

Investigative Report

# Conflict of Interest by Aviation Department Director

April 2023



Jacqueline Yaft, Chief Executive Officer of the Aviation Department, violated City Code by acting on a conflict of interest. Yaft participated in the approval process of at least four invoices from her previous employer, a City contractor. The invoices totaled approximately \$550,000. Yaft had a conflict of interest when she approved these invoices because of the money she made from this contractor before she was a City employee. She also violated City Code when she failed to disclose her conflict in writing to her supervisor.

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Cover: Aerial view of downtown Austin by RoschetzkyIstockPhoto

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## Allegation

In December 2021, we received a concern that Jacqueline Yaft had been “interfering in the management” of an aviation contract involving her previous employer.

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## Background

The Aviation Department is responsible for operating the Austin Bergstrom International Airport. Its goals include “build[ing] and maintain[ing] airport infrastructure to meet passenger demands and enhanc[ing] the [airport] employee experience.”

Jacqueline Yaft is the Chief Executive Officer (CEO) of the Aviation Department (Airport). As the Airport’s CEO, Yaft is responsible for overseeing the day-to-day operations of the airport, budget and finance matters, as well as construction and development of the airport.

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# Investigation Results Summary

Jacqueline Yaft, Chief Executive Office of the Airport, violated City Code by acting on a conflict of interest. Yaft participated in the approval process of at least four invoices from her previous employer, a City contractor. The invoices totaled approximately \$550,000. Yaft had a conflict of interest when she approved these invoices because of the money she made from this contractor before she was a City employee. Additionally, she met alone with her former employer on at least seven occasions and exchanged at least 13 emails in which she was the only Airport employee in the original exchange. Yaft also violated City Code when she failed to disclose her conflict in writing to her supervisor. Additionally, Yaft did not file a required conflict disclosure form until September 2022, over three years after she was initially required to do so.

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## Finding 1

### Jacqueline Yaft acted on a conflict of interest

Prior to beginning her role with the airport in June 2019, Yaft worked for a consulting firm from October 2018-May 2019. During that time, she made a salary of roughly \$200,000 annually. Because Yaft made more than \$5,000 in the previous calendar year working for this consulting firm, she had a substantial interest in the firm as defined by City Code when she began working for the City. This same consulting firm became a City contractor for the Airport in June 2019. The decision to contract with the firm was made prior to Yaft's employment with the City. The firm was hired to provide subject matter expertise to Aviation's executive management on airport development, planning, and project management and has a contract with the City for a period of five years at the cost of \$10 million. As a result, a conflict of interest existed between Yaft and this contractor when she started working for the City.

During our investigation, Yaft agreed that the Law Department could disclose records of advice provided to her. In June 2019, Yaft received written guidance from the City's Law Department which stated that Yaft must recuse herself from any decision-making related to her former employer. The guidance specifically included examples such as "oversight of payments" and "contract terms." It also noted that although Yaft could receive advice from the contractor as part of its "fulfillment of its management consulting contract," Yaft should take no actions that could create the perception of impropriety, such as "promoting the company or assisting the company in retaining its contract rights..." Further, the Law Department recommended that Yaft abstain from providing performance feedback about the contractor.

However, between January 2020 and March 2020 while she still had a conflict of interest under City Code, Yaft signed and approved payment for three invoices from her former employer. These invoices totaled about \$380,000. Yaft also appears to have requested staff to pay the contractor for an additional invoice in March 2020 but did not sign the invoice

paperwork for that payment. This payment was roughly \$170,000. When we spoke with Yaft, she confirmed that she signed the invoices as part of a process that previous Aviation executives put in place. However, she also stated that her signature was not necessary for payment by the City. Airport financial staff explained the Airport's invoice approval process and noted that during this time period invoices were sent to the Chief Operating Officer (COO), and if the COO was not available, invoices were sent to the Chief Executive Officer for approval.

In addition to participating in the invoice approval process, Yaft also had meetings with her former employer on at least seven occasions between November 2019 and June 2020 in which she appears to be the only attendee from the Airport. Yaft also exchanged at least 13 emails with the contractor in which she was the only airport employee at the start of the exchange between September 2019 and June 2020. Interactions such as these can create a perception of impropriety, as there is no one else present from the City without a conflict of interest during the interactions. As noted above, Yaft received advice from the Law Department about avoiding actions that may cause the appearance of impropriety.

Additionally, Yaft appears to have been involved in a contract-related decision with the contractor in April 2020. In an email, Yaft informed Airport staff that she spoke with the owner of the contractor and reached an agreement to place the contract on limited hours for a period of time as a result of the COVID-19 pandemic.

Yaft told us that she has not done anything related to her former employer's contract that would give her any financial interest in the contractor or "give [the contractor] anything beyond...their scope of work...[.]" However, this explanation does not account for the substantial interest she had in the contractor because of the salary she collected from them prior to her employment with the City.

