

City of Detroit
Office of Inspector General

OIG Case #2015-CF-0171



March 14, 2016

I. Office of Inspector General Jurisdiction

The City of Detroit Office of Inspector General is an independent office established by the 2012 Charter of the City of Detroit. The purpose of the office is to investigate allegations of waste, abuse, fraud, and corruption.¹ The Inspector General's jurisdiction extends "to the conduct of any Public Servant and City agency, program or official act, contractors and subcontractors providing goods and services to the City, business entities seeking contracts or certification of eligibility for city contracts and persons seeking certification of eligibility for participation in any city program."²

II. Background & Allegations

On September 4, 2015, the City of Detroit Office of Inspector General (OIG) initiated an investigation involving Carol Banks, a personal services contractor on the staff of Detroit City Councilmember Scott Benson. Ms. Banks began working for the City of Detroit in January 2014 and was hired by the Detroit Public Schools (DPS) as its Ombudsperson in February 2014.

Questions involving Ms. Banks' employment came to light following a local news report alleging that she submitted conflicting work hours to DPS and the City of Detroit. The OIG's investigation focused on the question of whether Ms. Banks received compensation from the City of Detroit for work she claimed to be doing on Councilmember Benson's behalf when she was in fact working for DPS.

III. Discussion

A. Carol Banks Personal Services Contract

Ms. Banks began working for Councilmember Benson in January 2014. As is common for legislative staffers, Ms. Banks was hired under a personal services contract. Her initial contract covered the period of January 2014 through June 2015. Her current contract covers July 1, 2015 through June 30, 2016. Ms. Banks earns \$33.00 per hour with a contractual limit of \$19,800.00 for providing general assistance to Councilmember Benson.³

The contractor is engaged to assist the Councilmember in the performance of duties on behalf of the Detroit City Council. The Council Member may define assignments and regular duties deemed necessary to ensure that the obligations of the Office of the City Council are diligently performed. Additionally, this contract shall be performed in accordance with all federal, state, and local laws, city policies, rules and regulations.⁴

¹ 2012 Charter of the City of Detroit, Art 7.5, Sec 7.5-301

² 2012 Charter of the City of Detroit, Art 7.5, Sec 7.5-305

³ Ms. Banks received a new contract in September 2015. She remains at \$33.00 per hour but now works 40 hours per week. However, this change is not relevant to this investigation.

⁴ Personal Services Contract #87201

B. City of Detroit Outside Employment Policy

Because she is classified as an “independent contractor” Ms. Banks is not subject to the City of Detroit’s outside employment policy.⁵ That policy requires city employees to “notify and obtain permission from their department or agency head to begin or continue employment with an outside employer.” Covered employees are required to complete a “Request for Approval of Outside Employment” form and present it to their supervisors. Ms. Banks’ contract clearly distinguishes her from a regular city employee:

[T]he relationship of the Contractor to the Agency is to be that of an independent contractor and no liability or benefits, such as retirement benefits or liabilities, pension rights or liabilities, insurance rights or liabilities, holiday pay, sick pay, vacation pay, personal injury or property insurance rights or liabilities, or such other rights, provisions or liabilities arising out of a contract of hire or employer-employee relationship either express or implied shall arise or accrue to either party as the result of this agreement and undertaking. The Contractor shall, under no circumstances, represent himself (herself) as an employee of the Agency or the City of Detroit.⁶

The OIG consulted the Human Resources Department which confirmed that personal services contractors are not covered by this policy. However, as is noted later in this report, Councilmember Benson was aware of Ms. Banks’ employment with DPS, and would have presumably approved a request for approval had she been required to submit one.

C. Carol Banks Interview

On October 26, 2015 Carol Banks met with OIG staff members to discuss the alleged conflicting time submissions. Ms. Banks stated that she rarely works in Councilmember Benson’s downtown office. She estimated that she spends 65% of her time at his district office located at 13560 W. McNichols and spends the majority of the remainder of her time accompanying Councilmember Benson to community events. Ms. Banks reported that even when she worked more than 10 hours in a week, she limited her time submissions to 10 hours to avoid exceeding the yearly contractual earning limit. An OIG review of her time card submissions supports this statement with respect to the pattern of billing 10 or fewer hours in a week. Ms. Banks stated that she would begin her DPS workday early, approximately 7:30 a.m., on many of the dates that she intended to work for the City of Detroit. This allowed her to begin working for the City of Detroit in the afternoon and fulfill her obligations to both entities.

Ms. Banks submitted her work hours by emailing them from her personal account to Councilmember Benson’s Executive Director. Ms. Banks believed that Councilmember Benson reviewed her submissions for accuracy because he would on occasion notify her when he found a discrepancy or had questions.

