

Law Department Funding

Final Report • February 24, 2016



OIG NEW ORLEANS OFFICE OF
INSPECTOR GENERAL

E. R. Quatrevaux, Inspector General

CITY OF NEW ORLEANS



ED QUATREVAUX
INSPECTOR GENERAL

February 24, 2016

Re: Law Department Funding

I certify that the inspector general personnel assigned to this project are free of personal or other external impairments to independence.

A handwritten signature in blue ink, appearing to read "E.R. Quatrevaux", is positioned above the printed name.

E.R. Quatrevaux
Inspector General

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I. EXECUTIVE SUMMARY

The Office of Inspector General for the City of New Orleans (OIG) conducted an evaluation of the funding of the City of New Orleans Law Department, which provides in-house legal counsel for the City. The goals of this project were to determine taxpayer costs associated with the Law Department's role in the New Orleans justice system, and to ascertain how the Mayor, the New Orleans City Council (City Council), and the Law Department allocated resources to achieve the Law Department's justice system-related performance goals. The primary objectives of the evaluation were to determine if:

1. The Law Department had mechanisms in place to quantify spending by function, specifically, spending related to the justice system;
2. Decision-makers (i.e., City Council, Mayor, City Attorney) had access to the information needed to determine if the Law Department was funded and staffed adequately; and
3. The Law Department provided information to the NOPD and the Risk Manager that could help those entities reduce liability risk.

Evaluators found several ways the Law Department could improve its practices to increase the likelihood of achieving justice system goals and improve its transparency and accountability to the public. For example, Law Department attorneys did not track their time by case, which obscured the public's ability to determine how the Law Department used public resources. Some of the performance measures used by the Law Department also did not meet best practices and were not relevant to the work of the department. In addition to findings related to transparency, evaluators found processes in place that could lead to poor quality outcomes.

Possibly the largest impediment to the Law Department's transparency was its lack of effective data management processes. The Law Department's ineffective litigation data management practices presented the City and the public with a missed opportunity. Departments such as the New Orleans Police Department (NOPD) did not have access to information that could be used to mitigate risk by making changes to policy, and both city managers and the public did not have access to important information about the frequency, nature, and financial impact of civil lawsuits filed against the City.

The evaluation includes the following findings:

- The Law Department did not track how its resources were used to fulfill its litigation functions;
- Some of the Law Department's performance measures did not meet industry standards because they did not provide the information needed to assess workload or output;
- The Law Department allowed prosecuting attorneys to engage in outside legal employment, introducing the possibility of conflicts of interest and low quality work;
- The Law Department did not provide the NOPD, Public Integrity Bureau (PIB), or the Risk Manager with all of the information needed to mitigate the risk of litigation; and
- The Law Department did not have easy access to basic, reliable information about its cases and performance in both the Municipal and Traffic Court and Litigation units.

Based on these findings, the OIG made the following recommendations to the City of New Orleans:

- The Law Department should require litigation attorneys to track time by case;
- The Law Department should revise its performance measures to provide more relevant information to decision-makers;
- The Law Department should prohibit outside legal employment for prosecuting attorneys;
- The Law Department should establish and improve formal mechanisms to share information about civil lawsuits with PIB and the Risk Manager; and
- The Law Department should improve its data management processes to improve efficiency in its operations and its ability to report on its workload and performance.

The Law Department's activities and responsibilities have a significant impact on the functions of the justice system in New Orleans. Improving the processes discussed in this report should serve the public interest by providing information to policymakers to facilitate the effective management of resources, lower the potential for conflicts of interest for city attorneys with private clients, and reduce the risk of litigation and police misconduct.

II. OBJECTIVES, SCOPE, AND METHODS

The Office of Inspector General of the City of New Orleans (OIG) conducted an evaluation of Department of Law (Law Department) funding. The purpose of this project was to determine the taxpayer costs associated with the Law Department's role in the New Orleans justice system, and to ascertain how the Mayor, the New Orleans City Council (City Council), and the Law Department allocated resources to achieve the Law Department's justice system-related performance goals.

The project examined revenues and expenditures from 2008 through 2013. Evaluators specifically focused on costs associated with the defense of the New Orleans Police Department (NOPD) and its officers in civil cases, the prosecutorial function of the Traffic and Municipal Unit, and activities directly related to the NOPD consent decree and the Orleans Parish Sheriff's Office (OPSO) consent decree.¹

The objectives of this evaluation were to determine if:

- The Law Department had mechanisms in place to quantify spending by function, specifically, spending related to the justice system;
- Decision-makers (i.e., City Council, Mayor, City Attorney) had access to the information needed to determine if the Law Department was funded and staffed adequately; and
- The Law Department provided information to the NOPD and the Risk Manager that could help those entities reduce liability risk.

To achieve these objectives, evaluators:

- Interviewed Law Department staff and observed prosecuting attorneys meeting with defendants;
- Reviewed financial data related to the Law Department in the City's general ledger from 2008 to 2013 and in the City's published budget books from 2000 to 2014; and

¹ For the NOPD consent decree, see United States v. City of New Orleans, 12-1924, E.D. La., *Complaint*, Doc. No. 1, July 24, 2012, accessed September 16, 2015, <http://www.laed.uscourts.gov/Consent/consent.htm>. For the OPSO consent decree, see Jones v. Gusman, 12-859 E.D. La., *Consent Judgment*, Doc. 101-3, December 11, 2012, and Jones v. Gusman, 12-859 E.D. La., *Joint Statement Amending Proposed Consent Judgment*, Doc. 183-1, March 18, 2013.

- Reviewed the case management systems used by the Law Department.

This report is the fourth installment in a wider examination of spending across the New Orleans justice system that will include a series of similar funding analyses of the various justice agencies. The objective of the series is to document all agency revenues and expenditures and assess agency performance. To the extent that available data will allow, the OIG intends to connect spending and policy decisions to justice outcomes and to promote a rational overall spending structure for justice agencies. The series will also use information from the examinations of individual agencies to explore systemic issues: e.g., how do funding and policy decisions directed toward one agency affect other agencies?

The series will include the City of New Orleans Municipal Court, Orleans Parish District Attorney's Office, Orleans Public Defenders, Orleans Parish Criminal District Court and Clerk of Criminal District Court, New Orleans Coroner's Office, Orleans Parish Juvenile Court, the Youth Study Center, Orleans Parish Civil District Court, Orleans Parish First and Second City Courts, Constables of First and Second City Courts, and Clerks of First and Second City Courts. In 2013 the OIG issued the first report in this series, "Inspection of Taxpayer/City Funding to Orleans Parish Sheriff's Office," and issued "New Orleans Police Department Funding" and "Traffic Court Funding" in the spring and summer of 2015.²

This evaluation was conducted in accordance with the Principles and Standards for Offices of Inspector General for Inspections, Evaluations, and Reviews.³

The OIG staff was greatly assisted in the preparation of this report by the full cooperation of City of New Orleans (City) and Law Department employees and officials.

² This series was made possible in part by a grant from Baptist Community Ministries, which had no input into or advance knowledge of any of the information contained in this report.

³ "Quality Standards for Inspections, Evaluations, and Reviews by Offices of Inspector General," Principles and Standards for Offices of Inspector General (Association of Inspectors General, 2004).

III. BACKGROUND

The Law Department, also referred to as the City Attorney’s office, carries out a broad range of legal functions. According to Article IV, Section 4-401 of the Home Rule Charter of the City of New Orleans (“Home Rule Charter”), the Law Department, “headed by a City Attorney, shall:

- 1) Direct and supervise the legal affairs of the City.
- 2) Provide legal advice to the Mayor and Council when requested and when directed by the Mayor to all officers, departments, and boards concerning any matter affecting the interests of the City.
- 3) Have charge of all legal matters in which the City has an interest or to which the City is a party, with power and authority, when directed by the Mayor or the Council, to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as may be deemed necessary for the assertion or protection of the rights and interests of the City.
- 4) Prepare proposed ordinances when requested by the Mayor or any member of the Council.
- 5) Prepare or approve as to form and legality all contracts, documents and instruments creating any legal or conventional obligation affecting the City.
- 6) Perform all other duties required by this Charter, the Mayor or the Council and not inconsistent with the functions of this Department.”⁴

The underlying principle of these duties is to protect and pursue the City’s interests. The Law Department’s performance affects the City’s operations and taxpayers because of its central role as in-house legal counsel.

City attorneys directly impact public safety and the lives and liberty of the accused through their exercise of discretionary authority when fulfilling their role as prosecutors. Attorneys from the Law Department are responsible for exercising prosecutorial powers over municipal criminal code offenses and traffic

⁴ City Charter Sec. 4-401.

violations.⁵ Law Department prosecutors decide whether to prosecute and what charges to pursue against citizens who are accused of violating municipal laws.

The Law Department's prosecutorial and litigation activities have a direct effect on the overall costs and operations of the justice system in New Orleans. For example, Law Department prosecutors in Traffic Court decide whether individuals are charged and prosecuted for DWI offenses or less serious reckless driving violations. Law Department prosecutors in Municipal Court decide whether to prosecute low-level offenses such as minors in possession of alcohol or offer defendants the opportunity to participate in a diversion program. These decisions directly impact other entities in the justice system, such as the workload of the public defenders, the courts, and the population of the local jail.

As in-house legal counsel, the Law Department represents the City's interest in litigation that may have a large financial impact on the City. These activities include litigation related to entities in the justice system, including representing the City in federal consent decrees for the NOPD and the OPSO, in civil lawsuits filed against the NOPD, and in NOPD personnel matters before the Civil Service Commission.

For example, the Law Department can reduce costs for the NOPD by advising the department on risk related to officer misconduct and affect costs at the Municipal and Traffic Courts through the number of cases it files in court. According to Joanna C. Schwartz, by "gathering and analyzing information from lawsuits" policymakers can "make informed decisions intended to avoid future [police] misconduct."⁶

In light of the Law Department's influential role in the justice system, the OIG sought to determine how Law Department managers allocated resources and whether managers defined and achieved public interest outcomes. Evaluators reviewed the Law Department's overall funding from 2008 through 2013 to determine how the department was funded and identify how funds were spent. This information also provided details about how the Law Department was staffed and how resources were allocated to perform functions related to the justice system.

⁵ State charges are generally prosecuted by the District Attorney; however, the District Attorney deputizes attorneys in the Law Department to prosecute misdemeanor state traffic offenses, including first and second instances of driving while intoxicated. The District Attorney prosecutes state misdemeanor charges in Municipal Court.

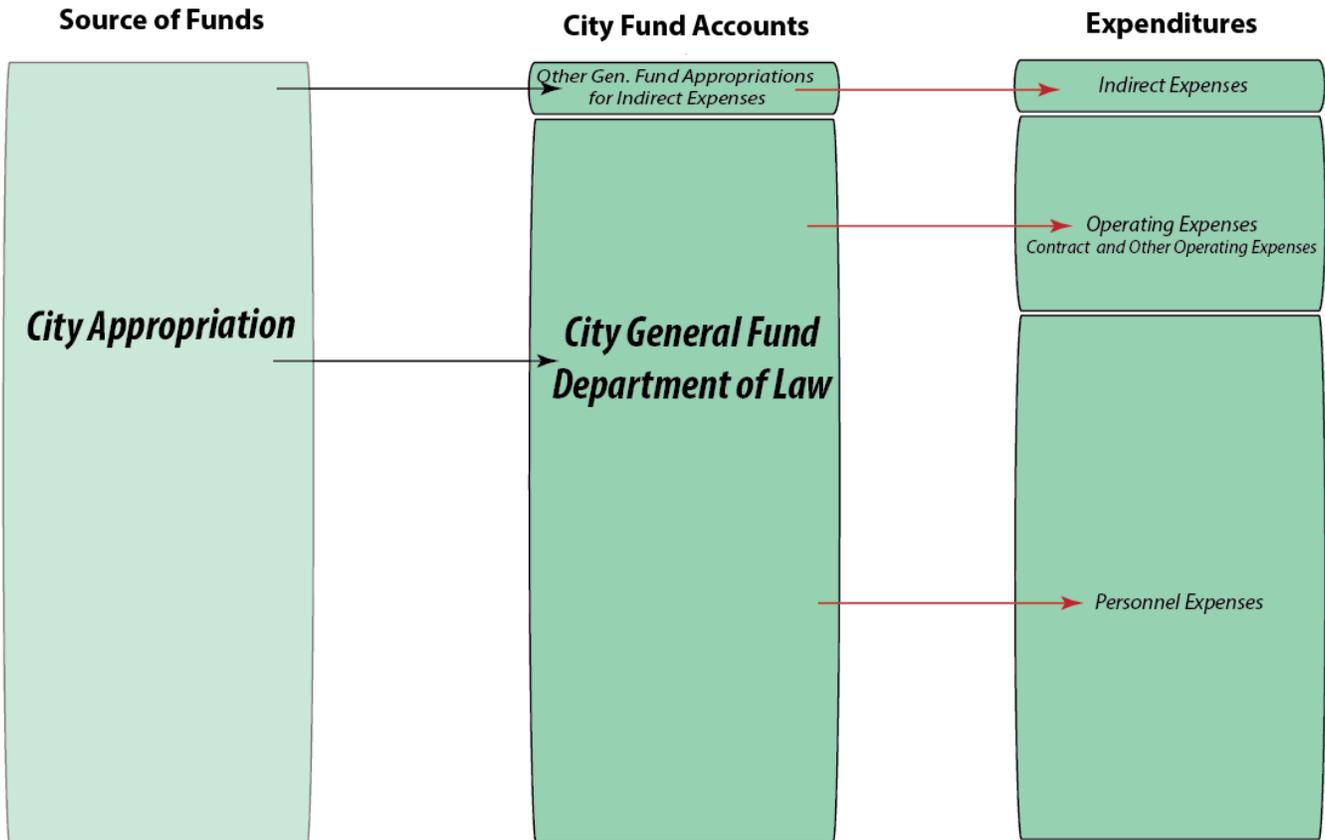
⁶ Joanna C. Schwartz, "Myths and Mechanics of Deterrence: The Role of Lawsuits in Law Enforcement Decisionmaking," *UCLA Law Review* 57 (July 2010): 1028.

