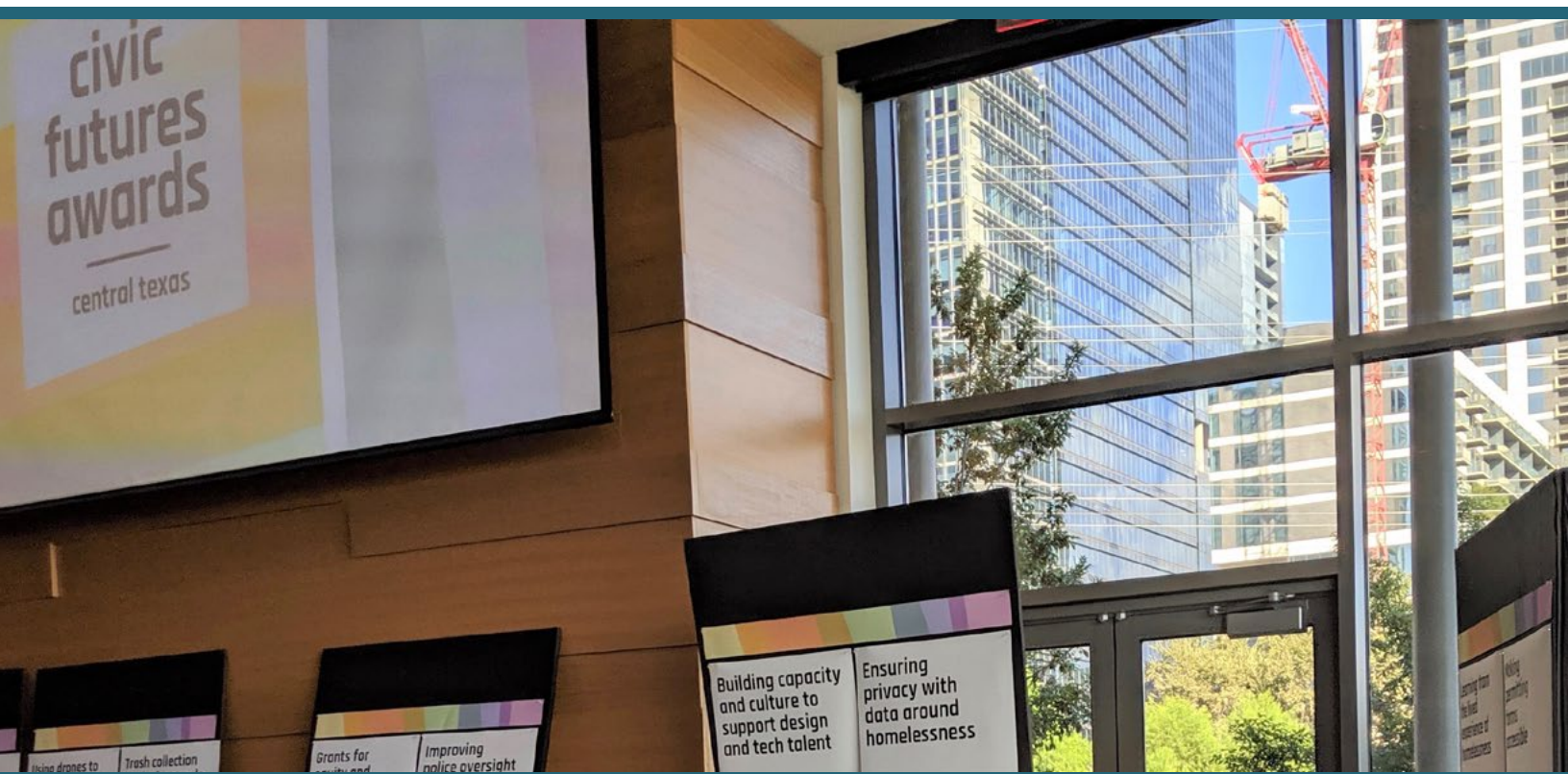


Investigative Report

Conflicts of Interest by Communications & Technology Management Employees

April 2021



Two former Communications & Technology Management (CTM) employees violated City Code when one of them transferred ticket revenue from the Civic Futures Summit, a City event, to non-City entities they controlled. Benjamin Guhin, a former temporary CTM employee, had two conflicts of interest. The first conflict occurred when Guhin sent the event's revenue to a company he owns. Later, Guhin created a second conflict when he transferred the funds to a nonprofit that he set up to pay event costs. Marni Wilhite, a former senior IT project manager at CTM, also had a conflict of interest because she holds an interest in Guhin's company through her marriage to Guhin. We did not find evidence that Guhin or Wilhite misappropriated City funds.

