



CITY OF SAN ANTONIO

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March 19, 2014

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SUBJECT: Audit Report of the San Antonio Police Department's Asset Seizure and Forfeiture Program

Mayor and Council Members:

We are pleased to send you the final report of the Audit of the San Antonio Police Department's Asset Seizure and Forfeiture Program. This audit began in September 2013 and concluded with an exit meeting with department management in February 2014. Management's verbatim response is included in Appendix C of the report. The San Antonio Police Department management and staff should be commended for their cooperation and assistance during this audit.

The Office of the City Auditor is available to discuss this report with you individually at your convenience.

Respectfully Submitted,

Kevin W. Barthold, CPA, CIA, CISA
City Auditor
City of San Antonio

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CITY OF SAN ANTONIO
OFFICE OF THE CITY AUDITOR



Audit of the San Antonio Police Department's
Asset Seizure and Forfeiture Program

Project No. AU14-025

March 19, 2014

Kevin W. Barthold, CPA, CIA, CISA
City Auditor

Executive Summary

As part of our annual Audit Plan approved by City Council, we conducted an audit of the San Antonio Police Department's (SAPD's) Asset Seizure and Forfeiture Program. The audit objectives, conclusions, and recommendations follow:

Is the information contained in the *Fiscal Year (FY) 2013 Chapter 59 Asset Forfeiture Report by Law Enforcement Agency (AFRLEA)* regarding SAPD's Asset Seizure and Forfeiture Program for FY 2013 true and correct?

Yes, the report is true and correct. Asset seizure and forfeiture activity for FY 2013 was accurately and completely recorded.

Are controls over SAPD's Asset Seizure and Forfeiture Program adequate and in compliance with laws and regulations?

Yes, overall, controls over the Asset Seizure and Forfeiture Program are adequate and in compliance with laws and regulations. However, we identified two areas for improvement:

- The SAPD comingled funds forfeited under the Texas State Code of Criminal Procedure Chapter 59 (CCP 59) with funds forfeited under other chapters of the CCP and also comingled funds forfeited under federal law via both the Departments of Justice (DOJ) and Treasury (TD). Each of these types of funds is required to be segregated from all other funds.
- The SAPD spent federally forfeited funds on fringe benefits, which is not allowed under guidelines published by the DOJ and TD. However, the SAPD remediated this issue prior to the conclusion of our audit, so no recommendation was made.

We recommend that the SAPD work with the Finance Department to ensure that funds generated from forfeitures and sales of assets forfeited under Texas State CCP 59, the DOJ equitable sharing program, and the TD equitable sharing program are segregated by fund or accounting code from each other and from all other sources of funding.

The SAPD Management's verbatim response is in Appendix C on page 9.

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Background

Both Texas and U.S. law permit law enforcement agencies to seize and facilitate the forfeiture of monetary instruments and property (real, personal, tangible, or intangible) of individuals when the property is the result of certain crimes, used or intended to be used in certain crimes, or was used to facilitate certain crimes (generally felonies or certain repeat misdemeanors). Proceeds of the forfeiture process are shared among participating law enforcement agencies after payment of court costs and compensation to crime victims, as applicable. This is known as “equitable sharing” in the federal domain.

The purpose of seizure and forfeiture laws is to be “remedial in nature and not a form of punishment.”¹ “It removes the tools of crime from criminal organizations, deprives wrongdoers of the proceeds of their crimes, recovers property that may be used to compensate victims, and deters crime... Equitable sharing further enhances this law enforcement objective by fostering cooperation among federal, state, and local law enforcement agencies.”²

Any forfeited property and money must be used solely for law enforcement purposes and must supplement, not supplant, the agencies’ appropriated budgets. Allowable expenditures might include overtime pay for officers, travel or training directly related to law enforcement activities, supplies, capital costs, investigative costs, building costs, equipment, travel and transportation, or grant matching funds, among others. The allowable uses vary between state and federal programs.