This report is divided into two sections. The first section analyzes the Law Department's funding, including funding sources and how the Law Department expended funds. The second section of the report includes findings related to operations of the Law Department.

IV. LAW DEPARTMENT FINANCES, 2008–2013

The Law Department cost between \$6.3 million and \$11.1 million per year from 2008 through 2013. These expenses were spread among eight units that carried out the Law Department’s various functions. Unlike agencies such as NOPD and OPSO that have multiple sources of funding, the Law Department’s funding structure is straightforward: all of its funds are appropriated by the City Council. Evaluators developed a chart of the in- and out-flows of revenues and expenditures to illustrate the Law Department’s justice system funding structure (see Figure 1).

Figure 1: In- and Out-Flows of Law Department Funding⁷



⁷ The relative portions of operating and personnel expenses varied from year to year. From 2008 through 2012 the personnel budget accounted for 49 to 53 percent of the Law Department’s total budget. However, in 2013 personnel expenses rose to 80 percent of the Law Department total budget when the Risk Unit was reassigned to the office of the Chief Administrative Officer. The diagram depicts the mean of the six years examined and omits the relatively small amounts of grant funding and the Housing Improvement Fund (see Figure 4).

LAW DEPARTMENT BUDGETING

The City uses the budget process to determine how to allocate resources across various municipal functions, including justice system functions. From 2008 to 2011 the City allocated 2 percent of the General Fund discretionary budget to the Law Department. Law Department funding dropped to 1 percent (See Figure 2) of the General Fund when the Risk Management Unit was placed under the purview of the Chief Administrative Officer in 2013.

Figure 2: General Fund Discretionary Appropriations to Law Department, Percent of Total (2008-2013)⁸

	2008	2009	2010	2011	2012	2013
Law Department	\$9,870,665	\$10,719,459	\$8,878,68	\$10,000,900	\$9,872,102	\$5,809,058
General Fund	\$469,745,661	\$491,569,614	\$509,379,299	\$499,972,564	\$679,882,701	\$492,763,848
% Law Department	2%	2%	2%	2%		1%

The budget process consisted of three steps:

- 1) The Law Department made a budget request to the Mayor who balanced the priorities of the Law Department with other financial needs in the City;
- 2) The Mayor submitted a budget proposal to the City Council which could make changes to the proposed budget and then adopt the budget through an ordinance; and
- 3) The City Council had the authority to amend the budget as needed throughout the year.

The City Attorney stated that she kept budget requests in line with requests from previous years, but she requested a higher budget than she thought she needed because expenses throughout the year could be unpredictable, depending on costs of litigation and other city needs. However, her goal was to keep spending below the budgeted amount, and evaluators found that the funding requested by the Law Department and the amount allocated by the City Council were

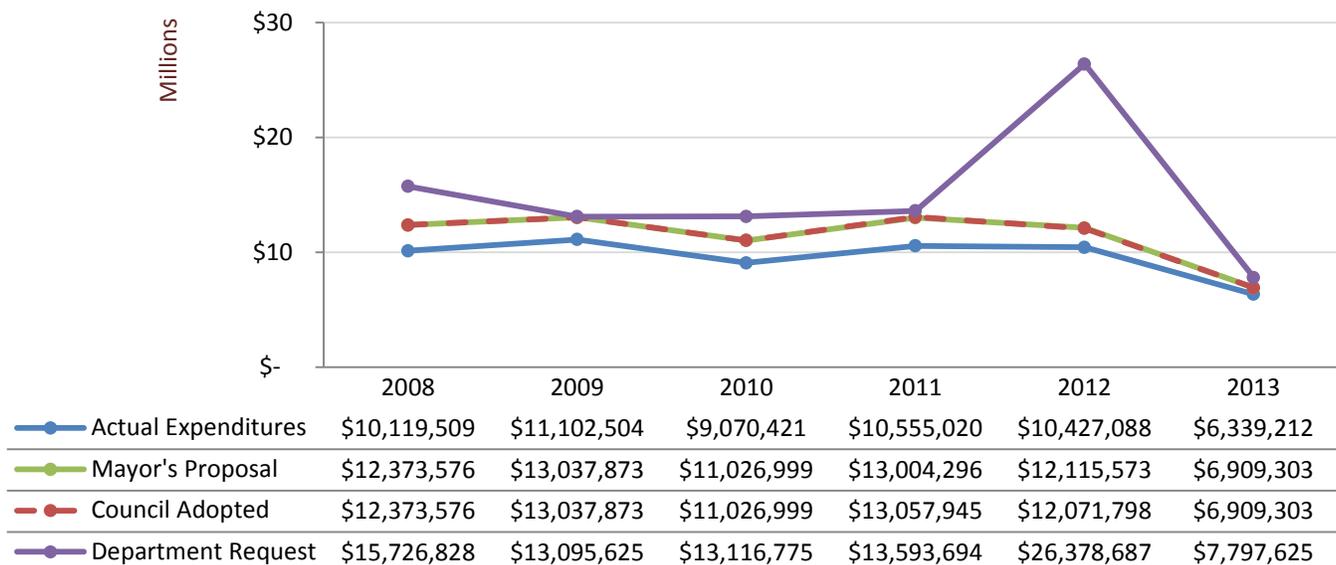
⁸ Evaluators did not include the Law Department's general fund appropriation for 2012 in the calculation because that year was an outlier: general fund expenditures increased to \$680 million. According to the City's 2012 Certified Annual Financial Report, \$195.9 million of the 2012 General Fund increase to \$680 million was due to the issuance of general obligation bonds to refund outstanding bonds not in the original budget.

consistently greater than the actual amount spent by the Law Department between 2008 and 2013 (see Figure 3).

After the City Attorney developed the budget request, the Mayor and Chief Administrative Officer used the budgeting for outcomes process to balance the priorities in the Law Department’s request with other departmental requests and the amount of revenue available. The budgeting for outcomes process ties each agency’s budget proposal to specific performance outcomes. The City’s budget offer forms included requirements for proposals that included a “compelling” narrative, a “return on investment” analysis that explained the value of the offer, and “quantifiable” performance measures. The Mayor held public meetings in each council district to determine priorities for programs and outcomes, then ranked budget offers according to those priorities.

Figure 3 shows a comparison of the Law Department request, the Mayor’s budget proposal, the City Council adopted budget, and actual spending by the Law Department.

Figure 3: Law Department Budget Requests Compared to Adopted Budgets and Actual Expenses (2008-2013)

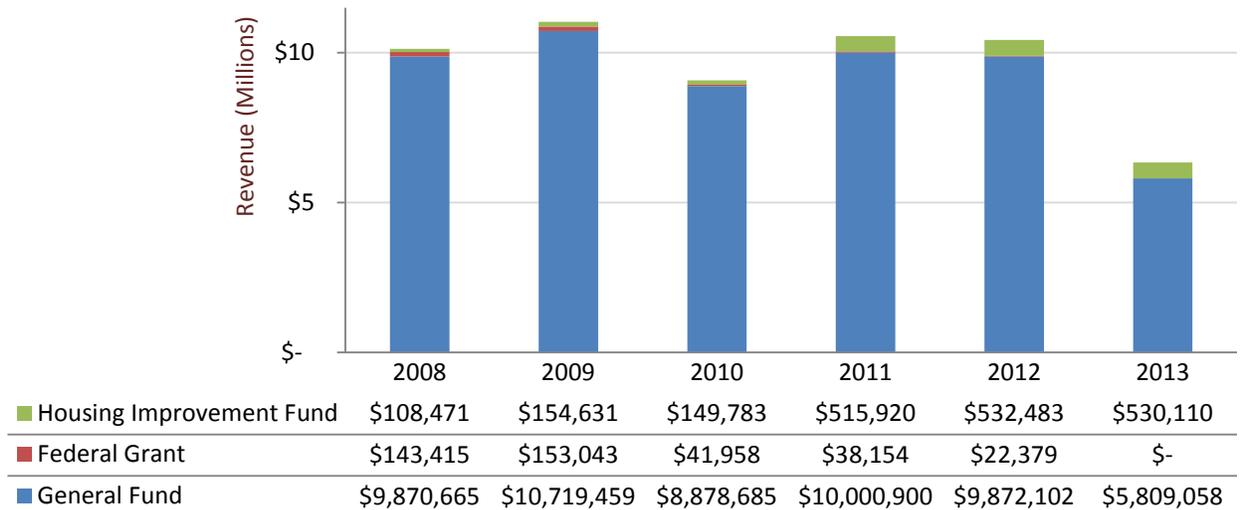


In 2012 the Law Department requested significantly more than it received or spent. According to budget request documents, the Law Department requested \$10 million in funds to pay some of the City’s general liability claims, but the Mayor and City Council did not allocate sufficient funds to pay those claims.⁹

REVENUE

All Law Department spending is contingent on the amount of revenue available. Unlike some agencies examined in other OIG justice system funding evaluations, the City Council controlled all of the revenue streams that funded the Law Department, including revenue from the City’s General Fund, federal grants, and the Housing Improvement Fund. As shown in Figure 4, almost all of the Law Department’s revenue came from the General Fund.

Figure 4: Law Department Revenue by Funding Source (2008-2013)



On average, the Law Department received \$10.2 million in funding per year between 2008 and 2012. Placing responsibility for the Risk Management Unit

⁹ In 2013 the City’s outstanding general liability was over \$298 million.

