process.<sup>1</sup> HRD’s CBI procedures establish a process for identifying positions for which criminal histories create a risk for the City (CBI-sensitive positions), identify the specific criminal offenses that would disqualify someone from CBI-sensitive positions, and ensure these positions are not filled by individuals who have committed those crimes.<sup>2</sup>

The City’s CBI process involves coordination between City departments, the individual being considered for the CBI-sensitive position, and HRD staff. Exhibit 1 provides a high-level overview of this process. The process begins when City departments identify an individual to fill a CBI-sensitive position.<sup>3</sup> This can be through hiring, promotion, or transfer, as well as changing the duties of a current position. The Department’s CBI Coordinator then enters the individual’s information in HRD’s CBI system, which sends a Notification and Disclosure (NAD) form to the individual. The NAD form is used to collect demographic information about the individual, as well as information about their criminal history. After the individual completes the NAD form, HRD staff obtains and reviews the individual’s criminal records to determine if there is anything that would disqualify the individual from holding the position. Specific elements of this process are discussed in more detail in the Findings section of this report.

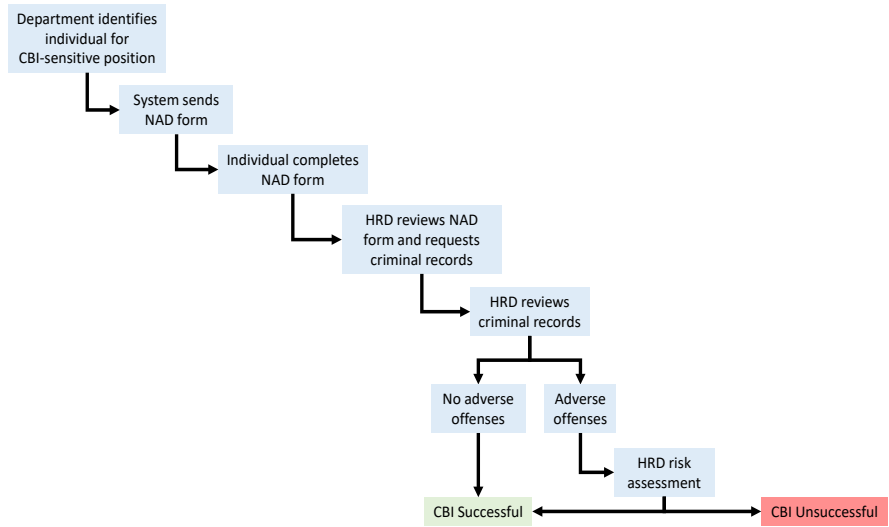
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<sup>1</sup> Conducting CBIs does not eliminate the City’s risk, as individuals with no prior criminal history may still commit crimes while serving in these positions.

<sup>2</sup> Beyond the HRD’s CBI requirements, some departments (e.g., Austin Aviation, Austin Police Department) have separate background check requirements.

<sup>3</sup> The scope of this audit did not include a review of the general hiring process (e.g., interviews) that serve to narrow down a pool of applicants.

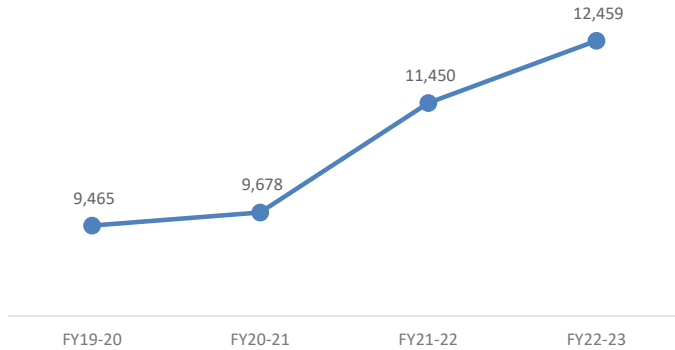
**Exhibit 1: The City’s CBI process requires actions by City departments, the individual being considered for the position, and HRD staff**



Source: Analysis conducted by external contractor, 2023

As shown in Exhibit 2, the City has completed an increasing number of CBIs over the last few years. Because there is a cost associated with requesting a criminal record, the increase in the number of CBIs has led to increased costs for the City. In FY22-23, the City spent \$62,300 to conduct CBIs, a 50% increase from FY19-20. This does not include the additional staff time necessary to process the increased number of CBIs.