Within the SAPD, administration of this process rests with the Asset Seizure Detail (Detail), which reports to the Internal Assistant Executive Officer, under the Chief of Police. The Detail is composed of a Sergeant, four investigators, and an accountant. The Detail is available 24/7 to answer questions from other officers debating an asset seizure and/or to accompany the officers to the site of a seizure. The Detail’s responsibilities include ensuring that seizures are appropriate and meet state and federal guidelines as well as guidelines set by the prosecuting District Attorney. Detail members value the seizures, track the cases through disposition, return property when required, and host auctions to sell forfeited property. They also track forfeited property converted to use by the SAPD.

In addition to the Detail, other SAPD units may run seizure actions taken under federal law as a result of participation in a task force or a joint investigation. The

¹ Texas Code of Criminal Procedure §59.05(e).

² U.S. Department of Justice. *Guide to Equitable Sharing for State and Local Law Enforcement Agencies*. April 2009.

SAPD Fiscal division also has a role in the process, as it oversees the budgeting process and expenditures from the confiscated property funds.

The SAPD has placed shared forfeitures into seven different sub-funds, collectively referred to as the confiscated property funds as described below:

Fund Name	Description	FY 2013 Ending Balance
New State	General forfeitures under Texas State CCP 59	\$487,828
Vice	Gambling-related forfeitures under Texas State CCP 18 and CCP 59	
STRIP	Salvage Theft Reduction Program forfeitures under Texas State CCP 59 and CCP 47	
HIDTA	High intensity drug trafficking area (HIDTA) unit forfeitures conducted under Texas State CCP 59	
Federal	General forfeitures performed under the Department of Justice and Treasury Department asset seizure and forfeiture programs	\$2,103,673
HIDTA-Federal	Forfeitures performed under federal asset forfeiture programs	
Airport (Federal)	Forfeitures for seizures performed at the San Antonio airport under the Department of Justice asset seizure and forfeiture program	
Total Confiscated Property Funds		\$2,591,501

In Fiscal Year 2013, most expenditures from the state confiscated property funds were for equipment, facility costs, and supplies. The largest expenditures of federally forfeited funds were for overtime, expenses of the HIDTA Task Force, and other law enforcement expenses such as vehicles purchases and animal care (see charts in Appendix A).

Audit Scope and Methodology

The audit scope included seizures, forfeitures, and expenditures from the SAPD confiscated property funds during FY 2013, with transactions from FY 2009 – FY 2012 for trending and analysis purposes.

We interviewed staff from the SAPD Detail, SAPD Fiscal Services, SAPD Fleet, and certain other selected investigative and policing units within the SAPD. We also reviewed:

- Reports from the SAPD to the Texas Office of the Attorney General (OAG) and the U.S. Department of Justice
- Data from the City's SAP accounting system and the Detail's case tracking database
- Case files
- Audits of other jurisdictions' equitable sharing programs
- Budgets, invoices, and other expenditure related documentation
- Sales records and receipts for auctions and other sales

Testing criteria included:

- Requirements of the Texas State CCP 59
- Guidelines issued by the U.S. Departments of Justice³ and Treasury⁴
- Inter-local agreements with District Attorneys (Bexar, Comal)
- SAPD Standard Operating Procedures
- Texas Auto Burglary & Theft Prevention Authority. *Grant Administrative Guide*.

We relied on computer-processed data in four systems to validate the accuracy and completeness of the FY 2013 AFRLEA report, and to test the accuracy and completeness of asset forfeiture and expenditure data for the federal equitable sharing program of the SAPD. The four systems were:

- The City's SAP financial and accounting system
- The SAPD's "FileOnQ" property and evidence system
- A mainframe application for vehicle inventory
- A Microsoft Access database that the Detail uses to track cases and the amounts of seized and forfeited money and property

Our reliance was based on performing direct tests on the data rather than evaluating the system's general and application controls. Additionally, the

³ U.S. Department of Justice. *Guide to Equitable Sharing for State and Local Law Enforcement Agencies*. April 2009.

⁴ U.S. Department of Treasury. *Guide to Equitable Sharing for Foreign Countries and Federal, State, and Local Law Enforcement Agencies*. April 2004.

FileOnQ system was audited recently as part of the Audit of SAPD Property & Evidence Room (AU13-018), issued April 3, 2013.