(including associated insurance expenses) with the Chief Administrative Officer reduced the Law Department budget by 41 percent.¹⁰

Federal grant money in 2008 and 2009 funded a staff attorney to run a witness protection program related to domestic violence, but by 2013 grant funding for the program ended, and the City closed the program. The Housing Improvement Fund covered expenses of the Law Department's Housing Adjudication Section, which is responsible for housing-related litigation, property transfers, expropriations, and lien foreclosure/sheriff sales associated with the City's redevelopment initiatives.¹¹

EXPENSES

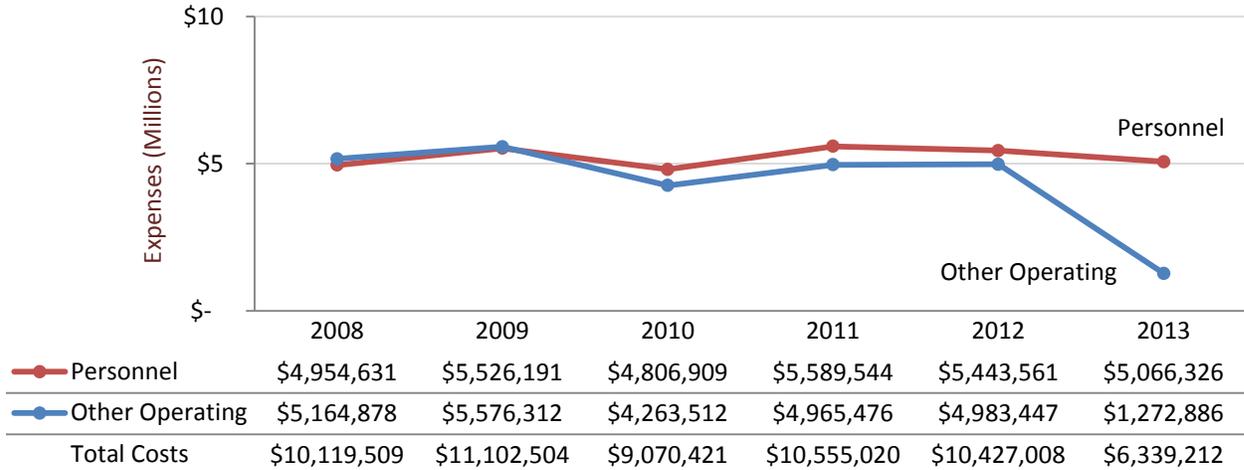
Spending in the Law Department ranged from a high of \$11.1 million in 2009 to a low of \$6.3 million in 2013.¹² To examine the Law Department's spending in more detail, evaluators divided expenses into two categories: personnel and operating. Personnel expenses included employee salaries and benefits. Operating expenses covered goods and services, which included contractors to manage the City's self-insurance programs, outside counsel for selected litigation efforts, legal services such as transcription or expert witness fees, and general office supplies. Figure 5 provides a breakdown of spending by category.

¹⁰ The risk management portion of the Law Department budget included approximately \$3 million in workers compensation self-insurance expenses, property and casualty insurance expenses, motor vehicle self-insurance expenses, sundry claims, and personnel costs for three staff positions.

¹¹ See City Code Sec. 70-415.1-2 for a description of the Fund's source of funding and the purpose of the initiative. The Fund receives "proceeds of the special tax authorized by Proposition D of R-91-100 and any other funds designated by lawful authority."

¹² Spending decreased when the Chief Administrative Officer acquired responsibility for risk management and associated insurance expenses.

Figure 5: Law Department Expenses (2008-2013)



Evaluators then tried to determine how much the City spent on justice system-related functions in the Law Department in order to determine whether the City was getting the best justice outcomes for those dollars.

PERSONNEL EXPENSES

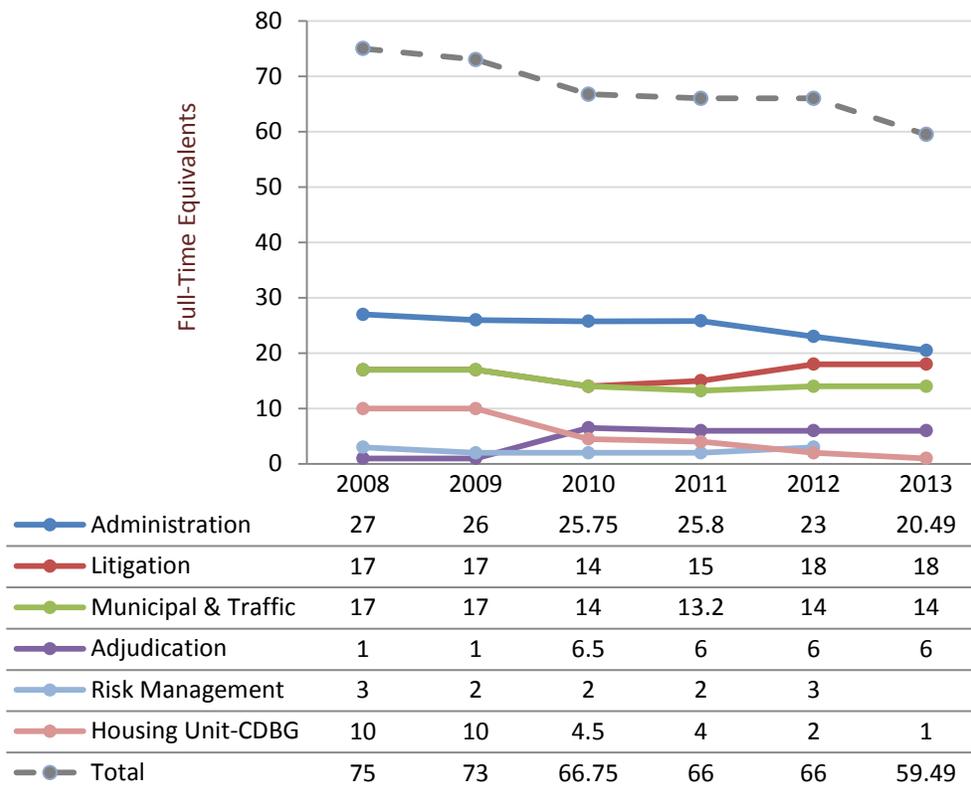
From 2008 through 2013 the Law Department consisted of eight units organized by function:

- 1) **Administration:** Oversaw the Law Department and managed personnel and finance.
- 2) **Litigation:** Defended the City against all lawsuits.
- 3) **Municipal and Traffic:** Prosecuted violations of municipal code and some state traffic offenses.
- 4) **Adjudication:** Handled litigation related to property transfers, expropriations, and lien foreclosure/sheriff sales.
- 5) **Contracts:** Oversaw the City’s contracting process.
- 6) **In-House:** Provided legal advice to the Mayor, City Council, and city departments.
- 7) **Risk Management:** Handled insurance programs and otherwise assisted the City in reducing financial and operational risks (2008 – 2012).
- 8) **Housing-CDGB:** Provided advice related to community development block grants and oversaw the tax sale process and tax related litigation.¹³

¹³ See Appendix A for a detailed description of the function of these units.

Evaluators calculated the number of full time equivalents (FTEs) in the various Law Department units over the study period to identify changes in staffing. The number of FTEs decreased overall; the largest decreases occurred in the Administration, Municipal and Traffic, and Housing Unit-CDBG Units. However, FTEs increased in the Litigation and Adjudication Units (see Figure 6).

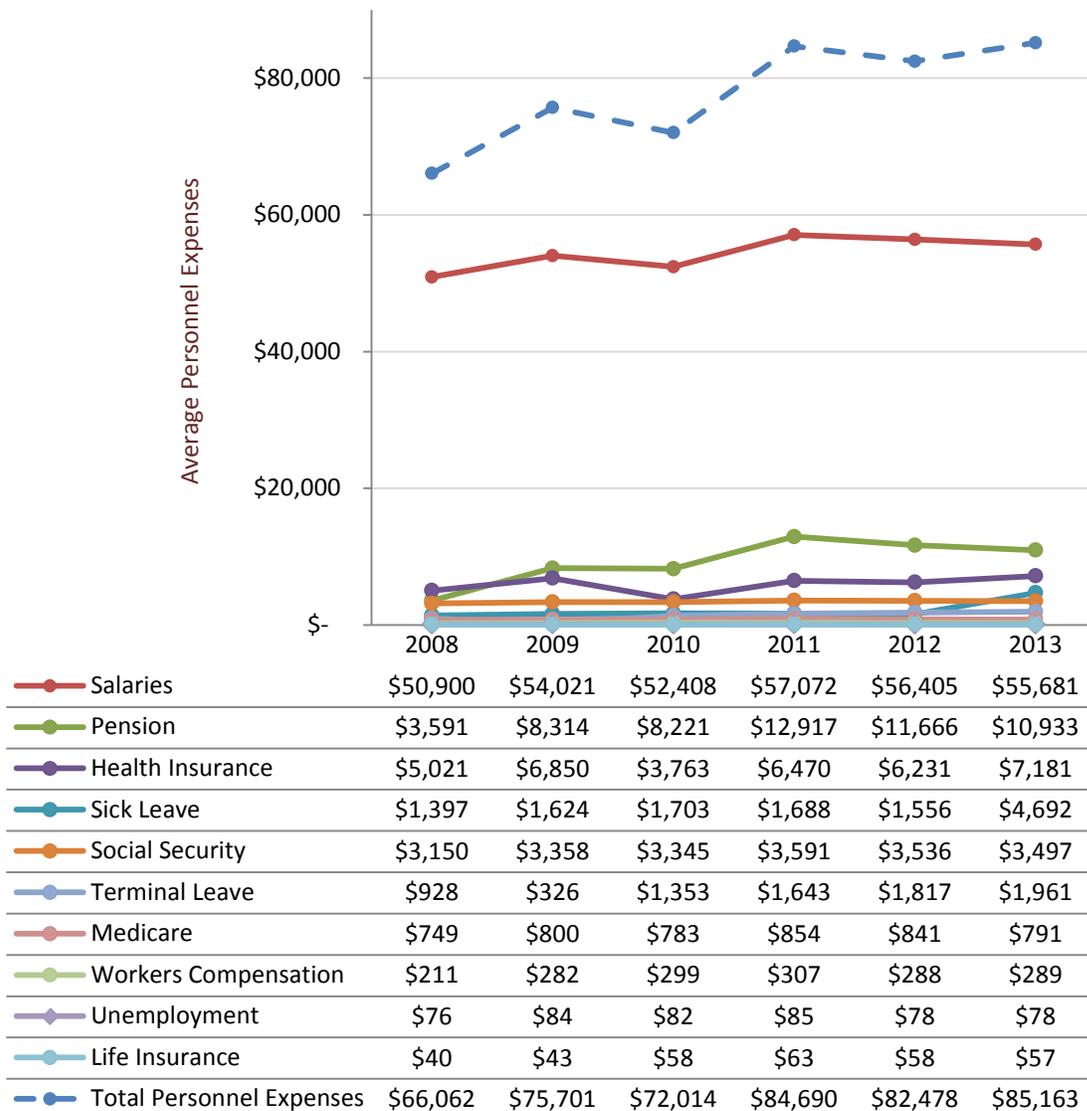
Figure 6: Law Department Full-Time Equivalents by Unit (2008-2013)¹⁴



As shown in Figures 5 and 6, the Law Department’s personnel expenses remained steady despite a decrease in the number of FTEs from 75 to 59.5. Law Department positions cost more on average in 2013 than they did in 2008. The increase in cost was due to a 9 percent increase in average salaries and increases in pension and other non-salary personnel expenses (see Figure 7).

¹⁴ The number of employees in this figure does not distinguish the Law Department’s Contracts and In-House units because these functions were housed in the Administration Unit prior to 2014.

Figure 7: Law Department Average Personnel Expenses by Category (2008-2013)



The total of all the non-salary costs resulted in a 52.5 percent increase in FTE cost per person. The costs associated with pension, sick leave, and terminal leave raised average compensation per employee by approximately 32 percent above the salary. Terminal leave is compensation for un-used sick and annual leave when an employee resigns or retires and Civil Service Rules require the compensation.¹⁵ The increase in sick leave expenses for 2013 was due to an

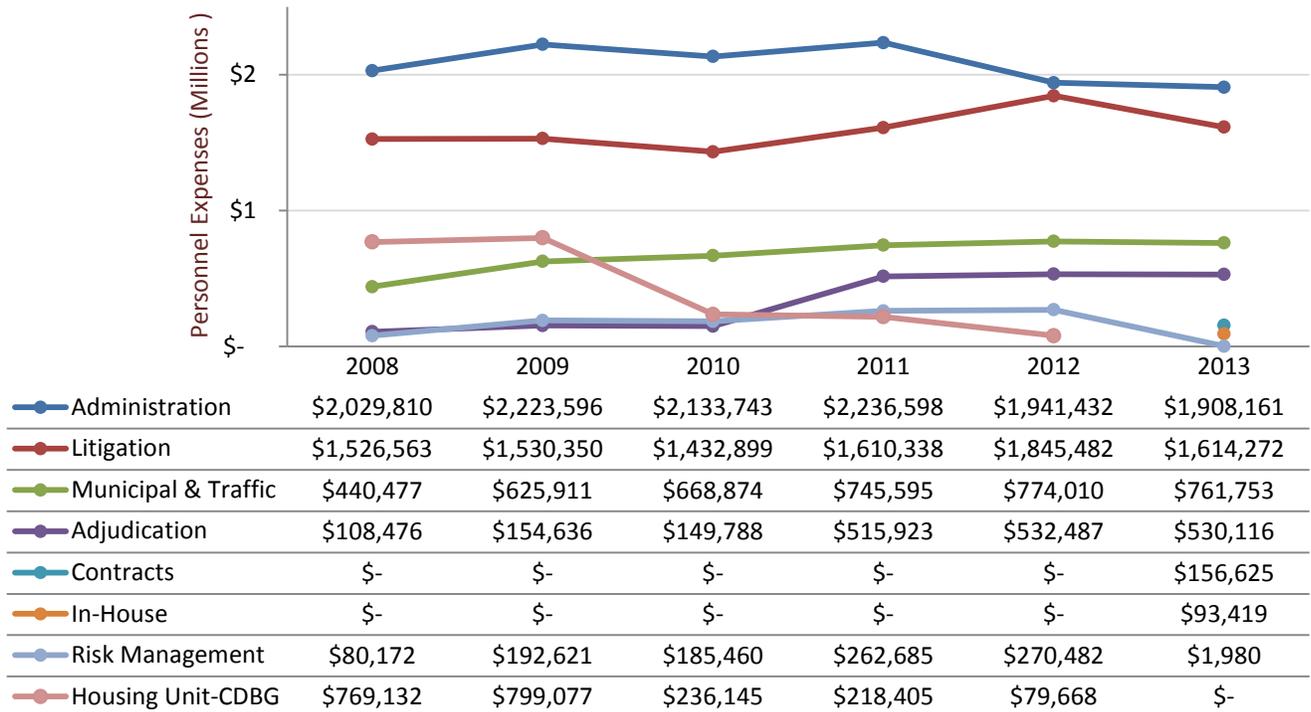
¹⁵ Employees receive full compensation for annual leave. Civil Service Rule VII Sec. 2.5 defines the amount of sick leave compensation: "Upon termination of service the conversion of unused sick

employee who transferred from the Law Department to the Sewerage and Water Board (S&WB). Civil Service rules required the City to transfer the full amount of the employee's \$187,000 in accumulated sick leave to the S&WB.