By signing off on invoices for her former employer as well as participating in other decisions related to the contract of her former employer, Yaft violated the following portion of City Code:

- § 2-7-63(A) - Prohibition on Conflict of Interest

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## Finding 2

### Yaft failed to disclose her conflict to her supervisor

In June 2019, Yaft received instruction from the Law Department advising her to file a disclosure form by July 1, 2019, to document her conflict of interest with her previous employer. The Law Department also directed Yaft to notify her immediate supervisor in writing of her conflict and note which assistant director at the airport who would oversee "any contract-related communications, payments, performance evaluations, or future negotiations" related to the contractor.

Yaft failed to provide written notice to her supervisor about her conflict of interest. Yaft also did not fill out the required disclosure form until September 2022, after meeting with our office about her conflict of interest. When we spoke with Yaft, she told us that her supervisor

was aware of her previous employer but did not tell her that she had a conflict or that she needed to recuse herself. Yaft's supervisor during this investigation denied having any conversation with Yaft about this or receiving any written disclosure of Yaft's conflict of interest. Additionally, Yaft told us that she disclosed her employment with the contractor during her hiring process with the City and was not informed that this would be a problem moving forward.

Yaft claimed that she never saw the June 2019 email from the Law Department when it was originally sent. Yaft also claimed she did not need to fill out the conflict-of-interest form as she has no personal or financial interest with her former employer, despite instructions from the Law Department. Additionally, the form Yaft claimed she did not have to complete specifically referenced receiving income from a contractor in the previous 12 months as a reason to complete the form. As stated above, Yaft received income from the consulting firm during the 12 months prior to her becoming a City employee.

Yaft initially denied having any meetings with the Law Department but confirmed in a subsequent interview with our office that she did have an in-person meeting with them. However, Yaft told us she did not recall discussing her conflict of interest involving her previous employer during the meeting. The June 2019 email Yaft received from the Law Department references the in-person meeting with Yaft and specifically notes the email is a follow-up regarding a discussion about Yaft's conflict with her prior employer.

By failing to disclose a conflict of interest in writing to her direct supervisor, Yaft violated the following portions of City Code:

- § 2-7-64(A) & (C) – Disclosure of Conflict of Interest

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## Additional Observation

We also noted that Yaft appears to have served as a professional reference for her previous employer on at least two occasions while working for the City. In December 2020, Yaft agreed to assist with a professional reference for her former employer during a contract bidding process. Additionally, Yaft received a similar request in April 2021 and provided a letter of recommendation to her former employer.

# Appendix A - Subject Response

## Cates Legal Group PLLC

Andrew Cates  
Attorney at Law

Personal Information

Personal Information

Personal Information

Personal Information

March 22, 2023

Corrie Stokes  
Office of the City Auditor  
P.O. Box 1088  
Austin, TX 78767-8808

RE: Review and Response to Investigative Report

On behalf of Jacqueline Yaft, who served as the City of Austin's (City) Department of Aviation (Department) Chief Executive Officer from June 2019 to March 2023, thank you for the opportunity to review the above-referenced report.

The report alleges violations of two sections of Austin City Code: §2-7-63 Conflict of Interest and §2-7-64 Disclosure of Conflict of Interest. The report's conclusion that Ms. Yaft acted as a City employee while having a conflict of interest is erroneous, and embodies a conclusion in search of a justification that is replete with inaccuracies and selective reporting.

The report unfairly characterizes and taints the totality of Ms. Yaft's service to the City by failing to acknowledge that

1. Ms. Yaft had a previous employer (Contractor) that held and continued to hold a City contract which predated Mrs. Yaft's employment with the city - a contract in which Ms. Yaft had zero power to award or change;
2. Ms. Yaft's responsibilities as the Department's CEO unavoidably required that she oversee this Executive Program Advisor Contractor which was essential to the future of Austin-Bergstrom International Airport (Airport or AUS) and its Airport Expansion Development Program (AEDP); and,
3. Ms. Yaft was directed by [redacted] City Executive to engage with the Contractor at a confidential level reporting back to him on specific tasks related to implementing the Austin Public Facility Corporations (APFC) .