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Cover: “Summit - 58” from “Civic Futures Summit / Central Texas 2019”

Allegations

In September 2019, we received an allegation that money from a City event, the Civic Futures Summit, was going to “unknown people.” We conducted initial due diligence steps but did not find evidence of the conflicts of interest that were later discovered. We ultimately referred the issue to Communications & Technology Management (CTM).

We received a second, more detailed allegation regarding the Summit in December 2019. Among other issues, the informant expressed concern that Guhin could have benefited personally from the event by involving his nonprofit in the event’s finances.

Background

Communications & Technology Management (CTM) manages the City’s information technology. Its mission is to “deliver innovative business technology solutions that improve City services.”

Benjamin Guhin worked at the City from February 2016 to April 2020. Most recently, Guhin was a temporary employee at CTM and described his title as “senior advisor for design and technology policy.” Marni Wilhite Tolle Mees (Wilhite) worked at the City from October 2016 through December 2020. As a senior IT project manager, Wilhite oversaw CTM’s Office of Design & Delivery (ODD). Guhin and Wilhite married in March 2019.

Civic Futures Summit

Guhin, Wilhite, and several other CTM employees planned the Civic Futures Summit, a two-day technology conference held in early October 2019. Roughly 100 to 120 people attended the Summit, according to the organizers.

The organizers sold tickets to the Summit through an online event platform, using an ODD account. The event platform offers several options for withdrawing ticket proceeds, including checks and direct deposit.

Involvement of third parties

The organizers planned the Summit similarly to a smaller event hosted in February 2018. For that event, they asked a local nonprofit to serve as a financial partner. The nonprofit partner received ticket revenue from the event through the online event platform, paid a speaking fee, and gave the remaining revenue to the City. Guhin and Wilhite said they worked with

third parties to hold these events because City executives told them the City couldn't accept cash payments from outside entities (see Additional Observation).

Investigation Results Summary

Two Communications & Technology Management employees violated City Code when one of them transferred ticket revenue from a City event to non-City entities they controlled. Benjamin Guhin, a former temporary CTM employee, and Marni Wilhite, a senior IT project manager at CTM, helped organize the Civic Futures Summit, a two-day technology conference held in early October 2019.

Guhin's decisions regarding the Summit's finances created two conflicts of interest:

- Guhin's first conflict of interest arose when he transferred nearly \$10,000 in ticket revenue from the event to a nonprofit that he controlled and set up to pay some event costs. Guhin, Wilhite, and a third person joined the nonprofit's board of directors.
- Guhin created a second conflict of interest by transferring the event's ticket revenue through a company that he owns and manages. Wilhite shared this conflict of interest because she holds an interest in Guhin's company through their marriage.

We did not find evidence that Guhin or Wilhite misappropriated or misused any of the funds while they were in bank accounts belonging to the nonprofit or Guhin's company.

Finding 1

Guhin had a conflict of interest involving a nonprofit that he set up and controlled

Guhin led planning for the Summit, was responsible for the event's expenses, and paid some of the expenses personally. Wilhite oversaw some of the City employees involved in planning the event and helped with budgeting, planning, marketing, and ordering supplies. Other organizers said Wilhite attended several planning meetings and was aware of major planning milestones.

For the Summit, the organizers intended to partner with a research group based at a Texas university. As with the 2018 event, the research group would have received ticket revenue from the Summit to pay some event costs. However, prior to the event, the organizers said the research group dropped out of the Summit. As a result, Guhin said, they needed a nonprofit organization to take the research group's place as the Summit's "third-party" financial partner.

Creation of nonprofit

Guhin chose to set up his own nonprofit organization in mid-October 2019 to fill this gap. The nonprofit's official documents list Guhin, Wilhite, and a third Communications & Technology Management employee as directors. Guhin said Wilhite and the CTM employee were not involved in setting up the nonprofit beyond agreeing to join its board. According to the organizers, the nonprofit's purpose was to receive ticket revenue from the Summit and pay some event costs.