**Exhibit 2: There has been an increase in the number of CBIs conducted by the City over the last few years**



Source: Analysis conducted by external contractor, 2023

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# What We Found

## Summary

Although recent changes to the City's Criminal Background Investigation (CBI) process appear to have made the process more effective and efficient, the Human Resources Department (HRD) does not ensure departments correctly identify positions that require a CBI and does not ensure departments fill those positions with individuals who pass a CBI. This creates legal, financial, and reputational risk for the City because departments may place individuals with criminal histories into positions with financial responsibilities or those which involve contact with vulnerable populations. HRD management has described planned changes to the CBI process which may address some of these issues.

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## Finding 1

Although Recent Changes Appear to Have Improved the City's CBI Process, Issues Remain that Result in Limited Effectiveness.

HRD recently implemented an electronic system to process CBIs, which allows NAD forms to be completed electronically. As a result, the CBI process can be completed faster. However, HRD has not provided clear guidance about how to identify CBI-sensitive positions and does not effectively oversee the CBI process. As a result, City positions with financial responsibilities or access to vulnerable populations have been filled by individuals who have not successfully completed a CBI. This increases the City's legal, financial, and reputational risks.

**HRD moved to an electronic system for CBIs, which made the CBI process more effective and efficient.**

HRD recently transitioned to an electronic system, referred to as the CBI module, to manage the CBI process. This change appears to have made the CBI process more effective and efficient. Staff at various City departments stated that they were happy with the changes, noting that it was an improvement over the prior process.

One significant improvement associated with the CBI module is that it eliminated the need for physical NAD forms. In the old process, individuals had to complete a paper copy of the NAD form and physically return it to the City. With the CBI module, individuals can complete and submit the NAD form electronically. Staff indicated this has resulted in a faster CBI process, as NAD forms are submitted faster. Since the NAD form is now submitted electronically, the risk of the form being lost before it can be delivered has been mitigated. Additionally, HRD staff stated that the electronic forms cannot be submitted unless all required fields on the form are completed. This ensures the CBI process is not delayed because individuals submitted an incomplete NAD form.

Another improvement from the CBI module is that departments can only request CBIs for positions that are listed as CBI-sensitive in the CBI module. This prevents departments from incurring unnecessary costs by requesting CBIs for positions that do not require a CBI.

**Elements of the CBI process are not effective.**

There are two key components to an effective CBI process. The first is ensuring CBI-sensitive positions are correctly identified. The second is ensuring CBI-sensitive positions are filled by individuals who have successfully completed a CBI. There are issues with both of those components in the City’s current CBI process.

Identifying CBI-Sensitive Positions

City departments are responsible for identifying CBI-sensitive positions, but limitations with HRD’s CBI procedures increase the likelihood that departments will not correctly identify CBI-sensitive positions. Additionally, HRD does not have a procedure to periodically review positions to ensure they are correctly identified.

As shown in Exhibit 3, HRD’s CBI procedures include numerous examples of duties and titles that have financial responsibilities. These include employees who collect payments, petty cash custodians, and Pro Card users. However, when defining positions that have access to vulnerable populations the procedures only reference “children, the disabled, and the elderly.” Another section of the procedures defines “children” as those under the age of 18, but the procedures do not include a definition for “elderly” or “disabled.” The procedures also do not mention other potentially vulnerable populations, such as people experiencing homelessness or asylum seekers.

**Exhibit 3: The definition of positions with access to vulnerable populations is limited**

Examples of positions with financial responsibilities

- Employees who collect payments, completes the deposit slip, or verifies the deposit
- Employees who serve as the petty cash custodian or back up custodian
- Employees in financial and accounting positions
- Employees who use Pro Cards or Travel Cards
- Employees with check signing authority
- Employees who oversee grant funds
- Employees with approval access for Banner, AIMS, or Works
- Employees who use Customer Information System and Amanda
- Executives

Examples of positions with access to vulnerable populations

- Employees who directly or indirectly work or are in contact with vulnerable populations, which include children (under 18 years), the disabled, and the elderly

✗ No definition of “disabled” or “elderly”

✗ Definition of vulnerable populations does not include key groups

- Employees in positions associated with the Parks and Recreation Department’s children recreation programs
- As required by grant provisions that underwrite City programs for and with children

Source: Analysis conducted by external contractor, 2023

This may result in inconsistencies in how City departments identify CBI-sensitive positions. As an example, recent job postings described similar job duties for a Meter Technician position at Austin Water and a Meter Electrician position at Austin Energy. Although the job duties for both positions included working at customer premises, only the Austin Energy position required a CBI.