The Auditor insists in the report that Ms. Yaft's limited contact with the contractor constitutes a conflict of interest; a point to which we vehemently disagree. The facts are as follows:



## Appendix A - Subject Response

### **Finding One – Violation of §2-7-63 Conflict of Interest**

1. During the City’s recruitment of Ms. Yaft as the Department’s CEO, Ms. Yaft transparently and accurately stated all then-current and historical employers in her resume and interview to the [redacted] City Executive, and all other City officials involved in the recruitment process. These City officials were personally well aware that Ms. Yaft was then employed by a City contractor and, in fact, they valued Ms. Yaft’s expertise in her employment as a benefit to the City.
2. [redacted] City Executive and [redacted] City Executive who fostered Ms. Yaft’s employment as the Department CEO directed her then, and on an ongoing basis, to manage certain deliverables of the Contractor and actively engage in pushing forth the scope of work for that Contractor which unavoidably requires, by definition, communication with the Contractor including meeting attendance and correspondence exchanges all of which were transparently recorded. Ms. Yaft’s supervisors should not have directed Ms. Yaft to manage the Contractor’s special task deliverables if there was a concern by the City that Ms. Yaft would have a conflict of interest.
3. Throughout the term of Ms. Yaft’s City employment and still today, Ms. Yaft had no financial or other interest in the Contractor that was her former employer once employment with that Contractor ended. No salary, bonus, pay-out, or any other form of compensation from the Contractor existed during Ms. Yaft’s employment with the City.
4. While the report cites the Law Department’s “advice” about managing “appearances” of conflict in managing the Contractor, this “advice” was consistently at odds with and contradictory to the communications and actions of Ms. Yaft’s supervisor [redacted] City Executive [redacted].
5. The report failed to confirm that all of the Contractor’s invoices were related to their described scope of work, including the confidential task assigned by the [redacted] City Executive [redacted]. It is important to note that initialing invoices by the executives was an internal Department process merely to verify that the Airport contract manager and finance manager confirmed and approved the invoices for work completed within the assigned budget. At no point did Ms. Yaft create or amend any invoices that she was required by her position to approve/initial.

Based on the minimal facts provided by the City Auditor in their report, it concluded that Ms. Yaft violated §2-7-63(A) of Austin City Code, which states:

A City official or employee may not participate in a vote or decision on a matter affecting a natural person, entity, or property in which the official or employee has a substantial interest; provided, however, that this provision shall not prohibit any member of the city council from participating in a discussion relating to a petition certified to the city council by the city clerk which petition seeks the recall of said member of the city council.



## Appendix A - Subject Response

However, another subsection of §2-7-63 is more applicable in this situation:

(C) Where the interest of a City official or employee in the subject matter of a vote or decision is remote or incidental, the City official or employee may participate in the vote or decision and need not disclose the interest.

The actions described by the City Auditor in the report amount to nothing more than standard duties of an executive employee, and any reasonable person would see that Ms. Yaft had no personal interest in any meetings with the Contractor or in any executive decision-making required by her position. As such, Ms. Yaft should not have been required to disclose anything according to City Code. The Auditor's conclusion is therefore faulty and incorrect.

### **Finding Two – Failure to Disclose Conflict of Interest – 2-7-64**

Additionally, the report inaccurately asserts that the Law Department informed Ms. Yaft via email that she was required to fill out and file the disclosure forms. The statement is not factually possible, as the Law Department's records show that the email was sent to an incorrect address using a non-existent domain name at the time it was sent by the Law Department. The auditor's report doesn't mention, nor acknowledge this fact or explain the inconsistency of the statements. Further, since Ms. Yaft was universally transparent about her former employment which was well known throughout the Airport, the shortfall in disclosure form filing deprived no one in the City's chain of command, either up or down from Ms. Yaft's Department CEO position, of full knowledge on the circumstances of her employment.

Speaking specifically to the portion of City Code the Auditor alleges Ms. Yaft violated, §2-7-64, it states, in part:

(A) A City official shall disclose the existence of any substantial interest he may have in a natural person, entity or property which would be affected by a vote or decision of the body of which the City official is a member or that he serves as a corporate officer or member of the board of directors of a nonprofit entity for which a vote or decision regarding funding by or through the City is being considered.

As the Airport CEO, Ms. Yaft was considered "a City official", and may have had a substantial interest in the Contractor, by City Code definition. However, due to the wording of §2-7-64, at no point was this interest "affected by a vote or decision of the body" of which Ms. Yaft was a member (namely the Department of Aviation). Ms. Yaft's "interest" preceded her employment entirely and at no point did any decision impact that "interest". As a result, based on a plain reading of the Code, disclosure was unnecessary.

As a final note, the inclusion of the "Additional Observation" in the report reinforces the conclusion that this report has no basis in fact or law. That Ms. Yaft assisted other airports by providing a reference for City contractors should not be included in this report as a footnote in a clear attempt to show compounding evidence of the report's "findings". The facts are that (1) Ms. Yaft has and will provide references on City contractors to other airports as a matter of intergovernmental cooperation in dealing with private sector service providers, and (2) when





## Appendix A - Subject Response

appropriate it is in the City's interest to provide references for contractors that do good work for the City as an incentive to continue to do so.