Two CTM managers—a former chief information officer and a current financial manager—said they knew in advance about the organizers’ plan to partner with an unnamed third party for the Summit. However, the managers did not learn that Guhin’s nonprofit was involved financially in the Summit until after the event concluded and the funds had been transferred. Guhin admitted he did not get permission to involve his own nonprofit in the Summit.

Investigation Criteria:

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(4)

See Investigation Criteria for details.

Investigation Criteria:

A City official or employee who serves as a corporate officer or member of the board of directors of a nonprofit entity may not participate in a vote or decision regarding funding by or through the City for the entity. [...]

City Code §2-7-63(B)

See Investigation Criteria for details.

Transfer of City funds to nonprofit

City Code prohibits City employees who serve as nonprofit board members from participating in certain financial decisions involving those nonprofits. In October and November 2019, Guhin decided to transfer the Summit’s ticket revenue, totaling about \$9,900, from the online event platform to the nonprofit, via his company’s bank account (see Finding 2). Guhin admitted he made all the financial arrangements and said the other organizers were not involved.

According to CTM’s former chief information officer and conference materials, the Summit was a City of Austin event. In addition, Guhin said the City contributed all funding for the Summit, other than funding generated by ticket revenue. For these reasons, the City was entitled to receive the Summit’s ticket revenue, which should be considered City funds.

A CTM financial manager said an appropriate way to set up this event would have been for CTM to pay for all conference expenses directly and for the City to receive the ticket proceeds from the online event platform. Guhin agreed that looking back, “the City should have managed all of this funding on its own.”

Guhin violated City Code when he sent City funds, in the form of ticket revenue from the Summit, to the nonprofit that he controlled and where he served as a board member. Exhibit 1 (see next page) displays the sequence of events that resulted in conflicts of interest.

We did not find evidence that Wilhite or the third CTM employee were involved in the decision to send money to the nonprofit. Nor did we find evidence that Guhin misappropriated or misused any of the funds while they were in the nonprofit’s bank account.

Guhin’s actions appear to have violated the following criteria:

- City Code §2-7-63(B) – Prohibition on Conflict of Interest

Finding 2

Guhin and Wilhite had a conflict of interest involving Guhin's company

Investigation Criteria:

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 [...]

City Code §2-7-63(A)

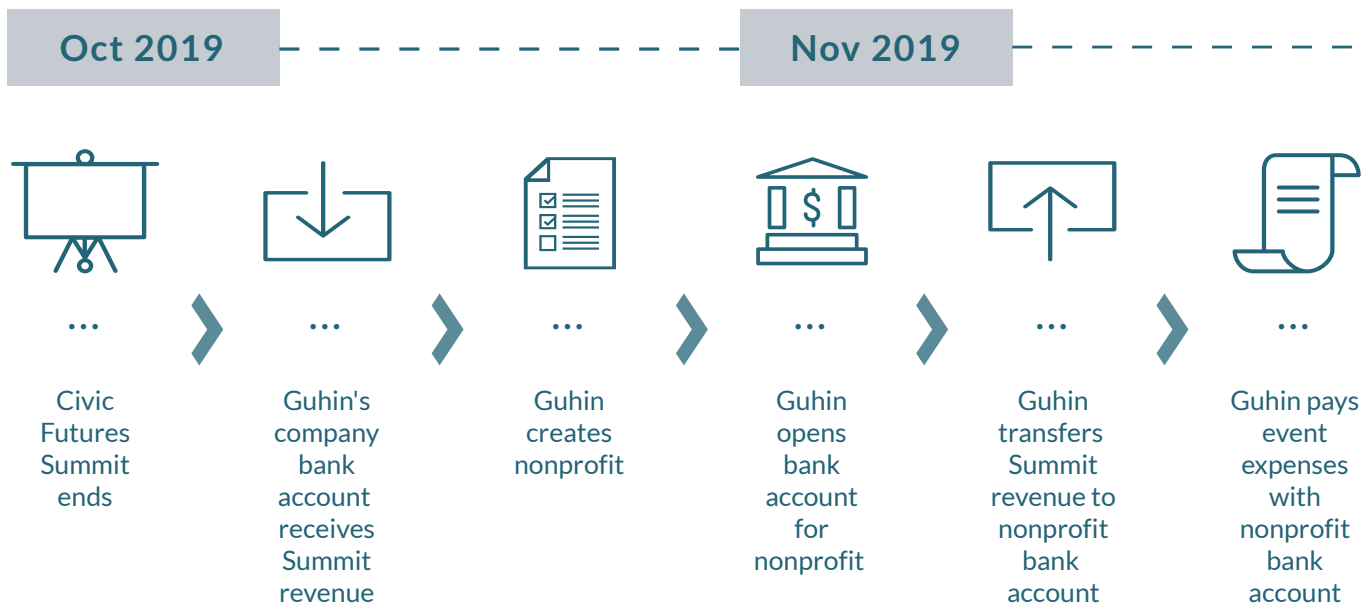
See Investigation Criteria for details.