The OIG presented Ms. Banks with 12 dates for which there appeared to be a conflict between her DPS and City of Detroit time submissions. Her position was that her submissions to

⁵ Outside Employment Policy Human Resources Directive #2009-1

⁶ Personal Services Contract #87201, III. Unclassified Service, 3.01

the City of Detroit were accurate and reflected hours actually worked for Councilmember Benson. Further, Ms. Banks stated billing DPS for the same time periods resulted from a mistake because she did not actually work those hours for DPS. Consequently, any inaccuracies would have resulted in DPS paying her for hours that she did not work for them but instead worked for the City of Detroit. Ms. Banks stated that the mistakes she referenced were occasionally made by both her and DPS.⁷

The OIG requested documentation (ie. emails, calendar entries, etc.) from Ms. Banks which would substantiate her claim that she was working on behalf of Councilmember Benson on the days in question. Ms. Banks produced a document entitled “Request for Approved Short Term Absence” signed and dated by a DPS employee appearing to authorize her to be absent from work on July 25, 2014 for “personal reasons.” Ms. Banks claims to have submitted the document to DPS and indicated that she requested the absence so that she could work a full day with the City of Detroit. However, DPS recorded her as working eight hours for this day. For the remaining 11 days, Ms. Banks provided calendar entries relating to meetings, community events, or other activities at which she claims to have been present and working on behalf of Councilmember Benson.⁸

D. Councilmember Scott Benson Response

Councilmember Benson supported Ms. Banks’ contention that her City of Detroit time submissions accurately reflected hours she actually worked on his behalf. He reviewed the days for which the OIG noticed a conflict. For six of the dates he located documentation to confirm that Ms. Banks worked for the City of Detroit.⁹ While he could not locate written documentation for the remaining six days, Councilmember Benson was adamant that Ms. Banks worked for the City of Detroit on those days.

Councilmember Benson explained that Ms. Banks generally worked on an “as-needed” basis. He was aware of her employment with DPS and he saw her work there as an asset to his office because of the knowledge it afforded her regarding public education in Detroit. He saw the DPS position as her primary job and explained that her work for the city was designed to accommodate her DPS schedule. Councilmember Benson stated that Carol Banks’ DPS position never interfered with her duties for the City of Detroit. He stated that he randomly reviewed her time submissions to confirm their accuracy. Councilman Benson believes that Ms. Banks routinely worked hours for which she was not compensated because of her weekend activities on his behalf.

⁷ Ms. Banks’ official response to this report contradicts this statement.

⁸ The calendar entries provided by Ms. Banks are from her personal Google account. She claims that she does not regularly use GroupWise, the City of Detroit’s email and calendaring system.

⁹ March 20, 2015; March 27, 2015; April 7, 2015; April 8, 2015; April 30, 2015; and May 1, 2015.

E. Time Card Submission Analysis

1. Time Submission Process

Ms. Banks, like all employees in Councilmember Benson's office, submits her time using the city's Workbrain system. Workbrain is a software program used by employees and personal services contractors to record and submit their work hours to the City of Detroit for payment. The OIG reviewed both her City of Detroit and DPS time submissions covering April 2014 to September 2015.¹⁰ The City of Detroit submissions list the specific times that she worked (ie. 8am-4pm). DPS submissions note the number of hours she worked without mention of the specific hours (ie. 8 hours). The OIG relied upon Ms. Banks' normal DPS work schedule (8:30am to 4:30pm) to analyze conflicting submissions. Ms. Banks stated that she often began her workday at DPS before 8:30 am on the days that she also worked for the City of Detroit. On these days, her 8-hour workday would end before 4:30 pm. Since DPS automatically logged Ms. Banks for 8-hour days, the OIG considered conflicting hours to be any City of Detroit workday that started before 4:00 pm on days in which she also submitted eight hours of time to DPS.

2. Carol Banks submitted conflicting work hours to the City of Detroit and the Detroit Public Schools on 12 occasions

Ms. Banks had a total of 33.5 hours of conflicting time submissions occurring over a period of 12 days. The conflict represents hours for which she represented to both the City of Detroit and DPS that she was working on their behalf. The OIG's review period covered 711.5 hours over a period of 198 days. As a result, Ms. Banks' City of Detroit and DPS hours conflicted 4.7% of the time in the examined period. Given her rate of pay, this would represent a total loss to the City of Detroit of just over \$1000 if the conflicting hours were improperly billed. She earned just over \$22,000 over the covered time period.

¹⁰ The OIG's review covered this time period because City Council staffers did not begin using Workbrain until April 2014.

Conflicting Hours Billed to DPS & City of Detroit

Date	Day of Week	COD Time Frame	Number of Conflicting Hours
7/21/2014	Monday	3:30 p.m. - 9:00 p.m.	0.5
7/25/2014	Friday	3:30 p.m. - 8:30 p.m.	0.5
3/20/2015	Friday	9:00 a.m. - 5:00 p.m.	8
3/27/2015	Friday	1:00 p.m. - 6:00 p.m.	3
4/7/2015	Tuesday	1:00 p.m. - 4:00 p.m.	3
4/8/2015	Wednesday	1:00 p.m. - 3:00 p.m.	2
4/30/2015	Thursday	10:00 a.m. - 12:30 p.m.	2.5
5/1/2015	Friday	12:00 noon - 6:30 p.m.	4
5/11/2015	Monday	3:00 p.m. - 7:30 p.m.	1
5/18/2015	Monday	3:00 p.m. - 7:30 p.m.	1
6/2/2015	Tuesday	12:00 noon - 3:00 p.m.	3
6/12/2015	Friday	10:00 a.m. - 3:00 p.m.	5
	Totals	N/A	Totals
Monday	3	N/A	2.5
Tuesday	2	N/A	6
Wednesday	1	N/A	2
Thursday	1	N/A	2.5
Friday	5	N/A	20.5
All	12	N/A	33.5