Additionally, the CBI procedures include “frequently” in a list of defined terms, noting that it means working in a CBI-sensitive position more than two times in a 30-day period. That term does not appear in any other section of the procedure, but the definition could imply that individuals who work in a CBI-sensitive position less than two times in a 30-day period do



not require a CBI. However, these positions still create a risk for the City. An employee who uses a Pro Card once a month can misuse that card the same as someone who uses a Pro Card multiple times per month.

The impact of these issues would be minimized if HRD had a procedure to regularly review positions to determine if the department had correctly identified if the position required a CBI. While HRD staff stated they have a process to regularly review Pro Card users, HRD does not have a procedure to review other types of CBI-sensitive positions.<sup>4</sup> Additionally, it does not appear that HRD's process for reviewing Pro Card users is effective. A review of a random selection of 10 City employees with access to the credit card system identified 6 that did not have a CBI before gaining access to the system.<sup>5</sup> HRD management said it is up to the department to correctly classify the position as CBI-sensitive, and the departments had not indicated these positions required a CBI.

HRD staff did do a high-level review of CBI-sensitive positions in 2022 to support the rollout of the CBI module. This review identified just over 200 positions that were not listed as CBI-sensitive, but which were filled by individuals that departments indicated had financial responsibilities or access to vulnerable populations.<sup>6</sup> The review also identified about 200 positions that were listed as CBI-sensitive, but department staff stated the positions did not have financial responsibilities or access to vulnerable populations. Overall, HRD management stated that the CBI requirements were updated for over 3,700 positions because of this review.

The number of CBI-sensitive positions that are not correctly identified by departments could be higher as this review did not include temporary positions, contractors, or volunteers. Additionally, HRD staff did not independently validate information provided by City departments about the duties of each position that was reviewed. And because position duties change and new positions are created over time, the information from HRD's review may be outdated. A review of a judgmental selection of 14 open positions posted on the City's job board in early 2024 identified five positions that had been added or changed since the 2022 analysis.

Regular reviews are important because determining which positions are CBI-sensitive is the first step in ensuring that departments fill those positions with individuals who successfully complete a CBI. While the CBI procedures make individual City departments responsible for identifying CBI-sensitive positions, HRD has a responsibility to ensure City departments follow this procedure and apply the requirements correctly. Departments may have a short-term incentive to limit the number of positions identified as CBI-sensitive if department staff have experienced

<sup>4</sup> In a [2013 audit](#), the City Auditor's Office recommend HRD create and maintain a complete list of City employees needing a CBI.

<sup>5</sup> According to Financial Services Department staff, not all individuals with access to the credit card system have Pro Cards. However, the FSD staff member said all required a CBI.

<sup>6</sup> In total, the review discovered 1,375 positions that had been incorrectly listed as not CBI-sensitive. Approximately two-thirds of these positions appeared to require a CBI because of department specific requirements, such as access to criminal justice information. In addition, roughly 500 of the positions appeared to be vacant at the time of the review.

difficulties filling positions because of CBI requirements. And the City incurs unnecessary costs when CBIs are required for positions that should not be CBI-sensitive. Requiring CBIs for these positions may also limit the pool of potential applicants for that position.

### Filling CBI-Sensitive Positions

Assuming CBI-sensitive positions are correctly identified, it is critical to ensure that departments fill those positions with individuals who have successfully completed a CBI. However, several issues increase the risk that this is not done.

#### *Connection to HR System*

HRD's CBI procedures require that individuals have a successful CBI before they can start working in a CBI-sensitive position. However, while the outcomes of CBIs are recorded in the CBI module, the CBI module is not connected to the HR system used to process and fill positions. This means that departments can hire individuals into CBI-sensitive positions without first conducting a CBI or can fill CBI-sensitive positions with individuals who do not have a successful CBI. Depending on the circumstances, this could be a violation of policy and result in discipline for the responsible department staff. However, an HRD staff member said they could remember "a couple of times" when this has happened. The staff member said HRD does not track these actions, so a specific number or additional details was not available.