Total expenses associated with Law Department personnel varied among units between 2008 and 2013. The decrease and then the elimination of personnel expenses in the Housing Unit-CDBG Unit in 2013 resulted in the largest change. Expenses also decreased slightly in the Administration Unit with a decline in the number of staff. At the same time expenses increased in the Litigation and Adjudication Units due to increases in the number of staff. The Law Department also added two new units in 2013 to represent more accurately the work of employees: the Contracts Unit managed city contracts and the In-House Unit provided legal advice to city officials and departments. Personnel expenses by unit are outlined in Figure 8.

leave to cash shall be determined as follows: (1) For the 1st through 100th leave day, twenty percent (20%) of the accrued leave shall be converted to pay. (amended April 20, 1995) (2) For the 101st through 200th leave day, twenty-five percent (25%) of the accrued leave shall be converted to pay. (amended April 20, 1995) (3) For the 201st through 300th leave day, thirty-three percent (33%) of the accrued leave shall be converted to pay. (amended April 20, 1995) (4) For the 301st through 400th leave day, fifty percent (50%) of the accrued leave shall be converted to pay. (amended April 20, 1995) (5) One hundred percent (100%) of the accrued leave in excess of 400 leave days of sick leave shall be converted to pay. (amended April 20, 1995)."

Figure 8: Law Department Personnel Expenses by Function (2008-2013)

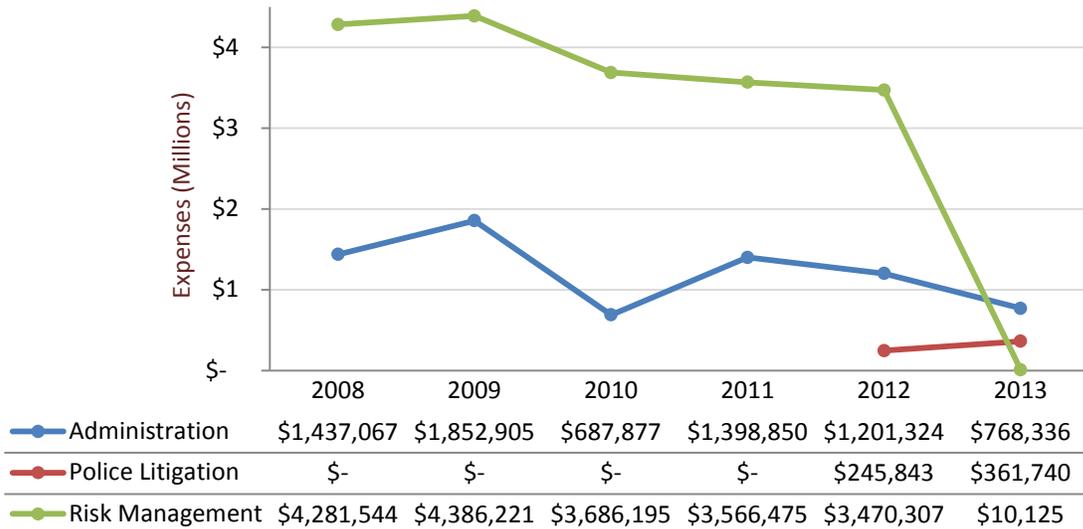


OPERATING EXPENSES

The Law Department recorded operating expenses in three of its eight units between 2008 and 2013: Risk Management, Administration, and Police Litigation.¹⁶ Expenditures in these three units accounted for all of the Law Department’s operating expenses. Figure 9 provides a breakdown of these expenses.

¹⁶ The Law Department began tracking police litigation expenses for the purpose of monitoring outside counsel and expert witness fees related to the NOPD consent decree.

Figure 9: Law Department Operating Expenses (2008-2013)



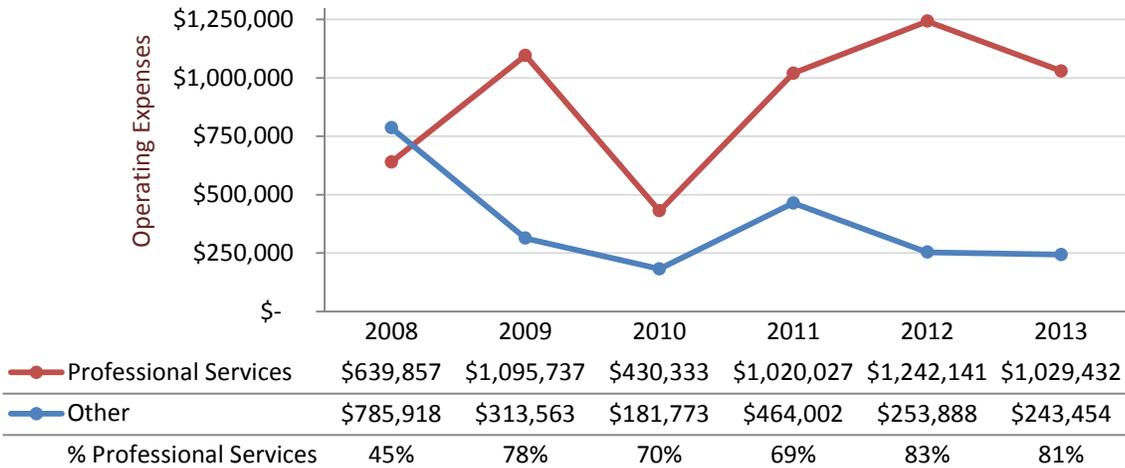
The majority of Risk Management operating expenses consisted of professional service contracts to manage the City’s insurance programs: property and casualty, vehicle and equipment, and workers compensation. Administration expenses included general office supplies and expenses related to litigation (e.g., transcriptions or expert witnesses).

Professional services was the largest category of operating expenses incurred by the Administration and Police Litigation Units between 2008 and 2013.¹⁷ Figure 10 outlines the amount spent on operating expenses in these units each year.¹⁸

¹⁷ Executive Order MJL 10-05 defines professional services: “Professional services are those that include work rendered by an independent contractor who has a professed knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, which independent contractor shall include but not be limited to attorneys, doctors, dentists, nurses, veterinarians, architects, engineers, land surveyors, landscape architects, accountants, actuaries, appraisers, business consultants, investment advisors, and claims adjusters. A profession is a vocation founded upon prolonged and specialized intellectual training which enables a particular service to be rendered. The word ‘professional’ implies professed attainments in special knowledge as distinguished from mere skill.”

¹⁸ See Appendix B for additional details of spending by category.

Figure 10: Administration and Police Litigation Operating Expenses by Type (2008-2013)



With the exception of 2008, the Law Department spent an average of 76 percent of its operating expenses on professional services each year.¹⁹ The City Attorney could not explain fluctuations in expenditures for professional services prior to her appointment in 2013, but she speculated that the City spent little in 2010 because there was no money available that year. The City Attorney also stated that she has made it a priority to control costs for outside counsel.

CLAIMS EXPENSES

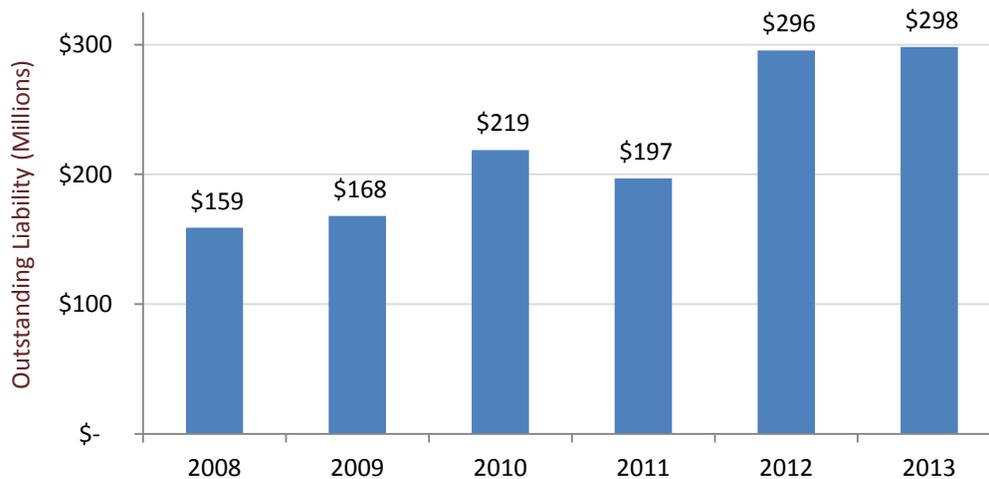
The Law Department is responsible for defending the City in lawsuits and also responsible for tracking and managing payments to parties who have been awarded legal judgments against the City. The Law Department reports the City's general liability for claims to the City's third party auditors for inclusion in the Certified Annual Financial Report (CAFR).²⁰ The CAFR is used by bond-rating agencies to determine the City's credit worthiness. According to the CAFR, the City's outstanding general liability claims increased from \$159 million at the end

¹⁹ The City paid \$425,000 to the Internal Revenue Service in 2008.

²⁰ General liability claims include legal claims against the City that did not relate to worker's compensation, motor vehicles, hospitalization, or unemployment. General liability included claims related to the NOPD, such as claims for use of excessive force.

of 2008 to \$298 million at the end of 2013 with a \$100 million increase between 2011 and 2012 (see Figure 11).²¹

Figure 11: Cumulative Outstanding General Liability Claims (2008-2013)



Evaluators attempted to calculate what portion of these claims were related to the NOPD, but the CAFR did not provide this level of detail. Also, the Law Department’s database for tracking cases included only the original judgment or estimated amount for a claim and did not track how much had been paid on a claim. City attorneys checked the records and the database against a list of payments to determine if claims were paid and reported each individual case to the City’s third party auditors. Auditors manually calculated claims for the CAFR using this information.²²

The Law Department paid a small number of liability claims between 2008 and 2013 but left most outstanding. Claims payments in 2009 totaled almost \$5.2 million, but from 2010 through 2013 totals averaged approximately \$202,500 per year. The majority of funds for these payments were made from the proceeds of two bonds: one issued during former Mayor Ernest N. Morial’s administration and another bond issued in 2004.

