



City Auditor's Office

**Cape Coral Police
Department (CCPD)
Seized and Forfeited
Assets Program Audit**

Report Issued: October 3, 2017

Audit Report No. # 17 A-2



TO: Mayor and Council Members

THRU: Andrea R. Butola, City Auditor *arb*

FROM: Jessie Hon, Senior Auditor *JH*

DATE: October 3, 2017

SUBJECT: Cape Coral Police Department's (CCPD) Seized and Forfeited Assets Program Audit

The City Auditor's Office has completed the audit of the Cape Coral Police Department's (CCPD) Seized and Forfeited Assets Program. The audit was conducted in conformance with the Institute of Internal Auditors (IIA) International Standards for the Professional Practice of Internal Auditing and in accordance with Generally Accepted Government Audit Standards by the authority granted through City Ordinances 28-02 and 79-10.

We would like to express our sincere appreciation to CCPD management and staff for the courtesy, cooperation and proactive attitude extended to the team members during the audit. If you have any questions or comments regarding this audit, please contact Jessie Hon at 242-3381 or Andrea Butola at 242-3380.

C: John Szerlag, City Manager
Michael Ilczyszyn, Assistant City Manager
Dolores Menendez, City Attorney
David Newlan, Chief of Police
Victoria Bateman, Financial Services Director
Rebecca van Deutekom, City Clerk
Audit Committee

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EXECUTIVE SUMMARY

The City Auditor's Office has conducted an audit of the Cape Coral Police Department's (CCPD) Seized and Forfeited Assets Program.

Significant areas covered during the audit include:

- Compliance with applicable Federal laws, Florida State Statutes, standards and regulations regarding seized and forfeited assets;
- Key elements of effective seized and forfeited assets practices such as:
 1. Forfeitures sharing distribution;
 2. Disposition of forfeited and seized assets;
 3. Accounting and reporting of proceeds from forfeited and seized assets; and
 4. Internal controls in safeguarding, accounting and reporting of seized and forfeited assets.

Overall CCPD has effective internal controls and procedures in place for the Seized and Forfeited Assets Program. The Program complied with laws and regulations applicable to the program with the exception of accounting for auction proceeds.

The finding noted during audit testing is noted below.

- Forfeited assets were coded to the incorrect general fund account business unit.

For details on the finding and recommendation see the Audit Results section. No material control deficiencies were noted.

BACKGROUND

The CCPD participates in the U.S. Department of Justice Equitable Sharing Program and U.S. Department of Treasury Forfeiture Sharing Program. These programs are nationwide initiatives that remove the tools of crime from criminal organizations; deprive wrongdoers of the proceeds of their crimes; recover property that may be used to compensate victims; and deter crime. The City records these seized and forfeited assets in the City's Federal and State Confiscation funds. CCPD is required to comply with these programs' requirements in order to obtain equitable shares of forfeited assets.

Florida State law establishes that assets including but not limited to currency, vehicles, and other personal or real property (collectively referred to as contraband) that are used in the commission of, or acquired from the proceeds from a commission of, a felony or violation of the Florida Contraband Forfeiture Act (Forfeiture Act) may be seized by and forfeited to law enforcement agencies. For the City, such contraband is recorded in the City's State Confiscation funds. The City's management of the State Confiscation fund and the use of any

assets in this fund are subject to the restrictions and guidance of Florida State Statutes (FSS), specifically the Forfeiture Act.

The CCPD's Investigative Services Bureau (ISB) is responsible for receiving, determining, accounting, recording, and reporting of such fund transactions. ISB also ensures that all procedural requirements concerning seized or forfeited assets are met.

This table shows total transaction activities for both Federal and State Confiscation funds for our audit period:

| Account | FY 2015 | | | FY 2016 | | |
|-----------------------------------|----------|-------------|----------------|-----------|-------------|----------------|
| | Revenue | Expenditure | Ending Balance | Revenue | Expenditure | Ending Balance |
| Police Confiscation State | \$45,366 | \$16,165 | \$174,400 | \$66,421 | \$12,457 | \$228,364 |
| Police Confiscation Federal | \$76,773 | \$110,306 | \$494,303 | \$327,841 | \$269,529 | \$552,615 |

AUDIT OBJECTIVES

The audit objectives were as follows:

- Determine if the Department complied with applicable Federal laws, Florida State Statutes (FSS) and regulations regarding seized and forfeited assets.
- Determine whether the forfeiture proceeds received by the Department were appropriate and equitable based on the agreed upon sharing distribution.
- Determine if the disposition of forfeited assets is in accordance with Federal, State and other applicable laws and regulations.
- Verify whether the forfeited assets and proceeds from auctioned properties are properly accounted and deposited in appropriate fund accounts.
- Determine if the internal controls are sufficient and effective in safeguarding, accounting and reporting of the seized and forfeited assets.