HRD staff stated they review a monthly report showing personnel changes to verify individuals hired into CBI-sensitive positions have a successful CBI on file. However, HRD staff said this review involves manually checking thousands of personnel changes each month. And HRD staff indicated they are several months behind in their review. In November 2023, HRD staff stated they were still reviewing personnel actions from July. This means a department could hire an unqualified individual into a CBI-sensitive position and it would be several months before HRD had a chance to identify that as an issue.

#### *Review of Successful CBIs*

As part of the CBI process, an HRD employee performs an initial review of the individual's criminal records. If there is no criminal history, or if the records do not include any disqualifying crime, the CBI is determined to be "successful." In these situations, the CBI is closed and no other HRD staff or supervisors review the records. Over the last few years, roughly 99% of CBIs have been classified as "successful." For almost every CBI the City has conducted, there was no oversight or verification that the outcome was correct. This increases the risk that an applicant who should have been disqualified for a CBI-sensitive position would be hired. Although HRD does have a process to conduct regular re-checks, these are not scheduled to occur for at least one year. Someone with a criminal history that should have disqualified them from holding a CBI-sensitive position could be in that position for a full year before the issue is discovered.

### *Risk Assessment Process*

If the initial review identifies a criminal history that could disqualify the individual from the position, HRD staff conduct a risk assessment. This involves a second review by an HRD staff member, and then a discussion with an HRD supervisor. After the supervisor determines the appropriate outcome, the initial reviewer enters the result into the CBI module. HRD's CBI procedures require the use of a risk assessment form, which includes sections for the reviewers and approvers to sign and date the form. However, HRD staff indicated that risk assessments are usually verbal discussions. HRD staff stated that they recently started using a spreadsheet to document the outcome of risk assessments, and it is unclear if HRD supervisors verify that the determined outcome of a CBI was correctly entered onto the spreadsheet. With no documentation supporting the outcome of the risk assessment, and no supervisory review of the outcome spreadsheet, HRD cannot ensure that risk assessment decisions are correctly recorded. While data indicates risk assessments are rare, because it involves individuals with a potentially disqualifying criminal history it is important that the CBI outcome is correctly recorded to ensure unqualified individuals are not hired into CBI-sensitive positions.

### *CBI Re-Checks*

HRD's CBI policy requires "re-checks" for CBI-sensitive positions based on the duties of the position. For positions with access to vulnerable populations, a re-check is required every year. For positions with financial responsibilities, a re-check is required every two years. Based on data for a judgmental sample of 22 individuals in CBI sensitive positions, the CBI re-checks was not done according to the policy for 1 individual. In this case, the employee had been initially checked in 2018 and was not re-checked until the employee's CBI history was requested as part of this audit.

### *Notification and Disclosure Forms*

Another issue relates to the NAD forms that individuals complete at the start of the process. As noted in the Background section, HRD uses these forms to collect demographic information about the individual. This includes whether the individual has lived outside of Texas within the last seven years. The answer to this question determines the criminal records HRD will review. For individuals who have lived within Texas for the last seven years, HRD obtains and reviews criminal records from the Texas Department of Public Safety (DPS). For individuals who have lived outside of Texas within that timeframe, HRD obtains and reviews criminal records from the Federal Bureau of Investigation.

This is important because HRD staff stated they rely on individuals to self-certify that they have answered this question correctly on the NAD form. Because the Texas DPS only provides criminal records from within Texas, this type of review would not identify arrests or convictions from other states. If an individual with a criminal history from another state indicated on the NAD form that they have not lived outside of Texas within the last seven years, HRD would not be aware of this criminal history when



reviewing the criminal records. Individuals who give false information on the NAD form can face discipline, up to termination, and this may be a sufficient deterrent in many cases. However, it may not deter someone who already has a disqualifying criminal history from falsely completing the NAD form.