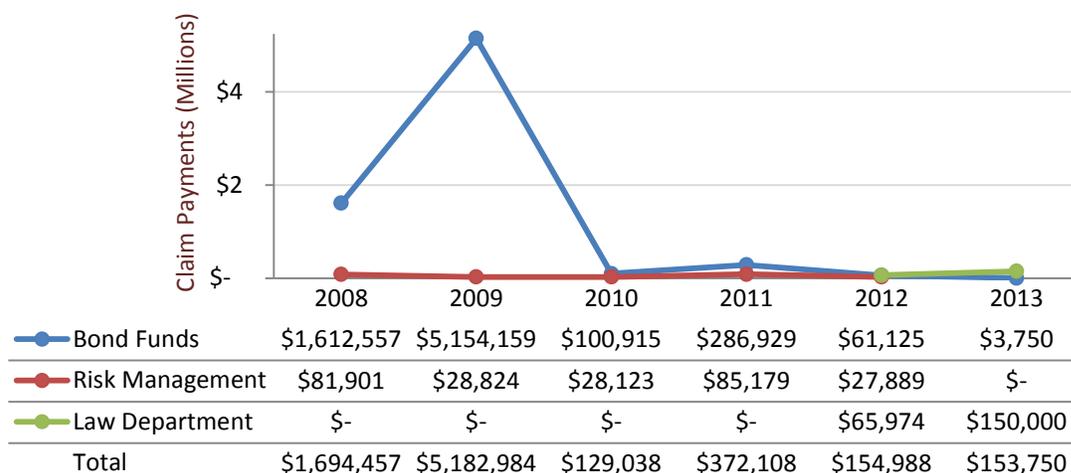
²¹ The increase was mostly due to changes in how the City reported liability for the New Orleans Fire Department lawsuit that has been ongoing since 1981. Previously, the City held the accrual in the case at \$100 million, but in 2012 the Law Department provided an updated estimate of the accrual at \$188 million. General liabilities reported in the CAFR do not include court-imposed interest expenses.

²² See Finding 5 for further discussion about the limits of the Law Department’s access to data.

In 2012 the Law Department began paying some claims from its General Fund line item appropriation because available bond funds were decreasing, and by 2014 they were nearly depleted. Between 2008 and 2013, annual claim payments ranged from more than \$5 million in 2009, when bond funds were available, to less than \$4,000 in 2013.

Staff in the Law Department stated that the City had not paid any claims from state judgments since 2010, when the availability of funds from the bond sales dropped precipitously (see Figure 12).²³

Figure 12: Claim Payments by Source of Funds (2008-2013)²⁴



The Law Department was responsible for tracking and paying most judgments against the City, but other departments could also be responsible for these costs. For example, the Risk Management Unit investigated and paid small sundry claims (below \$15,000) through the Risk Management line item in the City’s budget. In some cases, the Law Department asked responsible departments to pay some judgments from their own line item appropriations.²⁵

²³ The City prioritizes payments for federal claims, because the Louisiana Constitution protects public property and funds from seizure for payment of state claims. See La. Const. Art. 12, Sec.10.

²⁴ The Administration moved sundry claim payments to the CAO’s Office in 2013.

²⁵ The Law Department asked departments to pay claims for employee back pay when the Civil Service Commission found for an employee. It also asked departments to pay financial fees and penalties associated with delayed public records requests if the Law Department determined the department was responsible for the delay.

V. JUSTICE SYSTEM ACTIVITIES: PROSECUTION AND LITIGATION

The objectives of the OIG series of reports on justice system funding were to document all agency revenues and expenditures, assess agency performance, and connect spending and policy decisions to justice outcomes. Unlike other agencies in the series, only a portion of Law Department spending was directly related to the justice system. The Law Department served four general functions: administrative, advisory, civil litigation (prosecution and defense), and criminal prosecution (of municipal offenses and some state traffic violations). To answer the question of whether the Law Department was funded adequately to meet the City's justice needs, it is necessary to know both the Law Department's justice-related workload and how successfully it managed that workload.

LAW DEPARTMENT JUSTICE SYSTEM COSTS

FINDING 1. THE LAW DEPARTMENT DID NOT TRACK HOW ITS RESOURCES WERE USED TO FULFILL ITS LITIGATION FUNCTIONS.

Evaluators considered the functions of the Law Department's Litigation and Municipal and Traffic Units to be related to the justice system for the purpose of this analysis. The Litigation Unit defended NOPD officers who had been sued by outside parties and represented the City in Civil Service proceedings involving NOPD officers. City attorneys in the Municipal and Traffic Unit prosecuted cases in which defendants had been accused of violating the criminal municipal code and some state traffic laws.

PERSONNEL COSTS

Municipal and Traffic Unit: All personnel employed in the Municipal and Traffic Unit performed work related to the justice system. Evaluators included all personnel costs associated with the unit.

Litigation Unit: The City Attorney could not specify what percent of staff time in the Litigation Unit was devoted to cases related to the justice system. To identify Litigation Unit personnel costs associated with the justice system, evaluators estimated the portion of the Litigation Unit's resources spent on activities related to the justice system. These activities included attorneys' defense of

claims related to the NOPD and legal activities related to the NOPD and OPSO consent decrees.

Evaluators multiplied total Litigation Unit personnel costs by 9 percent, the percentage of open cases related to the NOPD, to determine Litigation costs associated with the justice system. Evaluators had to weight all cases equally whether they were simple car accidents or complex cases like the NOPD consent decree, because the Law Department did not track the amount of time attorneys spent on cases.

Administration Unit: The Law Department's Administration Unit provided clerical support to the Litigation and Municipal and Traffic Units so a portion of the Administration Unit's personnel expenses were also related to the justice system. Evaluators determined administrative costs related to the justice system by calculating the per-person administrative personnel costs and multiplying that number by the number of employees devoted to justice system-related tasks in the Litigation and Municipal and Traffic Court Units. Evaluators calculated justice system costs at 25 percent of total administrative unit personnel costs.

To determine the overall percent of Law Department justice-system related personnel costs, evaluators summed the following personnel costs: 100 percent of Municipal and Traffic Court Unit costs; 9 percent of Litigation Unit costs; and 25 percent of Administration Unit costs. The calculation resulted in an average of \$1.3 million in total Law Department personnel costs related to justice system activities.

OPERATING EXPENSES

The Law Department did not always track which operating expenses were justice system costs. In 2012 and 2013 it recorded some expenses related to the NOPD consent decree, so evaluators included these expenses as part of this analysis. Evaluators also included expenses related to outside counsel for the OPSO consent decree.

INDIRECT EXPENSES

Indirect expenses are administrative expenses associated with running a program and include services from other departments such as information technology, law, human resources, and purchasing. The City used an indirect expense multiplier when applying for grants to determine how much administrative overhead would be associated with a project. Evaluators asked

the City to provide an estimate for indirect costs and the City provided a 2010 consultant's report that estimated a 7.92 percent indirect cost for the Law Department.²⁶ Evaluators applied that indirect cost ratio to the Law Department's justice system-related expenses for each year.

An estimate of the total justice system costs is presented in Figure 13.

Figure 13: Law Department Estimated Administration, Prosecution, and Litigation Expenses (2008-2013)

	2008	2009	2010	2011	2012	2013
Personnel Expenses	\$1,066,905	\$1,305,418	\$1,216,872	\$1,364,724	\$1,377,064	\$1,389,692
Operating Expenses	\$0	\$0	\$0	\$10,754	\$371,904	\$458,763
Indirect Expenses	\$84,499	\$103,389	\$96,376	\$108,938	\$138,938	\$146,398
Total	\$1,151,404	\$1,408,807	\$1,313,248	\$1,484,415	\$1,887,486	\$1,994,853

It was impossible to determine actual Law Department justice system costs because the Law Department did not require litigation attorneys to track their time by case. Therefore, evaluators could not determine how much time and money was spent defending the City's interests in lawsuits related to various departments or functions.

The Law Department previously tracked personnel working on police litigation separately, and it retained a code in its accounting for this function.²⁷ However, the City Attorney stated that the Law Department discontinued its practice of using the accounting code for attorneys working solely on police cases after it shifted to a generalist model that allowed litigation attorneys to defend the City's interests across a broad spectrum of legal disciplines (e.g., labor, housing, taxation, etc.).

²⁶ The City had not updated its cost allocations plan since 2010. The OIG commented on the cost allocation plan in a previous report. Office of Inspector General City of New Orleans, *Funding of Traffic Court* (New Orleans, LA: Office of Inspector General City of New Orleans, 2015), 44-45, accessed December 14, 2015, http://nolaoig.gov/uploads/File/Public%20Letters/2015/OIG_Funding_of_Traffic_Ct-Final_Report_150729.pdf.

²⁷ The City continued using this accounting code to account for personnel, but the activities of those attorneys were not necessarily related to the code used. Moreover, beginning in 2012 the Law Department also used the code to track expenses for outside counsel related to the NOPD consent decree. (see Figure 9)

It is important to track how the Law Department used its resources for several reasons. First, the lack of information limited the Law Department's ability to determine whether attorneys used their time efficiently or whether the Law Department had an adequate number of in-house attorneys with the necessary expertise to cover the Law Department's workload in specialized areas of law. In addition, the public would have limited information about how the Law Department used its resources.

Second, transitions in the Law Department's leadership and structure elevated the importance of reliable, documented information about staffing and workload for the purpose of managerial oversight. There were five different City Attorneys between 2008 and 2013 and at least three different management structures and organizational charts.²⁸ The City also moved Risk Management functions under the Chief Administrative Officer. These transitions increased the likelihood that the amount and type of information would be collected inconsistently or that it would not be communicated to subsequent department leadership. Moreover, the Mayor and City Council would not have the ability to review the Law Department's activities and quantify the amount spent on its various functions.

It is standard practice for attorneys in the private sector to track time by case and use this information to bill clients, and the Law Department acknowledged the practice by including this requirement in its guidelines for outside counsel. The Law Department's billing guidelines for outside counsel require attorneys to track their time in six-minute increments (one-tenth of an hour) to ensure that tasks are performed at lowest possible cost to the City.

Law Department attorneys serve a variety of different functions or client departments in the same way that attorneys in the private sector do. For this reason, it would be necessary to track their time in order to determine how much time the Law Department devoted to its various responsibilities. However, the Law Department did not require city attorneys to track how much time they spent performing particular categories of tasks or time spent on specific cases.

Evaluators surveyed law department managers in the cities in the ResultsNOLA benchmark as well as some additional regional cities to determine the

²⁸ The five City Attorneys during this period were Penny Moses-Fields (December 2008–May 2010), Nanette Jolivet-Brown (May 2010–October 2011), Richard Cortizas (October 2011–May 2013), Sharonda Williams (May 2013–October 2015), and Rebecca Dietz (October 2015–Present).

prevalence of tracking time.²⁹ Of the eight respondents to the survey, five tracked attorney time, two did not, and one was considering a requirement to have attorneys track their time.

RECOMMENDATION 1. THE LAW DEPARTMENT SHOULD REQUIRE LITIGATION ATTORNEYS TO TRACK TIME BY CASE.

Tracking litigation attorneys' time would enable the Law Department to make better management decisions in allocating staffing resources and could be used to support potential requests for additional staff or technology and allow the Law Department to monitor employee performance by quantifying the amount of time employees spent on certain tasks. Reports could alert management if employees were struggling with certain cases and/or activities. Tracking attorney time could also better inform decisions regarding whether or not to use outside counsel.

Some Law Department attorneys may consider not having to track time to be one of the advantages of working for the City rather than the private sector.³⁰ However, the process of tracking time would not need to be as detailed as it is for billing purposes in the private sector to be useful to managers. Moreover, tracking time could permit supervisors to manage the department's personnel resources, and the potential for increased transparency and accountability in the expenditure of public resources outweighs any perceived drawbacks. The Mayor, City Council, client departments, and the public deserve the same access to information and assurance that public dollars are being spent efficiently and effectively that the Law Department expects from its outside attorneys.

²⁹ Atlanta, GA; Charlotte, NC; Miami, FL; Nashville, TN; and Tallahassee, FL, tracked attorney time. Memphis, TN, was considering tracking time. Raleigh, NC; and Tampa, FL, did not track attorney time.

³⁰ The City Attorney stated that this is one of the benefits she uses to attract talented attorneys from the private sector.