Unfortunately, the City Auditor's report is based on incomplete information, selective assertions, and inaccuracies. The City Auditor's report narrows the focus of Ms. Yaft's service to the City down to two findings based on conflicting directives from her supervisors through scant factual information.

Instead, the City should be thanking Ms. Yaft who served the City extraordinarily well in launching the modernization of the Airport, in operating AUS throughout the COVID-19 pandemic with a 30% vacancy rate, and in increasing the Airport's air service advancing the airport to a large hub serving close to 22 million passengers.

Respectfully,



Andrew Cates

On Behalf of Jacqueline Yaft



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

We reviewed the subject's response and believe our findings stand. The subject's response ignores City Code language and makes statements that are contradicted by the available evidence:

- As noted in our report, City Code defines the term "substantial interest." That definition includes the interest established when "funds received by the person from the other person or entity either during the previous 12 months or the previous calendar year equaled or exceeded \$5,000 in salary..." This is Yaft's situation, as she admitted her salary with the contractor was approximately \$200,000 annually.
- Yaft responded that it was not possible for her to have received the email from the Law Department documenting her conflict of interest and the legal guidance on how to handle that conflict. However, a review of Yaft's City email shows she did receive the email. Additionally, the email was marked with a red flag, a feature used by the receiver of emails in the City system.
- We interviewed the City executives who oversaw Yaft and were told they had never discussed Yaft's conflict of interest, nor received any written disclosure about it.

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## Appendix C - Management Response

Assistant City Manager Robert Goode provided the following response to our office on 4/3/2023:

*“The City has established standards of conduct for all our employees. Ethics and Integrity are fundamental within those standards with the goal that our actions maintain the trust and confidence of the public and the organization. Therefore, we require strict adherence to federal, state and local laws, regulations, ordinances and code for all city employees. It is imperative that conflicts of interest be reported, and guidance be followed when conflicts of interest occur, to avoid even the suspicion of impropriety. We appreciate the diligence of the Office of the City Auditor in this investigative report. Ms. Yaft submitted her resignation effective March 2, 2023, and therefore is no longer in the role of Chief Executive Officer of the Aviation Department.”*

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# Investigation Criteria

## Finding 1

### City Code § 2-7-63 Prohibition on Conflict of Interest (A)

A City official or employee may not participate in a vote or decision on a matter affecting a natural person, entity, or property in which the official or employee has a substantial interest; provided, however, that this provision shall not prohibit any member of the city council from participating in a discussion relating to a petition certified to the city council by the city clerk which petition seeks the recall of said member of the city council.

### City Code § 2-7-2(1) – Definitions

AFFECTED means in the case of a person, entity or property, means reasonably likely to be subject to a direct economic effect or consequence, either positive or negative, as a result of the vote or decision in question. [...]

### City Code § 2-7-2(4) – Definitions

DECISION means any ordinance, resolution, contract, franchise, formal action or other matter voted on by the city council or other City board or commission, as well as the discussions or deliberations of the council, board, or commission which can or may lead to a vote or formal action by that body. A decision of a City employee means any action in which the employee exercises discretionary authority, including but not limited to the issuance of permits, imposition or collection of fines or fees, authorizations for expenditures, and other non-ministerial acts.

### City Code § 2-7-2(5) – Definitions

DISCRETIONARY AUTHORITY means the power to exercise any judgement in a decision or action.

### City Code § 2-7-2(12) – Definitions

SUBSTANTIAL INTEREST means an interest in another person or an entity if: the interest is ownership of five percent or more of the voting stock, shares or equity of the entity or ownership of \$5,000 or more of the equity or market value of the entity; or funds received by the person from the other person or entity either during the previous 12 months or the previous calendar year equaled or exceeded \$5,000 in salary, bonuses, commissions or professional fees or \$20,000 in payment for goods, products or nonprofessional services, or 10 percent of the person's gross income during that period, whichever is less. [...]

## Finding 2

### City Code § 2-7-64 Disclosure of Conflict of Interest (A)

A City official shall disclose the existence of any substantial interest he may have in a natural person, entity or property which would be affected by a vote or decision of the body of which the City official is a member or that he serves as a corporate officer or member of the board of directors of a nonprofit entity for which a vote or decision regarding funding by or through the City is being considered.

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## Investigation Criteria

### City Code § 2-7-64 Disclosure of Conflict of Interest (C)

To comply with this section, a City employee shall notify in writing his supervisor of any substantial interest he may have in a natural person, entity or property which would be affected by an exercise of discretionary authority by the City employee and a supervisor shall reassign the matter.

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## Methodology

We took the following steps to accomplish our investigation objectives:

- Conducted background research
- Reviewed applicable City records
- Interviewed Aviation Department staff
- Interviewed the subject
- Reviewed applicable City Code and policy

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## CAIU Investigative Standards

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