**Planned changes to the CBI process may mitigate some of the current issues with the CBI process.**

During the audit, HRD management indicated they were planning to outsource parts of the CBI process. According to HRD management, they plan to seek City Council authorization for this contract in July 2024. Although HRD has not contracted with a vendor yet, HRD has developed a draft scope of work intended to serve as the basis for a vendor contract. This scope of work describes a process that would mitigate the issue with the NAD forms noted above. Specifically, the scope of work would require a vendor to review criminal records in municipalities based on an applicant's historical addresses. This would eliminate the risk associated with individuals incorrectly indicating they had only lived within Texas for the last seven years and make it more likely that an applicant's complete criminal history will be identified and reviewed. Additionally, the scope of work specified a timeframe for completing the criminal record search. While this may not have a noticeable effect on the time it takes to complete the CBI process, it does set a contractual standard.

Additionally, HRD management indicated that they are working to implement a new human resources system for the City. While staff indicated the new system would still not automatically connect with the CBI module, staff stated that the new system would not allow departments to fill a CBI-sensitive position unless there was a successful CBI.

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## Additional Observations

### Identification of CBI-Sensitive Positions

As part of the process to develop the current CBI procedures in 2021, HRD obtained information about CBI practices in other large Texas cities (Dallas, El Paso, Fort Worth, Houston, and San Antonio), nearby cities (Georgetown, San Marcos) and counties (Harris, Travis, Bexar). All the cities and most of the other counties included in HRD's review required CBIs for all positions.

As noted above, HRD's CBI procedures may lead to situations where departments incorrectly determine that a position does or does not require a CBI. This could be avoided if the City required a CBI for all City positions. However, this would lead to increased costs associated with conducting CBIs. HRD management also asserted that this would conflict with Municipal Civil Service rules and the City's "re-entry friendly practices."

### Consideration of Convictions

While HRD staff review all criminal records for the past seven years as part of the CBI process, the CBI procedures specify that only convictions and incomplete deferred adjudication can be used to disqualify an individual from a CBI-sensitive position.<sup>7</sup> In other words, if someone has been arrested, but not convicted, of a disqualifying crime, that individual would not be disqualified from holding a CBI-sensitive position according to the CBI procedures. This does not match guidance from the Society of Human Resources Professionals, which recommends that convictions and pending prosecutions be considered in a CBI process.

This is important because only considering convictions creates reputational risk for the City. For example, consider a situation where someone has been arrested, but not convicted, for sexual assault. According to HRD's CBI procedures, this individual would not be disqualified for a City position which required contact with vulnerable populations. This would create significant issues for the City if the individual was hired for that position and then committed additional crimes. Even if the individual did not commit additional crimes, if the person was ultimately convicted of sexual assault the public might question the City's decision to place the person in a position that involved interactions with vulnerable populations.

HRD staff members noted that they monitor situations where individuals are still facing trial for disqualifying crimes. HRD management also stated that they discuss these situations during the risk assessment process, and would disqualify individuals who had not been convicted of a crime, but whose alleged crimes created risk for the City. Additionally, HRD management indicated that if individuals faced a pending trial for crimes which conflict with the requirements of a position, the individual could be placed into an alternative position until the charge is resolved. However, none of those controls are included in HRD's CBI procedures.

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<sup>7</sup> The CBI procedures define "deferred adjudication" as a court ordered supervision in which a finding of "guilt" has been withheld, which will result in the dismissal of the charge if the deferred adjudication conditions are successfully completed.

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# Recommendations and Management Response

1

To ensure CBI positions are clearly identified, the Human Resources Department Director should:

- a. Develop and provide guidance for departments, including what is considered a “vulnerable population,” to ensure departments consistently and correctly identify CBI-sensitive positions.
- b. Implement a process to periodically review positions to confirm departments have correctly identified CBI-sensitive positions.

**Management Response:** Agree

**Proposed Implementation Plan:** The current procedure defines “vulnerable populations.” This is defined in the Criteria for CBI Reviews: Vulnerable Populations as:

- Positions directly or indirectly working or in contact with vulnerable populations which include children, the disabled, and the elderly.
- Positions defined in the City Ordinance adopting local standards of care for the City Parks and Recreation Department’s children’s recreation programs under Texas Human Resources Code Section 42.041 (b)(14) (Required License and Accreditation).
- As required by provisions of MHMR grants that underwire City programs for and with Children.