MEASURING PERFORMANCE

The Governmental Accounting Standards Board (GASB) established standards for how governmental organizations should measure performance. According to GASB, performance measures should be:

- **Relevant:** Performance measures “should include data that are essential to provide a basis for understanding the accomplishment of goals and objectives of the entity that have potentially significant decision-making or accountability implications.”³¹
- **Understandable:** Performance measures “should be concise yet comprehensive with regard to which (and how many) measures” and “should include explanations about important underlying factors and existing conditions that may have affected [service, effort, and accomplishment (SEA)] performance.”³²
- **Comparable:** Performance measures “should provide a clear frame of reference for assessing the SEA performance of the entity and its agencies, departments, programs, and services.”³³ Performance measures can be monitored by conducting progress toward a goal, or comparisons can be made over time, to external norms, or to other entities.
- **Timely:** Performance measures “should be reported in a timely manner so that [they] will be available to users before [the information] loses its capacity to be of value... .”³⁴
- **Consistent:** Performance measures “should be reported consistently from period to period ... ,” but “performance measures also need to be reviewed regularly and modified or replaced as needed to reflect changing circumstances.”³⁵

³¹ Governmental Accounting Standards Board, *Concepts Statement No. 2 of the Governmental Accounting Standards Board* (Norwalk, CT: Governmental Accounting Standards Board, 2008) 24, accessed January 27, 2015, <http://www.gasb.org/cs/BlobServer?blobkey=id&blobnocache=true&blobwhere=1175824063642&blobheader=application/pdf&blobcol=urldata&blobtable=MungoBlobs>. Evaluators did not test the reliability of performance measures reported by the Department.

³² *Ibid.*, 25.

³³ *Ibid.*, 26.

³⁴ *Ibid.*

³⁵ *Ibid.*

- **Reliable:** Performance measures “should be verifiable and free from bias and should faithfully represent what it purports to represent.”³⁶

FINDING 2. SOME OF THE LAW DEPARTMENT’S PERFORMANCE MEASURES DID NOT MEET INDUSTRY STANDARDS BECAUSE THEY DID NOT PROVIDE THE INFORMATION NEEDED TO ASSESS WORKLOAD OR OUTPUT.

Between 2008 and 2013 the Law Department reported 33 different measures in the City’s budget books, but it did not report most of these measures consistently.³⁷ The Department reported only three of the 33 performance measures in more than half of the six years included in evaluators’ review period. The Law Department did not report any measures in 2010.

The City also publishes ResultsNOLA reports twice a year to track city-wide key performance indicators.³⁸ In 2013 the Law Department reported on seven different performance measures in the ResultsNOLA report. Staff in the Office of Performance and Accountability with expertise in performance measurement assisted staff in the Law Department with developing the measures. The Law Department’s ResultsNOLA performance measures are listed below (the measures related to the justice system are listed in bold print):

- 1) Percent of contracts drafted and reviewed by the Law Department and signed by the City Attorney within 30 days;
- 2) **Average number of Municipal and Traffic Court cases per attorney per month;**
- 3) **Revenue from Municipal and Traffic Court claims, settlements, and judgments;**
- 4) **Savings achieved by legal team in civil/police litigation;**
- 5) Number of public records requests completed;
- 6) Number of tax and public nuisance cases filed before the Alcohol Beverage Outlet (ABO) Board; and
- 7) Percent of ABO Tax cases resolved within 60 days.

³⁶ Ibid., 27. Evaluators did not test the reliability of performance measures reported by the Department.

³⁷ See Appendix C for a complete list of metrics and results.

³⁸ The City published these reports quarterly through 2013, but in 2014 began reporting twice a year.

Measures two and three related to the Law Department’s prosecutorial functions in the Municipal and Traffic Courts and measure four related to the Law Department’s litigation function for civil and police cases.

PROSECUTORIAL PERFORMANCE

The Law Department measured the performance of its prosecutorial function using the average number of cases per attorney per month and the total revenue from Municipal and Traffic Court cases. The Law Department reported the number of cases per attorney per month in five of the six years of the 2008 to 2013 period, during which there was an average of 802 cases per attorney per month. It reported revenue in three of the six years; annual revenue averaged \$13.4 million. This information is listed in Figure 14.

Figure 14: Prosecutorial Performance Measures (2008-2013)

Measure	2008	2009	2010	2011	2012	2013	Average
Revenue from Municipal and Traffic Court claims, settlements, and judgments	-----	-----	-----	\$13,696,003	\$12,760,345	\$13,987,535	\$13,481,294
Average number of Municipal and Traffic Court cases per attorney per month	896	659	-----	869	806	780	802

According to the ResultsNOLA report, the amount of revenue from Municipal and Traffic Court claims was “an indicator of the Department of Law’s success in prosecuting violations of the city code,” and it was related to the Law Department’s strategy to “effectively and fairly administer justice.”³⁹ However, the performance measure did not meet the standards outlined by the American Bar Association (ABA) or by GASB.

³⁹ City of New Orleans, *ResultsNOLA 2013* (New Orleans, LA: City of New Orleans, 2014), 189, accessed January 27, 2015, [http://www.nola.gov/getattachment/5fe2a9a7-f1e9-49c9-aeac-8ee8215ef75b/ResultsNOLA-2013-Year-End-Report-\(1\)/](http://www.nola.gov/getattachment/5fe2a9a7-f1e9-49c9-aeac-8ee8215ef75b/ResultsNOLA-2013-Year-End-Report-(1)/).

The use of revenue from claims, settlements, and judgments disregarded the ABA standard that states, “the prosecutor should not make the severity of sentences the index of his or her effectiveness.”⁴⁰ The narrative provided with the standard elaborated: “the prosecutor’s status as a minister of justice makes it totally inappropriate to measure prosecutorial effectiveness by the severity of the sentences imposed in prosecuted cases.”⁴¹

Also, by GASB standards revenue was neither a *relevant* nor an *understandable* performance measure for the Law Department. It was not a *relevant* measure, because the Law Department had little control over the number of cases or the potential dollar amounts involved. Both the NOPD and Traffic Court had more control over the dollar amounts collected: NOPD determined the number of citations and arrests, and filed charges in the Municipal and Traffic Courts, and the courts had more control over the actual amount collected. The measure was also not *understandable*, because there was no explanation of “underlying factors and existing conditions” that might affect the amount of revenue generated by claims, settlements, and judgments.

The City Attorney stated in an interview that she used revenue as an indicator of whether work was being done, but she acknowledged that other measures could provide more detailed information about the quality of prosecutor’s work. For example, she noted that information such as a count of case dismissals versus reductions and a breakdown of cases among attorneys could be more useful.

The City Attorney used the number of cases per attorney to make decisions about staffing the Municipal and Traffic Court Unit. To calculate the number, the City Attorney divided the total number of cases for the year by 12 months and then by the number of attorneys.

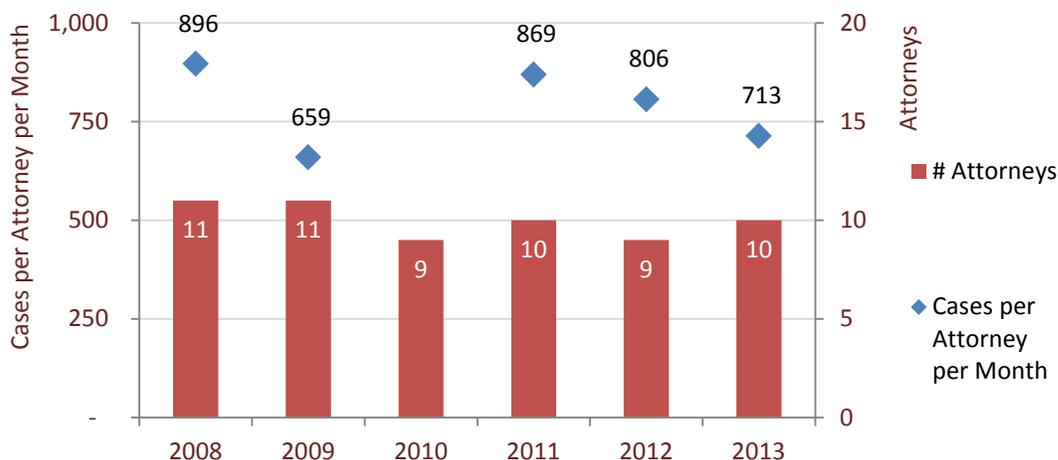
This measure met GASB performance measurement standards for relevance. It measured the department’s workload and indicated relative efficiency by connecting the number of attorneys to the number of cases they handled from year to year. However, the usefulness of the measure to guide staffing decisions was limited by two factors: the lack of a goal for an appropriate range of the number of cases per attorney and baseline needs for the attorneys based on the number of sections of court.

⁴⁰ American Bar Association, *ABA Standards for Criminal Justice Prosecution and Defense Function Third Edition* (Washington, DC: American Bar Association, 1993), 133.

⁴¹ *Ibid.*

The Law Department did not set a goal for the number of cases per attorney per month and defined the measure as a management statistic. In the ResultsNOLA report, the City stated that “if a measure is a workload indicator, or a measure of the amount of work that comes into an organization (such as the number of customers that come in for a service), [it] is referred to [as] a management statistic.”⁴² The number of cases coming in may be considered a management statistic, but the number of cases per attorney is not. The Law Department changed the number of cases per attorney by adjusting the number of attorneys and stated that this was the purpose of using this measure. Cases per attorney per month ranged from 659 to 896, a 26 percent difference. (See Figure 15) The measure would be more useful for making staffing decisions if the Law Department defined a range for an appropriate case load.

Figure 15: Traffic/Municipal Cases per Attorney per Month (2008-2013)⁴³



A second factor that affected the usefulness of the measure was the Law Department’s limited flexibility in the number of prosecuting attorneys it employed. As shown in Figure 15, case load per attorney ranged by 26 percent, but the number of attorneys only ranged from nine to eleven, an 18 percent difference. The City Attorney stated that the City would only drop below one prosecuting attorney per section of court if there were a drastic reduction in cases.

⁴² City of New Orleans, *ResultsNOLA 2013*, 7.

⁴³ The Law Department did not report any performance measures in 2010.

From 2008 to 2012, the Law Department prosecuted cases in four sections of Municipal Court and four sections of Traffic Court. As a result, the number of sections required employing eight prosecuting attorneys and one supervising attorney. The employment of nine attorneys was a floor below which the City would only reduce staffing after measured conversation. In 2013 the Law Department also began prosecuting cases before a hearings officer for traffic camera tickets.⁴⁴ The Law Department added an attorney to the Municipal and Traffic Court Unit despite declining caseload, demonstrating that the number of sections of court was a bigger factor in determining staffing than attorney caseload.

LITIGATION PERFORMANCE

The City used the savings achieved by the in-house legal team to measure performance of the Law Department’s Litigation Unit. The City previously calculated this metric by subtracting the actual settlement/judgment from the amount the plaintiff claimed. However, the City determined that this might not be a relevant measure because plaintiffs’ claim amounts may be inflated. In 2013 the department changed its calculation method, and litigating attorneys began estimating claim amounts based on historical claims for similar lawsuits across the state, the judge hearing the case, whether the claim was credible, and relevant information uncovered during the discovery process. The change in methodology caused a sharp decrease in the amount of savings achieved by the litigation team in 2013 (see Figure 16).

Figure 16: Litigation Performance Measure (2008-2013)

Measure	2008	2009	2010	2011	2012	2013
Savings achieved by legal team in civil/police litigation	\$6,705,620	----	----	\$17,301,896	\$10,315,253	\$769,832

The new method for calculating the metric made it more *relevant*, because it was not influenced by inflated plaintiff claims, but it was still problematic. The

⁴⁴ The City added an attorney to the Municipal and Traffic Court Unit after the City lost a case related to administrative appeal hearings for traffic camera tickets. See Rand v. City of New Orleans, 125 So.3d 476 (La.App. 4 Cir. 12/13/12).

total amount of savings was dependent on the dollar amount and total number of claims made against the City. The dollar amount of savings would likely be higher if more and higher claims were made against the City irrespective of city attorneys' activities or their effectiveness.

Two of the Law Department's performance measures, revenue from Municipal and Traffic Court claims and savings achieved by the litigation team, did not meet the GASB and ABA standards. Moreover, the measures did not provide decision-makers, including the City Attorney, with the kind of information necessary to document the performance of the units or to make decisions about staffing the prosecution and litigation units.

RECOMMENDATION 2. THE LAW DEPARTMENT SHOULD REVISE ITS PERFORMANCE MEASURES TO PROVIDE MORE RELEVANT INFORMATION TO DECISION-MAKERS.

The Law Department has many options available to improve its performance measures. Any measures the department adopts should be *relevant, understandable, comparable, timely, consistent, and reliable*. The City Attorney suggested using the rate of case dismissals versus reductions as a performance measure for the Municipal and Traffic Court Unit. The City Attorney should also establish a goal for the number of cases per attorney to make the measure more useful for making staffing decisions.

For the Litigation Unit, the City Attorney could consider developing performance measures related to the goals and objectives of the unit. For example, the City Attorney may find that measuring case load per attorney in the Litigation Unit could be helpful in making staffing decisions in the same way that it is helpful in the Municipal and Traffic Court Unit.