In April 2018, Guhin set up a for-profit company that was unrelated to his City position. As the company's owner, Guhin has a substantial interest under City Code. Wilhite also has a substantial interest in this company because she is married to Guhin.

In October 2019, Guhin decided to issue the Summit's ticket revenue, totaling about \$9,900, from the online event platform account to his company's bank account. A month later, Guhin withdrew the same amount from his company's bank account by transferring it to the bank account set up for the nonprofit (see Finding 1). According to City Code, these transactions "affected" Guhin's company because they subjected it to "direct economic effects."

Guhin admitted transferring the Summit's ticket revenue to the nonprofit through his company's bank account. Guhin said he did this because the nonprofit's bank account did not exist when the online event platform was set to pay out the funds. Guhin noted that the funds had to go somewhere because the event platform was going to pay out the Summit's ticket revenue on a set schedule after the event.

Exhibit 1: Events that led to conflicts of interest



Source: Auditor analysis, November 2020

The event platform's website states that it issues payouts four or five days after events end, as Guhin described. Bank statements for Guhin's company and the nonprofit also support Guhin's explanation regarding the timing of the transfers. The nonprofit's bank account appears to have been opened in early November 2019, roughly a month after the event platform paid out the ticket funds to Guhin's company.

Guhin said he did not tell anyone that he planned to send the Summit's ticket revenue to an organization that he controlled. Wilhite said she did not speak to Guhin about the details of the payout from the online

event platform and did not know if the funds went directly to the nonprofit Guhin created. Guhin’s manager at the time, CTM’s former chief information officer, said they did not know about Guhin’s company. When asked about Guhin’s transfer of Summit ticket revenue to Guhin’s company, the former chief information officer said this seemed “suspicious.”

Investigation Criteria:

A substantial interest of a spouse of a City [...] employee shall be deemed to apply to that [...] employee for the purposes of Sections 2-7-63 (Prohibition on Conflict of Interest).

City Code §2-7-65(A)

See Investigation Criteria for details.

Guhin violated City Code by making decisions that financially affected his company. Specifically, Guhin’s second conflict of interest arose when he decided to have the online event platform issue ticket revenue from the Summit to his company’s bank account. Additionally, per City Code, Wilhite had her own conflict of interest because she has a substantial interest in Guhin’s company through their marriage.

We did not find evidence that Guhin or Wilhite misappropriated or misused any of the funds while they were in Guhin’s company’s bank account.

Guhin and Wilhite’s conduct appears to have violated the following criteria:

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

Additional Observation

CTM appears to have given Guhin and Wilhite inaccurate financial guidance

Guhin and Wilhite said they sought to work with third parties for the 2018 event and the Summit because several City executives, including a former administrator at Communications & Technology Management, told them the City could not accept payments from outside entities. Former CTM executives generally confirmed they had given financial guidance as described by Guhin and Wilhite.

CTM executives appear to have given Wilhite and Guhin inaccurate guidance about City financial procedures. According to the City Controller’s Office, departments routinely accept payments from external parties as revenue. In this instance, CTM could have treated a check or direct deposit from the online event platform as a “cash receipt.” In addition, a Controller’s Office manager said they would have suggested CTM ask the Controller’s Office for help in managing a payment like this one.

City procedures address this kind of transaction separately. Training manuals for the City’s financial management system, for example, explain in detail how to amend budgets and handle cash receipts. More broadly, a City administrative bulletin titled “Roles and Responsibilities for Financial Management” instructs financial staff in all departments to “contact the Controller’s Office promptly if they have any questions about how to record transactions appropriately.” The same administrative bulletin also directs financial managers to “ensure that adequate controls are in place to monitor contracts and financial relationships with third parties.”