3. Councilmember Benson confirms the accuracy of Carol Banks' time submissions

Councilmember Benson responded to two sets of questions during the OIG investigation. In his first response received on October 22, 2015, the councilmember stated his confidence that Ms. Banks only received compensation for work she completed on his behalf. At the time of his initial response the OIG had not yet determined that there were conflicting time submissions, so his statements reflected his general confidence with the accuracy of the submissions. On December 1, 2015 he responded directly to the dates in question. Councilmember Benson once again stated unequivocally that Ms. Banks was only paid for hours that she actually worked for him.

4. The Detroit Public Schools investigation concluded that the school district was the victim of the conflicting time submissions

The OIG has been in contact with the DPS general counsel from the onset of this investigation and has worked collaboratively with DPS outside counsel who conducted an independent investigation. The DPS and OIG investigations ran concurrently and focused on the same basic point – for whom was Carol Banks working during the conflicting dates? The OIG

requested that DPS provide it with any available documentation (emails, calendar entries, video footage, etc.) suggesting that Ms. Banks was working for the district during the relevant time periods. They were not able to produce such documentation. Similarly, Ms. Banks' supervisors at DPS were not able to confirm her attendance for the conflicting dates. The result of the DPS investigation is that Ms. Banks was not working for the school district during the dates in question. Consequently, DPS has terminated Ms. Banks based upon its findings.

IV. Conclusion

For the purposes of this investigation the question which the OIG must answer is whether there is actionable evidence suggesting that the City of Detroit is the victim of the conflicting submissions. In other words, is there evidence that Ms. Banks billed Councilmember Benson for time she spent at DPS? The answer to that question is that there is not. For the following reasons the OIG determines that there is insufficient evidence that Ms. Banks committed fraud against the City of Detroit based upon its review of conflicting time submissions to the City of Detroit and the Detroit Public Schools:

- 1) Carol Banks' supervisor, Councilmember Benson, confirms the validity of her submissions and the OIG did not find any evidence to suggest that Ms. Banks was not working for the City of Detroit during the submitted hours; and
- 2) The Detroit Public Schools has determined that it was the victim of inaccurate reporting

Councilmember Benson maintains that Ms. Banks' employment with DPS was a positive factor in his decision to select her as his Chief of Staff. This indicates that even if she was covered under Detroit's outside employment policy, he would have approved a request to work for the school district. The evidence uncovered in both the DPS and the OIG investigations suggests that DPS was billed for work it did not receive. However, the OIG investigation did not uncover sufficient evidence to assert that the City of Detroit was the victim of purposeful or even mistaken time card submissions. Consequently, this office is not recommending any criminal or administrative action against Ms. Banks.

DPS has not publically released its report describing the full results of its investigation. Therefore, the full reasoning behind its termination decision is not known to this office or the general public. However, the OIG will continue to stay abreast of further developments as they may be relevant to future contracting decisions.

V. Waiver of OIG Hearing & Public Servant Response to Report

The Charter precludes the Inspector General from issuing any report critical of a public servant without first giving the public servant the opportunity to respond at a hearing.¹¹ The OIG has adopted administrative rules which allow a public servant to waive his or her right to a hearing and instead offer a written response to the draft of a report. On January 3, 2016, the OIG

¹¹ 2012 Charter of the City of Detroit, Art 7.5, Sec 7.5-311

sent a draft of this report to Ms. Banks and Councilmember Benson. Councilman Benson provided verbal feedback to the report and several of his suggestions were incorporated into the final draft. On January 14, 2016 Ms. Banks' attorney requested a hearing on her behalf. The OIG scheduled the hearing for February 14, 2015. It was subsequently adjourned to March 10, 2015. Prior to the hearing, Ms. Banks's attorney contacted the OIG and waived the hearing.

On March 14, 2015 Ms. Banks submitted written comments to the report. She made several points. First, she disputed the OIG's suggestion that some of the inaccuracies with her DPS time submissions may have been the result of mistakes on her part. Ms. Banks stated that she did not make any mistakes when submitting her time to DPS and that any mistakes made by DPS. However, in her October 26, 2015 interview with the OIG she allowed for the possibility that she had made mistakes. However, since this issue speaks to the integrity of DPS' process and not the City of Detroit's, the distinction is not material to the findings of this report. Second, Ms. Banks maintains that she was wrongfully terminated by DPS. Similarly, the legitimacy of her termination, given that DPS' report had not been made public, is not a central tenant of this report.