The department may also wish to consider measures used by the City's benchmark cities. The City selected Atlanta, GA; Baton Rouge, LA; Louisville, KY; Memphis, TN; Miami, FL; Nashville, TN; Oklahoma City, OK; Raleigh, NC; and Tampa, FL as comparable cities in its 2013 ResultsNOLA year-end report. Evaluators reviewed budget documents from these cities and compiled a list of performance metrics for law departments. The benchmark cities, other than Oklahoma City, did not report measures related to prosecution, but there were other measures related to litigation. Appendix C includes a complete list of law department measures used in these cities.

FINDING 3. THE LAW DEPARTMENT ALLOWED PROSECUTING ATTORNEYS TO ENGAGE IN OUTSIDE LEGAL EMPLOYMENT, INTRODUCING THE POSSIBILITY OF CONFLICTS OF INTEREST AND LOW QUALITY WORK.

Prosecuting attorneys worked limited hours and were paid less than other Law Department attorneys who were not permitted to have outside employment. For these reasons, the Law Department allowed outside employment for prosecuting attorneys in the Municipal and Traffic Court Unit.

However, the practice of permitting outside employment introduced the possibility of conflicts of interest. In his 2009 article in the *University of California Davis Law Review*, Roger Fairfax described problems associated with allowing prosecuting attorneys to have outside legal employment. Fairfax wrote:

It does not take much imagination to envision the potential for corruption and conflicts of interest when a lawyer who controls the tremendous power of criminal investigation and prosecution also represents private clients.⁴⁵

Fairfax provided examples in which a prosecutor could abuse his position for private gain, including using information obtained in a criminal investigation to benefit a private client, declining prosecution of a private client, initiating prosecution against a private client's adversary, and using the threat of prosecution to coerce an opponent in a private case into concession.

The City did not institute adequate controls to protect itself from attorney conflicts of interest when city attorneys had private caseloads, and evaluators found little oversight of the outside work of city prosecuting attorneys. An attorney assigned to prosecute cases in Traffic Court stated that attorneys were required to sign a conflict of interest statement at the start of the Landrieu administration in 2010, but they had not been required to sign statements that reaffirmed their freedom from conflict of interest since then.

When asked which attorneys at the City had outside practices, the Chief Deputy City Attorney in charge of the Municipal and Traffic Unit wrote, "I do not know; they would have to answer that question individually with regards to outside employment."

⁴⁵ Roger A. Fairfax, "Delegation of the Criminal Prosecution Function to Private Actors," *University of California Davis Law Review* 43, no. 2 (December 2009): 438, accessed April 23, 2015, http://lawreview.law.ucdavis.edu/issues/43/2/articles/43-2_Fairfax.pdf.

Fairfax also wrote about the impact of conflicting work priorities on the quality of the work produced by prosecuting attorneys allowed outside practice:

The financial pressures of the part-time prosecutor's full-time job (law practice or otherwise) will be brought to bear. The desire to turn his attention to more lucrative private client work might prompt a part-time prosecutor to give short shrift to the criminal cases.⁴⁶

There is some indication that outside legal employment may affect the performance of city prosecuting attorneys. In a 2015 OIG report, evaluators found poor documentation and quality of work on the part of Traffic Court city attorneys permitted to have a private practice.⁴⁷ As Fairfax notes, eagerness to engage in "more lucrative private client work" could be part of the explanation for poor prosecutorial performance documented by the OIG.

The City's own analysis revealed limited financial benefits from the practice and provided additional support for eliminating the significant potential risks associated with employing prosecutors who are allowed outside employment. In 2014 the City examined the costs and benefits of prohibiting attorneys in the Municipal and Traffic Court Unit from having outside employment. The analysis showed that two attorneys permitted to engage in outside employment cost \$106,192, and these attorneys could be replaced by one higher paid attorney who was not permitted outside employment at a cost of \$111,499. Prohibiting the Municipal and Traffic Court Unit attorneys from outside employment would increase the City's total costs for employing prosecuting attorneys by a total of \$21,228 per year.

RECOMMENDATION 3. THE LAW DEPARTMENT SHOULD PROHIBIT OUTSIDE LEGAL EMPLOYMENT FOR PROSECUTING ATTORNEYS.

The Law Department should prohibit city attorneys who prosecute cases in Municipal and Traffic Courts from outside legal employment. The potential for conflicts of interest and a reduced commitment to prosecuting cases for the City are avoidable: the City determined that it would cost approximately \$20,000 a

⁴⁶ Ibid., 442.

⁴⁷ Office of Inspector General City of New Orleans, *DWI Case Processing Arrest, Prosecution, and Adjudication of Misdemeanor DWI Offenses* (New Orleans, LA: Office of Inspector General City of New Orleans, 2015), 26-42, <http://www.nolaig.org/uploads/File/OIG%20Final%20Report-DWI%20Case%20Processing%20150624.pdf>.

year for the Law Department to change the staffing pattern. For this minimal investment, the City could ensure greater accountability and improve performance by prohibiting attorneys from representing private clients.

MANAGING RISK

FINDING 4. THE LAW DEPARTMENT DID NOT PROVIDE THE NOPD, PUBLIC INTEGRITY BUREAU, OR THE RISK MANAGER WITH ALL OF THE INFORMATION NEEDED TO MITIGATE THE RISK OF LITIGATION.

Traditionally, the Law Department's role in litigation is reactive because it responds to lawsuits filed against the City. In most cases, the circumstances that exposed the City to liability have passed by the time the Law Department becomes involved in a lawsuit. The responsibility to mitigate litigation risk related to the justice system proactively was assigned to the NOPD Public Integrity Bureau (PIB) and the Risk Manager under the purview of the Chief Administrative Officer.

However, the NOPD consent decree requires numerous policy changes, and the Law Department plays an active advisory role for the Mayor and the NOPD.⁴⁸ According to the City Attorney, she meets regularly with a working group to discuss policy questions raised by the consent decree. This increasingly proactive role requires formal mechanisms for sharing with other departments information about lawsuits related to NOPD.

PUBLIC INTEGRITY BUREAU

PIB is responsible for investigating allegations of police officer misconduct and recommending disciplinary action or training for documented violations of established policies. According to the NOPD website:

The Public Integrity Bureau promotes the credibility of, and public confidence in, New Orleans police officers. To do so, PIB adopts preventive and proactive measures to enforce the highest standards of professional police performance and conduct, as well as directing

⁴⁸ The Law Department's ability to mitigate risk is limited to a reactive role in the OPSO consent decree because the Sheriff's Office manages the operations of the jail. However, with NOPD, the Law Department has the ability to play an active role in mitigating risk.

investigations into citizen and NOPD-initiated allegations of police misconduct.⁴⁹

For example, PIB investigates complaints made by citizens for infractions ranging from discourtesy to excessive use of force and makes recommendations for disciplinary action to NOPD commanders. PIB is also responsible for monitoring allegations of misconduct levied against the NOPD for trends in officer behavior that indicate potential for civil judgments against the City and for working with department leadership to develop new policies or training to mitigate those risks.

PIB most often learned of allegations of officer misconduct from citizens or NOPD supervisors who filed complaints. However, PIB might also receive notification of alleged misconduct from the Law Department when a civil lawsuit was filed against the NOPD. According to the Deputy Superintendent in charge of PIB (Deputy), information about civil suits against officers had traditionally been communicated between the Law Department and PIB informally: Law Department attorneys asked PIB for information about complaint investigations when cases were opened in court.

In 2012 the NOPD consent decree with the U.S. Department of Justice required a formal process for the transfer of information about law suits from the Law Department to NOPD by mandating that civil lawsuits be recorded in the NOPD's early warning system.⁵⁰ In response, the City established a formal protocol to comply with the consent decree in which the Law Department e-mailed PIB monthly with a list of cases involving NOPD officers filed that month.

This process generally met the needs of PIB, but the Deputy stated that PIB had not received some of the cases the Law Department believed it sent to PIB. To ensure that the information reached PIB reliably, the Deputy suggested that PIB create item numbers for cases it received from the Law Department and provide the numbers as receipts to the Law Department. The Deputy also stated that it would be helpful for PIB to receive more information about cases: the process in place put PIB on notice of cases, but no updated information followed the initial notification to PIB as cases progressed in the Law Department. Information

⁴⁹ City of New Orleans, "Public Integrity Bureau," Last Modified December 3, 2014, accessed April 23, 2015, <http://www.nola.gov/nopd/about-us/bureaus/public-integrity/>.

⁵⁰ *United States v. City of New Orleans*, 316-326, E.D. La., *Complaint*, Doc. No. 1, July 24, 2012, accessed October 31, 2014, <http://www.laed.uscourts.gov/Consent/consent.htm>.

relevant to PIB investigations might be uncovered at trial and that could be helpful if shared.

The Deputy acknowledged that she sometimes received the name of the attorney assigned to cases, but she noted that it would facilitate communication to receive the name of the attorney assigned to every case. As Joanna Schwartz points out, “the attorney representing the defendant will likely possess the most information about the claims, evidence developed during litigation, and disposition of the case” And only with this information, Schwartz argues, can police department officials “calculate the damages associated with various kinds of misconduct and identify personnel and policy changes that could reduce future payouts.”⁵¹

RISK MANAGER

The Risk Manager is responsible for overseeing the City’s various insurance programs (e.g., workers’ compensation, motor vehicle, property & casualty) and generally reducing the City’s exposure to risk. However, it would not be possible for the Risk Manager to mitigate risk without access to information about the frequency and extent of claims and judgments.

The Risk Manager told evaluators that there had not been good communication between his office and the Law Department related to general civil lawsuits filed against the City. However, he stated that he was working on developing a process to gain regular access to information such as a list of litigation cases, the date of the incident, a synopsis of the event, anyone who was injured, and medical expenses.

RECOMMENDATION 4. THE LAW DEPARTMENT SHOULD ESTABLISH AND IMPROVE FORMAL MECHANISMS TO SHARE INFORMATION ABOUT CIVIL LAWSUITS WITH PIB AND THE RISK MANAGER.

The Deputy in charge of PIB generally had access to information about civil cases filed against officers, and requirements of the consent decree prompted the parties involved to improve the transfer of this information. However, the Deputy recommended changes that could make PIB more effective in mitigating risk at the NOPD. First, the Law Department should require an item number for transferred cases from PIB to confirm that the information had been entered

⁵¹ Schwartz, “Myths and Mechanics of Deterrence,” 1038.

into the PIB system. Also, the Law Department should always provide PIB with the name of the attorney assigned to cases so that PIB investigators could follow up as cases proceed through the justice system.

Attorneys from the Law Department should also meet with the Risk Manager to develop a protocol to provide regular access to information regarding the nature, number, and magnitude of general liability of claims against the City. The Risk Manager would be able to use this information to guide decisions about purchasing liability insurance, work with departments such as the NOPD to initiate policy changes, and proactively mitigate for risk to prevent future claims against the City.

MANAGING DATA

FINDING 5. THE LAW DEPARTMENT DID NOT HAVE EASY ACCESS TO BASIC, RELIABLE INFORMATION ABOUT ITS CASES AND PERFORMANCE IN EITHER THE MUNICIPAL AND TRAFFIC COURT OR LITIGATION UNITS.

The ability to track and query information with ease improves accountability, promotes transparency, and increases efficiency. Modern case management systems provide attorneys with the ability to access information related to a case, share information, evaluate workflow efficiency, identify trends, and provide information in the form of reports to outside parties. However, the Law Department did not have effective case management systems in place in either the Municipal and Traffic Unit or the Litigation Unit.

PROSECUTION DATA MANAGEMENT

Collecting and analyzing quantitative data for the purpose of measuring prosecuting attorneys' performance had not been a priority for the Law Department. From 2008 to 2013 the Law Department's prosecutors relied on case management systems developed by Municipal Court and Traffic Court. Prosecutors had read-only access to the systems, and the Law Department did not use the systems to track information relevant to prosecutorial performance.

For most of this period, the systems lacked information as basic as which attorneys worked on which cases.⁵²

The absence of data related to prosecutorial performance meant that individual city attorneys were less accountable to the public, and it resulted in an inability to manage staff based on performance.