Our direct testing included comparisons of both random and judgmental samples of case files (court orders, notarized seizure reports, police reports, and other correspondence), records in the case tracking database, FileOnQ and mainframe inventory records, revenue and expenditure records in SAP, as well as samples of physical inventory. It also included comparisons of judgmentally selected sales records and records from FileOnQ and the mainframe inventory system, revenue transactions in SAP, and the records from the case tracking database. We do not believe that the absence of testing general and application controls had an effect on the results of our audit.

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 and Recommendations

Overall, the SAPD has implemented an adequate control environment over its asset seizure and forfeiture program. Revenues, expenditures, inventories, and records of seizure and forfeiture activity are recorded accurately and completely. There are controls over inventoried items to ensure that they are secure, released only to authorized parties, and sold only after forfeiture. Supervisory approvals are required to place any forfeited goods into use by the SAPD. The Detail reviews and approves all seizure activity prior to filing a court case, to ensure that there is a substantiated reason for the seizure that will hold up in court and that it meets the District Attorney's criteria for seizure. However, we did find two opportunities for improvement in the management of the program.

A. Comingling of Forfeited Funds

The SAPD comingled forfeited funds.

The SAPD comingled the following:

- Texas State CCP 59 forfeited funds with CCP 18 forfeited funds (CCP 18 FY 2013 revenues of \$25,673) in the VICE fund
- Texas State CCP 59 funds with the proceeds of sales of vehicles seized under CCP 47 in the STRIP fund (CCP 47 FY 2013 revenues of \$2,503)
- DOJ and TD federally forfeited funds within the Federal and HIDTA-Federal funds (DOJ funds of \$1,661,625 were commingled with TD funds of \$442,048 for a total of \$2,103,673)

Comingling of asset forfeiture funds is not permitted under either the state or federal programs. Comingling of forfeited funds could lead to audit findings from the DOJ Office of the Inspector General. It also is difficult to track the expenditures and balances of the DOJ versus TD funds as required and difficult to ensure that they are used within the differing timeframes specified by federal guidelines.

Recommendation

The Chief of Police should work with the Finance Department to ensure that funds generated from forfeitures and sales of assets forfeited under Texas State CCP 59, the DOJ equitable sharing program, and the TD equitable sharing program are segregated by fund or accounting code from each other and from all other sources of funding.

B. Unallowable Expenditures

The SAPD used federally forfeited funds to pay for unallowable expenditures.