Appendix A - Combined Subject Response

From: Ben Guhin Delphine **Personal information**
Sent: Wednesday, April 07, 2021 3:44 PM
To: Williams, Andrew
Subject: Re: City of Austin Auditor's Office - response requested

Hi Andrew,

I've included a written response for the report below. As Marni noted¹, this can be included with both of our names, or whatever works best for your office.

Thank you for the opportunity to respond to this audit report. We agree with its results, findings, and additional observation.

To support City employees in future efforts, we recommend that the City establish a guide on how to host cross-sector events that can be funded by multiple city departments and entities outside of the City of Austin. It can also be helpful to review and revise its content on a regular cadence, such as every 1-2 years.

We have observed that a majority of events related to civic technology and "smart cities" are organized by prominent technology vendors and other large corporations who benefit from the attendance of City employees, at the potential detriment of smaller companies who cannot afford to attend. We hope that the City of Austin will continue to take a leading role in organizing technology events in the civic space.

Best,
Ben

¹ On April 7, 2021, Wilhite told us separately that her subject response could be combined with Guhin's response.

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

We have reviewed the subjects' response. We believe our findings stand.


Appendix C - Management Response



COMMUNICATIONS & TECHNOLOGY MANAGEMENT

MEMORANDUM

TO: Brian Molloy, Chief of Investigations

FROM: Chris Stewart, Interim Chief Information Officer 

DATE: April 15, 2021

SUBJECT: Management Response to Investigative Report IN20004

The thorough investigation completed by the Integrity Office in regards to allegations of conflicts of interest is appreciated. The Communications and Technology Management (CTM) department takes all allegations of conflicts of interest and the potential for misappropriated funds seriously.

The Communications and Technology Management (CTM) management team agrees that two employees engaged in conflict(s) of interest involving a nonprofit that was setup and ultimately controlled by one of the employees. These two employees are no longer employed by the City of Austin.

While CTM management is relieved that the investigation did not find evidence that these two employees misappropriated or misused these funds, management is committed to ensuring that these types of conflicts of interest do not occur again.

Hosting events such as the one associated with this investigation is not standard practice for CTM, nor is the collection of registration fees, speaker compensation or awards for such events. If another event is planned by CTM staff, which is unlikely, the appropriate guidance will be sought from the Controller's Office. The individuals responsible for the event will receive information, in writing, on how to go about collecting and recording any third-party transactions. Guidelines, roles and responsibilities will be clearly defined among all parties prior to commencing with the engagement.

Additionally, if CTM management is made aware of any future potential fiscal conflicts of interest, CTM management will address the issues promptly. In addition, the Integrity Office will be notified immediately to include the allegation, the associated risk and the corrective actions.

Investigation Criteria

Finding 1

City Code §2-7-63(B)(2) - Prohibition on conflict of interest

A City official or employee who serves as a corporate officer or member of the board of directors of a nonprofit entity may not participate in a vote or decision regarding funding by or through the City for the entity. This subsection does not apply to a City official or employee who: [...] as a duty of office or as a job assignment, serves as a corporate officer or member of the board of directors of a nonprofit entity as a representative of the City.

City Code §2-7-2(4) - Definitions

[...] 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.

Finding 2

City Code §2-7-63(A)- Prohibition on conflict of interest

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 [...]

City Code §2-7-65(A) - Substantial interest of relative

A substantial interest of a spouse of a City [...] employee shall be deemed to apply to that [...] employee for the purposes of Sections 2-7-63 (Prohibition on Conflict of Interest) [...]

City Code §2-7-2 - Definitions

(1) 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 [...]

(4) [...] 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.

(12) SUBSTANTIAL INTEREST means an interest in another person or an entity if: [...] the person serves as a corporate officer or member of the board of directors or other governing board of the for-profit entity other than a corporate entity owned or created by the city council [...]

Methodology

We took the following steps to accomplish our investigation objectives:

- Conducted background research
- Analyzed forensic data
- Reviewed bank records, budget files, and expense receipts
- Interviewed City personnel and the subjects
- Consulted with the Law Department
- Reviewed applicable City Code, policies, and procedures

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 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 the subjects and the Department Director on the results of this investigation. These responses are attached as Appendices 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.

City Auditor

Corrie Stokes

Deputy City Auditor

Jason Hadavi

Chief of Investigations

Brian Molloy

Office of the City Auditor

phone: (512) 974-2805

email: AustinAuditor@austintexas.gov

website: <http://www.austintexas.gov/auditor>



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