SCOPE AND METHODOLOGY

The audit scope focused primarily on the key controls, practices, and compliance with applicable laws and legal requirements, for forfeited asset transactions during fiscal year 2015 and 2016.

To meet the above objectives, the following testing procedures were performed:

- Reviewed applicable laws and regulations
- Reviewed and analyzed current policies and procedures to determine if they are in compliance with applicable laws and regulations
- Reviewed FY2015 and FY2016 signed Equitable Sharing Agreement and Certification Forms
- Performed a walk-through of CCPD forfeiture processing procedures and analyzed whether the internal controls are sufficient and effective in safeguarding, accounting, and reporting of the seized and forfeited assets
- Selected and tested a sample of forfeiture proceeds to ensure CCPD received appropriate and equitable shares based on the agreed upon sharing distributions
- Selected and tested a sample of disposition of forfeited assets to ensure CCPD complied with Federal, State, and other applicable laws and regulations for expenditure requirements
- Tested a sample of auction proceeds to determine if they were properly accounted for and deposited in appropriate fund accounts
- Ensured forfeiture training was provided to staff and CCPD personnel responsible for processing forfeiture has up to date knowledge and information regarding applicable laws

STATEMENT OF AUDITING 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.

AUDIT RESULTS

Forfeitures Sharing Distribution

We reviewed the FY2015 and FY2016 signed Equitable Sharing Agreement and Certification Form to determine CCPD compliance with the requirements for forfeiture sharing distribution. A sample of five Federal forfeited proceeds and twelve State forfeited proceeds were selected for review. Based on our testing results, it appears that all forfeiture proceeds received by CCPD were appropriate and equitable based on the agreed upon sharing distribution. No exceptions were noted.

Disposition of forfeited and seized assets

We selected thirteen expenditure samples to determine if the transactions complied to the allowable expenditures in accordance with State Statutes and Equitable Sharing Guide.

Per FSS 932.7055(5)(c)(1) expenditures or donations made to organizations are to be used...

...for the support or operation of any drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer programs.

All sampled donations were made to programs for allowable expenditures noted above. In addition, we verified these transactions were approved by City Council and were made in compliance with the City purchasing process. No exceptions were noted.

In addition to the allowable expenditure requirement for the areas noted above, state statute also requires a certain percent of forfeited funds should be donated or expended for such expenditures each fiscal year if \$15,000 or more is acquired pursuant to the Florida Contraband Forfeiture Act. According to FSS 932.7055, the percent of forfeited assets to be donated for FY2015 and FY2016 was 15%. We completed an analysis of the forfeited asset accounts to calculate the total percent of funds donated for appropriate expenditures for FY2015 and FY2016. Testing indicated that CCPD donated the correct percentage in support of programs mentioned above. No exceptions were noted.

Auction Proceeds

During FY2015 and FY2016, there were three vehicles forfeited. Due to the small size of population, we reviewed 100% of the population and examined the supporting documentation required to process auction proceeds, including the Purchase of New Asset Form, Retirement of Asset Form, Final Judgement of Forfeiture, and Auction Sale invoice. During our review, we noted all of the forfeited vehicle transactions were coded to the wrong account Business Unit (BU) #121101 Police Support Administration. The details of the exceptions are noted in the Finding below.

FINDING: Forfeited assets were coded to the incorrect general fund account business unit.

Rank: (Medium)

When an asset is seized or forfeited, it can either be put into use by CCPD or auctioned off without becoming part of the City Fleet. The decision to put the asset into use is based on several factors including but not limited to, cost to repair and maintain. The Seizing Control Officer is responsible for processing assets that are seized or forfeited to the City. Seized and forfeited property transactions should be recorded to BU #223010. During the audit period, three vehicles were forfeited and put into use by CCPD as indicated by the assignment of an asset tag. Only vehicles put into use will have an asset tag assigned. Two of the vehicles were sold at auction during FY2017. The incorrect BU #121101 Police Support Administration, was utilized on all three Purchase of Asset forms for the vehicles included in the audit sample. The Police Support Administration account, BU #121101 is used to account for normal police vehicle transactions. Seized assets should not be recorded in the same manner as normal police vehicles.

When two of the vehicles were auctioned off, the \$7,090 in proceeds received from the vehicles were also coded to general fund account BU #121101 Police Support Administration because this was the BU recorded on the Purchase of New Asset Form when the vehicles were added to the City Fleet inventory.