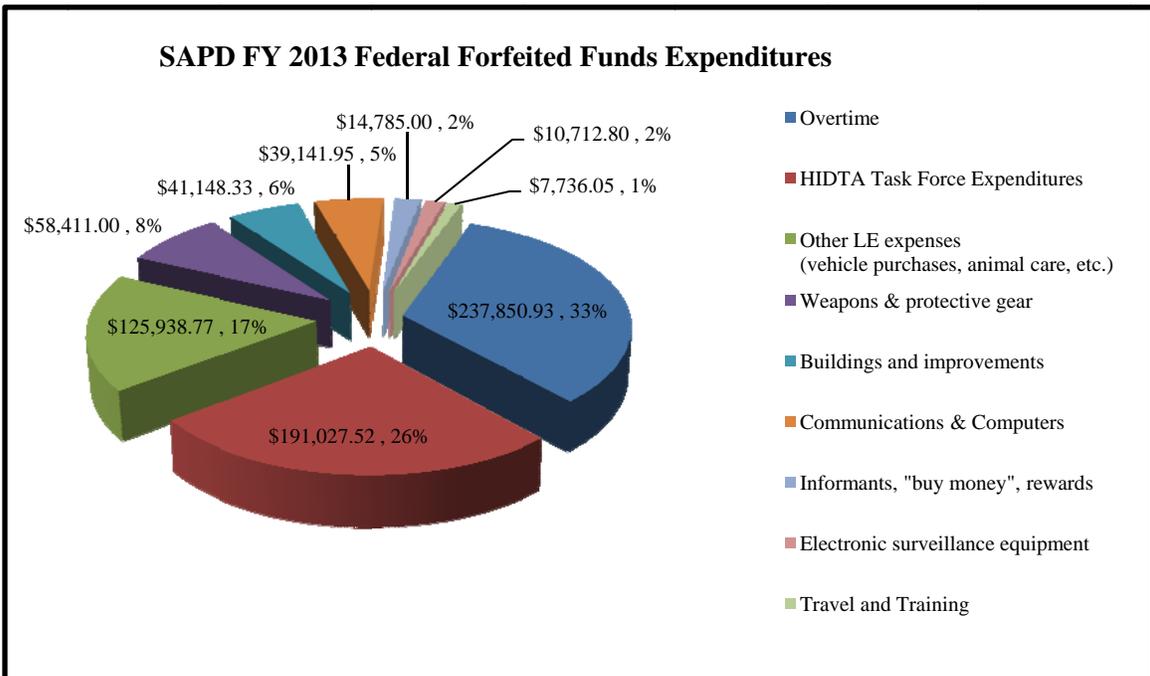
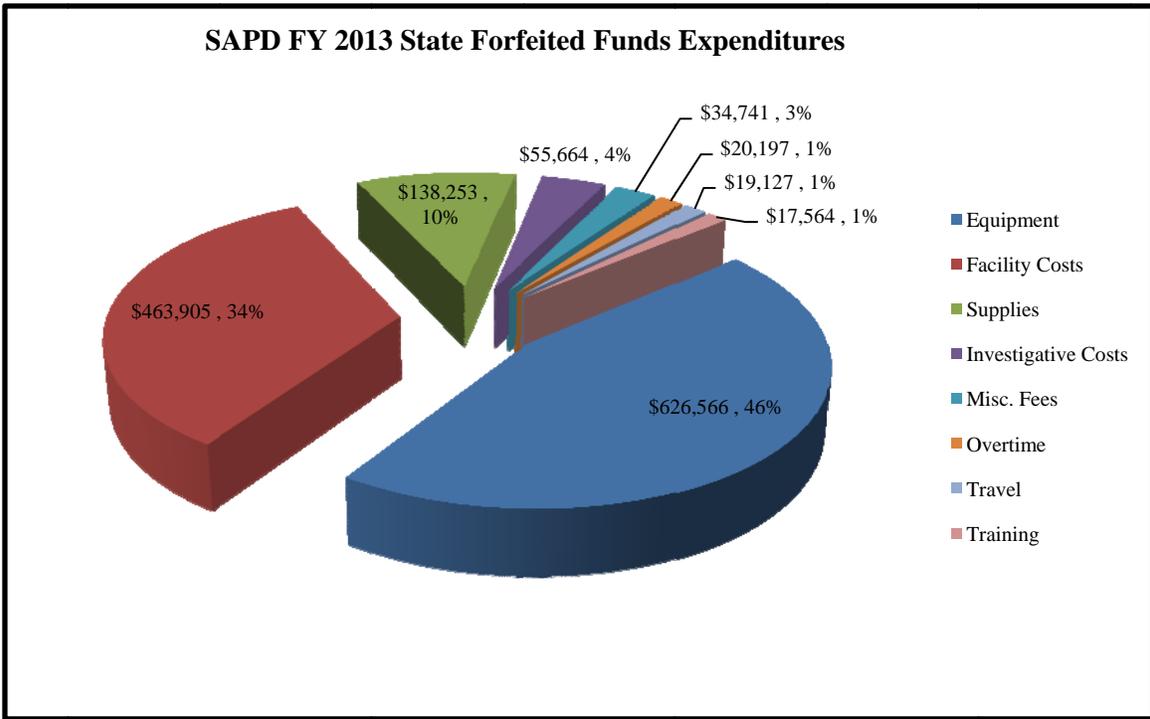
The SAPD paid for fringe benefits (e.g., life insurance, incentive payments, retirement contributions, etc.) of task force personnel from the HIDTA-Federal fund (totaling \$200,086) in FY 2013. This represents approximately 27.53% of total federally forfeited funds expenditures for the year (\$726,752).