Definitions specific to working with Vulnerable Populations

*Children*            *Persons under the age of 18; see also ‘youth’*

*TDFPS*            *Texas Department of Family and Protective Services*

*TDPS*            *Texas Department of Public Safety*

HRD will update the Vulnerable Population definition to include the information already provided, as well as the specific information noted by the Auditors regarding the elderly that can be found in the referred pages above:

- age 65 or older; or
- age 18 to 65 who have disabilities.

As referenced in the audit, the HRD conducted 12,459 CBIs in FY23. This represents a 32% increase in CBIs conducted on positions since FY20. Departments are responsible for ensuring their positions are classified correctly as requiring a CBI.

HRD plans to utilize a third-party vendor to complete CBIs. The solicitation for this service was posted on April 22, 2024 and will close on May 21, 2024. Once this contract is implemented, HRD staff can focus on periodically reviewing positions to ensure Departments have correctly identified positions requiring a CBI.

**Proposed Implementation Date:** January 2025

2

To ensure CBI positions are filled by individuals who have successfully completed a CBI, the Human Resources Department Director should implement a process, such as periodic verification of a sample, to verify outcomes are correctly recorded.

Management Response: Agree

**Proposed Implementation Plan:** HRD plans to utilize a third-party vendor to complete CBIs. The solicitation for this service was posted on April 22, 2024, and will close on May 21, 2024. Once this contract is implemented, HRD staff can focus on periodically reviewing positions to ensure Departments have correctly identified positions requiring a CBI.

**Proposed Implementation Date:** January 2025

3

To ensure CBI positions are filled by individuals who have successfully completed a CBI, the Human Resources Department Director should:

- a. Implement a process to search for criminal records based on the individual's previous addresses.
- b. Implement a process to ensure personnel actions cannot be completed for CBI-sensitive positions until the candidate has a successful CBI.

Management Response: Agree

**Proposed Implementation Plan:** HRD plans to utilize a third-party vendor to complete CBIs. The solicitation for this service was posted on April 22, 2024 and will close on May 21, 2024. Any new process will include a process to search for criminal histories based on an applicant/employee's previous addresses.

The City is in the process of implementing a new Human Capital Management (HCM) system. Once this is implemented, Departments cannot hire someone for a CBI-sensitive role without having the CBI returned. The current process requires three separate systems. With the new HCM, the process will reside in one system.

**Proposed Implementation Date:** January 2025

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## Scope

This audit considered the City's current policies and practices related to CBIs. Records showing dates of previous CBIs were reviewed to evaluate whether the CBI re-check policy was followed.

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## Methodology

The methodology used to conduct this audit included:

- Reviewed HRD policies related to the CBI process.
- Reviewed Texas laws and industry guidance related to CBIs.
- Analyzed historical data related to the number of CBIs completed since FY2019, along with the associated costs.
- Interviewed HRD staff and supervisors responsible for reviewing criminal records as part of the CBI process to gain an understanding of the process.
- Interviewed HRD staff who completed a review of City positions to identify whether positions should be classified as CBI-sensitive and reviewed their analysis.
- Surveyed department CBI coordinators about their understanding of the CBI process and their experience conducting CBIs as part of their department's hiring practices.
- Reviewed a judgmental sample of 14 City job postings to determine if they appeared to correctly identify positions as CBI-sensitive and had been included in HRD's analysis of City positions.
  - The sample included 7 positions that stated a CBI was required and 7 positions that stated a CBI was not required. Within those groups, the selection was made to ensure the sample included a variety of City departments and job titles. Because the sample size was not statistically valid, the results should not be projected to the entire population.
- Reviewed a sample of 22 employees to validate that CBIs were conducted as required by policy. This included:
  - 10 employees randomly selected from a list of employees with access to the City's credit card system that did not appear to be included in the list of employees who had a current CBI. Because the sample size was not statistically valid, the results should not be projected to the entire population.
  - 10 employees judgmentally selected from a list of current employees who had a CBI. The sample selection was done to ensure a variety of City departments and job titles was included. Because the sample size was not statistically valid, the results should not be projected to the entire population.
  - 2 employees identified in City Auditor's Integrity Unit reports as having misused City Pro Cards.
- Evaluated internal controls and the risk of fraud, waste, and abuse related to the City's CBI process.



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## Audit Standards

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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 performance audits to review aspects of a City service or program and provide recommendations for improvement.

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