Any seized or forfeited transactions, including auction proceeds, should be recorded in account BU #223010 State Confiscation Funds. It is CCPD's responsibility to communicate the fact that the asset is an acquisition or disposition of a regular police vehicle versus a seized or forfeited vehicle. Asset transactions are handled by multiple departments, including CCPD, Fleet and Finance/Fixed Assets. It is important that this information is communicated to Fleet to ensure the asset is classified with the correct BU and therefore correctly accounted for. Seized and forfeited assets recorded to the incorrect account will not be subject to monitoring as required by Florida State Statute. Communication of the type of asset, seized or forfeited by CCPD to Fleet will help to ensure the correct BU #223010 State Confiscation Funds, is used on the Purchase and Retirement of Asset Forms for seized or forfeited assets put into use. Transactions recorded in BU #223010 are monitored for compliance with statutory requirements for forfeiture transactions in accordance with Florida Contraband Forfeiture Act Chapter 932.

RECOMMENDATION: CCPD shall inform Fleet when a vehicle is a seized or forfeited. For any vehicle put into use by CCPD and therefore assigned an asset tag, there should be some indication noted with the asset tag number to denote the vehicle was seized or forfeited.

Management Response and Corrective Action Plan: CCPD believes this is not a systemic issue but rather a minor mistake in coding. The CCPD individual responsible for seized or forfeited assets will communicate this information to Fleet for those assets that will be placed into use by the CCPD. An "S" will be used with the asset tag number to indicate the asset was seized or forfeited. This will ensure the correct BU # 223010 is utilized to indicate any seized or forfeited asset transactions.

Responsible Person: Supervisor of the VIN Unit

Anticipated Completion Date: October 3, 2017

Evaluation of Internal Controls over Forfeiture Transactions

We performed a process walk-through from confiscation of property to disposition of property and reviewed selected forms required to be completed to determine an assessment of the controls over the process in addition to testing performed.

We also reviewed FY2015 and FY2016 Equitable Sharing Agreement and Certification Form to determine if these forms were submitted annually to Department of Justice as required.

Florida State Statutes Chapter 932.706 requires that an agency develop training to enhance proficiency in the seizure and forfeiture of property under the Florida Contraband Forfeiture

Act. We reviewed CCPD forfeiture training attendance record and training material to ensure staff received sufficient and up to date knowledge as required by the Florida State Statutes. CCPD had its training in April 2016 and no exceptions were noted.

Overall, CCPD has sufficient internal controls over forfeited asset transactions to ensure compliance with applicable federal and state regulations and laws. There were no significant control weaknesses identified.

APPENDIX A

Finding Classification

Findings are grouped into one of three classifications: High, Medium or Low. Those findings that are categorized as low are not included in the report but rather are communicated separately to management. Classifications prioritize the findings for management to address and also indicate the level of testing required to determine if a finding's Corrective Action Plan is fully implemented in accordance with recommendations and Management's Response.

High: A finding that is ranked as "High" will have a significant impact on the organization. It is one that *prevents* the achievement of a substantial part of significant goals or objectives, or noncompliance with federal, state or local laws, regulations, statutes or ordinances. Any exposure to loss or financial impact for a High finding is considered *material*. Examples include direct violation of City or Department policy, blatant deviation from established policy and procedure, such as actions taken to circumvent controls in place, material non-compliance with federal, state or local laws, regulations, statutes or ordinances, or an area where significant cost savings could be realized by the Department or the City through more efficient operations.

High findings require immediate management attention and should take management's priority when considering implementation for corrective action.

Medium: A "Medium" finding is one that *hinders* the accomplishment of a significant goal or objective or non-compliance with federal, state or local laws, regulations, statutes or ordinances, but can't be considered as preventing the accomplishment of the goal or objective or compliance with federal, state or local laws, regulations, statutes or ordinances. Exposure to loss or potential or actual financial impact is *significant but not material* to the Department or City. Examples include lack of monitoring of certain reports, insufficient policies and procedures, procedure in place or lack of procedure that can result in *potential* noncompliance with laws and or regulations.

Medium findings require management attention within a time frame that is agreed upon by the Department and the City Auditor. Priority for implementation of management's corrective action should be considered in light of other High or Low findings.

Low: A "Low" finding is one that warrants communication to management, but is one that isn't considered as hindering the accomplishment of a significant goal or objective and isn't causing noncompliance with federal, state or local laws, regulations, statutes or ordinances. Financial impact or risk of loss is minimal to none; however, low findings can *hinder the effectiveness or quality of department operations and thus are communicated to management separately. Low ranked findings are not included in the final audit report.*

The City Auditor's Office will not follow up on the status of Low findings communicated to Management.