Both the TD and DOJ guidelines specifically prohibit using federally forfeited funds for salaries and fringe benefits except in limited circumstances, which did not apply to this situation.

Upon learning of this issue, the SAPD made a journal entry removing the fringe benefit expenditures from the HIDTA-Federal fund and placing them into the City's General Fund and then removing an equal amount of overtime expenditures from the City's General Fund and placing them in the HIDTA-Federal fund for FY 2013. Overtime is an allowable expenditure under the rules governing the federal equitable sharing program.

Since the SAPD remediated the issue during the course of the audit, we make no recommendation.

Appendix A –Confiscated Property Fund Expenditures



Appendix B – Staff Acknowledgement

Mark Bigler, CPA, CISA, CFE, Audit Manager
Susan Van Hoozer, CIA, Auditor in Charge
Matthew Howard, CISA, Auditor
Christopher Moreno, CFE, Auditor

Appendix C – Management Response



CITY OF SAN ANTONIO

SAN ANTONIO TEXAS 78283-3966

March 3, 2014

Kevin W. Barthold, CPA, CIA, CISA
City Auditor
San Antonio, Texas

RE: Management's Corrective Action Plan for Audit of the San Antonio Police Department's Asset Seizure and Forfeiture Program

The San Antonio Police Department has reviewed the audit report and has developed the Corrective Action Plan below corresponding to the report recommendation.

Recommendation					
#	Description	Audit Report Page	Accept, Decline	Responsible Person's Name/Title	Completion Date
1	Comingling of Forfeited Funds The Chief of Police should work with the Finance Department to ensure that funds generated from forfeitures and sales of assets forfeited under Texas State CCP 59, the DOJ equitable sharing program, and the TD equitable sharing program are segregated by fund or accounting code from each other and from all other sources of funding.	5	Accept	Steven W. Baum Assistant Police Director	9/30/2014

Recommendation					
#	Description	Audit Report Page	Accept, Decline	Responsible Person's Name/Title	Completion Date
	<p>Action plan:</p> <p>The SAPD fiscal staff has developed a new a structure for categorizing asset seizure funds that will comply with all segregation requirements of seizures and forfeitures as stated in the Texas State Code of Criminal Procedure Chapter 59 (CCP 59), the Department of Justice Equitable Sharing Program (DOJ) and the Treasury Department Equitable Sharing Program (TD).</p> <p>To avoid the comingling of funds as identified by the City Auditor's office, SAPD is making changes to its accounting structure so that all seizures, forfeitures and expenditures will be compliant with the governing law. The changes will include the creation of new accounting codes (Funds, Internal Orders and Cost Centers) which secure a true segregation for reporting and budgeting. In addition to SAP accounting changes, the SAPD fiscal staff will also be working with the Asset Seizure accounting staff to classify all future seizures correctly in their appropriate accounting code.</p> <p>All required changes to the master data and accounting hierarchies within SAP will be completed by March 31st, 2014 in preparation for the start of fiscal year 2015.</p> <p>To start fiscal year 2015, SAPD fiscal staff will have all adjustments and/or transfers completed for existing fund balances. These adjustments and/or transfers will allocate existing monies to the fund as designated by the type of seizure, whether state or federal. Fiscal year 2015 will begin with accurate fund balances across all confiscated property funds. All adjustments and transfers of fund balances will be reflected in the fiscal year 2015 budgets. Once approved by SAPD Command, the appropriate journal entries will be made to transfer the fund balances.</p> <p>All research and transferring adjustments will be completed by September 30th, 2014.</p> <p>The SAPD Fiscal Services staff will also review the applicable guidelines with the Asset Seizure Detail division to secure accurate categorization of all future seizures and forfeitures using the new accounting structure.</p> <p>The new fund structure will be implemented October 1st, 2014, to coincide with the beginning of fiscal year 2015.</p>				

We are committed to addressing the recommendations in the audit report and the plan of actions presented above.

Sincerely,



William McManus
Police Chief
San Antonio Police Department

MAR 03 2014
Date



Erik Walsh
Deputy City Manager
City Manager's Office

3/7/14
Date