The OIG commented on the Law Department's lack of information on prosecutorial performance in its 2011 Assessment of New Orleans' System of City Courts. Evaluators found that prosecutors did not report on the outcome of cases and that this limited the accountability of the Law Department.⁵³

The Law Department also lacked information on individual prosecutors that could be used to manage employees based on performance. The City Attorney stated that she wanted to be able to measure the number of case dismissals versus reductions, a breakdown of cases by attorney, and the number of cases brought to trial with disposition because these metrics would provide her with more detail on prosecutorial performance than the amount of revenue collected.⁵⁴

In December 2014 Traffic Court implemented a new case management system and the Law Department prosecutors in Traffic Court began entering into the system the name of the attorney associated with case. According to the Chief Deputy City Attorney, the Traffic Court's new system could provide information identified as useful for managing the Law Department, but the Municipal Court case management system remained inadequate because it did not record basic information such as the attorney assigned to a case.

Although a new case management system could be designed with the capability to collect and analyze the required data, measuring the performance of prosecuting attorneys was not a priority. The Chief Deputy City Attorney for Municipal and Traffic Courts stated that she met with the City's Information Technology and Innovation (ITI) team to evaluate needs for an electronic filing

⁵² In the absence of case management software specifically designed to capture this information, the Law Department could have developed a spreadsheet used to track basic information such as the name of the attorney assigned to a case and the disposition of the case.

⁵³ Office of Inspector General City of New Orleans, *Assessment of New Orleans' System of City Courts and Performance Review of New Orleans Traffic Court* (New Orleans, LA: Office of Inspector General City of New Orleans, 2011), 34, accessed January 27, 2015, http://www.nolaog.org/uploads/File/All/11-17-11_Final_Public_Report_10013.pdf.

⁵⁴ See Finding 2.

system at Municipal Court, but the goal of that new system was to make the office paperless and not to track performance measures.

LITIGATION DATA MANAGEMENT

The Litigation Unit's approach to managing case data was inefficient and ineffective. The unit used a patchwork case management system that included a locked Microsoft Access database that was available only to a small number of staff members, a redundant Excel spreadsheet, case files stored on the Law Department shared drive, and a shared calendar in Microsoft Outlook.

A city information technology employee developed the Microsoft Access database in 2000. The database included basic case information such as the case number, assigned attorney, and case status. The Law Department used the database to run reports for the City's outside auditors in preparation for the City's CAFR. The Law Department also used the database to run reports requested by the public or other entities such as the City's Risk Manager or the OIG.

However, it was difficult for Law Department staff to run reports by case subject matter in the Microsoft Access database. The database contained a long list of codes to define the subject matter of cases, but it could only accept one code per case. In addition, the coding of Law Department cases had been inconsistent over time. When evaluators requested a list of police cases, staff had to run multiple reports. The system used multiple codes for cases related to the NOPD, entering them by type of case: battery, assault, wrongful death, etc. As a result, there was no way to run a single report for all police cases, making the process more time-consuming and reducing its utility.

For these reasons, the attorney who managed the database and assigned cases to other attorneys developed a redundant Microsoft Excel spreadsheet. The Microsoft Excel spreadsheet was easier to access and use than the database, but the spreadsheet was missing some important fields (including case status and damages). It also wasted staff time spent entering duplicative data and introduced the possibility of errors. Finally, it was difficult to keep both systems up to date.

Deficiencies in the Law Department's fractured case management system made it impossible for evaluators to use the database to calculate which portion of general liability claims were related to the NOPD, because the database did not

track claims paid. It also made it impossible for the Law Department to identify long-term trends in police litigation (and non-NOPD lawsuits) and communicate those with the departments responsible for risk management. For example, NOPD managers and city officials would not be able to determine how often officers were accused of wrongful arrest and the financial impact of judgments against the City.

The Law Department's fractured litigation data management system also resulted in errors, leading to findings noted by the auditors who compiled the City's 2013 and 2014 CAFRs. In 2014 the auditors found that the City provided them with duplicate claims in the detailed listing of litigation. In 2013 auditors found that estimated reserves for cases described in narrative memos submitted by the Law Department did not match estimates listed in the list of litigations and claims. In both years, auditors recommended that the City "implement processes and procedures to ensure that the listing of litigation provided reflects the proper estimated reserve for all outstanding cases and unpaid settlements."⁵⁵

The database also lacked functionality common in litigation case management systems. For example, the database:

- Was not connected to document storage;
- Did not include fields for contact information;
- Did not have time-keeping functionality;
- Did not automatically create alerts for attorneys working on cases; and
- Provided only limited reporting.

Finally, the database did not include fields for reporting the use and costs of outside counsel and other associated expenses, such as transcription or expert witness fees.

⁵⁵ Postlethwaite & Netteville, *City of New Orleans, Louisiana Comprehensive Annual Financial Report December 31, 2014* (Metairie, LA: Postlethwaite & Netteville, 2015) 175, accessed September 30, 2015, [https://app.la.state.la.us/PublicReports.nsf/2F95C85C2C7061CA86257E9E0049FD7F/\\$FILE/0000973B.pdf](https://app.la.state.la.us/PublicReports.nsf/2F95C85C2C7061CA86257E9E0049FD7F/$FILE/0000973B.pdf); and Postlethwaite & Netteville, *City of New Orleans, Louisiana Comprehensive Annual Financial Report December 31, 2013* (Metairie, LA: Postlethwaite & Netteville, 2014) 170, accessed October 6, 2015, [https://app.la.state.la.us/PublicReports.nsf/0557180AB81C7EAA86257D41006469CD/\\$FILE/00029FF.pdf](https://app.la.state.la.us/PublicReports.nsf/0557180AB81C7EAA86257D41006469CD/$FILE/00029FF.pdf).

RECOMMENDATION 5. THE LAW DEPARTMENT SHOULD IMPROVE ITS DATA MANAGEMENT PROCESSES TO IMPROVE EFFICIENCY IN ITS OPERATIONS AND ITS ABILITY TO REPORT ON ITS WORKLOAD AND PERFORMANCE.

The Law Department should work with the City's ITI department to evaluate data management needs and technology options in both the Municipal and Traffic Court Unit and the Litigation Unit. The Law Department should adopt systems that provide information that Law Department supervisors could use to monitor output and performance. Systems should also allow easy access to information needed by the City's third party auditors and risk managers. Finally, these systems should increase employee efficiency by creating one central storage place for information, deadline alerts, and calendaring: employees should not have to enter data into more than one system. After meeting with ITI, the Law Department should continue to assess its information needs on a routine basis.

In addition, the Law Department should ensure that its codes for tracking information are consistent over time in order to protect the reliability, integrity, and usefulness of the data. The Law Department should also train and monitor its employees to ensure that case management systems contain accurate data (including, for example, the case subject codes mentioned in this report). Finally, the Law Department should incorporate technology and ongoing software maintenance needs into its financial planning and budgeting.

VI. CONCLUSION

The Law Department's prosecutorial and litigation activities have a direct effect on the overall costs and operations of the justice system in New Orleans. Evaluators estimated that the Law Department's annual costs related to justice system functions averaged \$1.5 million per year between 2008 and 2013. Although the amount of funds allocated to perform these activities is significantly less than allocations to other justice system entities (e.g., the NOPD and the OPSO), the Law Department's prosecution and litigation activities impact the workload and operational efficiency of virtually every other justice system agency. Therefore, the performance of the Law Department directly affects the overall cost of the justice system.

This report noted several ways the Law Department could make its practices more effective in achieving justice system goals and improve its transparency and accountability to the public. For example, Law Department attorneys did not track their time by case, which caused a lack of transparency to the public about how it used its public resources. As a result, it was impossible to determine the costs associated with public safety and the justice system.

Some of the performance measures used by the Law Department also did not meet best practices and were not relevant to the work of the department. Possibly the largest impediment to the Law Department's transparency was its lack of effective data management processes.

In addition to findings related to transparency, evaluators found processes in place that could lead to poor quality outcomes. Evaluators noted that the Law Department allowed prosecuting attorneys to have outside legal employment, which could lead to abuse of power by attorneys or low-quality work.

Finally, the Law Department's ineffective litigation data management practices presented the City and the public with a missed opportunity. Departments such as NOPD did not have access to information that could be used to mitigate risk by making changes to policy, and both city managers and the public did not have access to important information about the frequency, nature, and financial impact of civil lawsuits filed against the City.

Evaluators offered the following recommendations to improve transparency and quality. The Law Department should:

- Require attorneys to track time by case;
- Revise its performance measures to provide more relevant data to decision-makers;
- Prohibit outside employment for prosecuting attorneys;
- Establish and improve formal mechanisms to share information about civil lawsuits with PIB and the Risk Manager; and
- Improve data management processes.

The Law Department's activities and responsibilities have a significant impact on the functions of the justice system in New Orleans. Improving the processes discussed in this report could serve the public interest by providing information to policymakers to facilitate the effective management of resources, lower the potential for conflicts of interest for city attorneys with private clients, and reduce the risk of litigation and police misconduct.

VII. APPENDIX A. LAW DEPARTMENT UNIT DESCRIPTIONS

The following unit descriptions were quoted from the City's 2015 Annual Operating Budget except for the Risk Management Unit which came from the 2012 Annual Operating Budget.^{56, 57}

“Law Administration: Law Administration provides legal advice and management for the department. They oversee operations of the entire department on a day-to-day basis, as well as manage the department's finances and personnel needs. Law Administration also advises and supports the Mayor, City Council, Departments, Boards, Commissions, and other City agencies.”

“Police Litigation: The Police Litigation Unit defends the police and the City in police related matters and represents the City in other federal litigation and civil service prosecution and appeals. In federal police litigation cases, the City is exposed to not only damage awards, but also attorneys' fees and costs. Further, the City must pay federal judgments immediately, as City assets may be seized to satisfy judgments based on federal claims.”⁵⁸

“Civil Litigation: The Civil Litigation Unit defends the City against all lawsuits including class actions, personal injury claims, casualty claims, contract and bid disputes, property damage, and civil service issues related to multiple City departments, as well as zoning and other administrative appeals.”

“Municipal and Traffic: The City Attorney's Office efficiently prosecutes violations of Chapter 54 of the Municipal Code of Ordinances, and violations of Chapter 154 of the Municipal Code of Ordinances, as well as State misdemeanor traffic offenses.”

“Adjudication: The Housing Adjudication Section oversees adjudicated and blighted properties in conjunction with the City's enforcement and redevelopment initiatives, including property transfers, expropriations, and lien

⁵⁶ City of New Orleans, *2015 Annual Operating Budget* (New Orleans, LA: City of New Orleans, 2014), 194-195, accessed January 27, 2015,

<http://www.nola.gov/getattachment/Mayor/Budget/2015-Proposed-Budget-Book.pdf/>.

⁵⁷ City of New Orleans, *2012 Annual Operating Budget* (New Orleans, LA: City of New Orleans, 2013), 203, accessed January 27, 2015, http://www.nola.gov/nola/media/Mayor-s-Office/Files/2012%20Budget/City_of_New_Orleans_2012_Adopted_Budget_Book_Final.pdf.

⁵⁸ In practice the Department of Law does not differentiate between the Police Litigation and Civil Litigation units.

foreclosure/sheriff sales. This section handles related litigation, including appeals of administrative hearings.”

“Law Contracts: Law Contracts oversees the City’s contracting process from start to finish. It works with departments to create tailored contracts for goods and services, reviews all contracts for legality, addresses any issues that arise during the routing process, and responds to questions and concerns from the Mayor before execution.”

“Law In-House: Law In-House provides legal advice and support to the Mayor, City Council, Departments, Boards, Commissions, and other City agencies. It also provides written legal advice at the request of the Mayor, City Council, Departments, Boards, and Commissions. Law In-House additionally compiles, reviews, and transmits responses to all Public Records Requests submitted to the City.”

“Risk Management: Takes action, develops programs, handles the City’s insurance program and otherwise acts to assist the City in reducing financial and operational risks and exposures.”

“Housing Unit: The Housing Section advises as to CDBG [Community Development Block Grant] and D-CDBG funded projects. This section handles all legal matters related to taxation, including ad valorem, sales, and other taxes. It oversees the tax sale process and handles all tax related litigation, as well as litigation related to commercial properties and projects.”

VIII. APPENDIX B. LAW DEPARTMENT OPERATING EXPENSE DETAILS

	2008	2009	2010	2011	2012	2013
Advertising	\$6,606					
Books & Pamphlets	\$98,163	\$13,104	\$12,414			
Clothing & Food Supplies	\$3,450	\$3,709	\$4,153	\$3,516	\$3,926	\$6,013
Consulting Professional Services		\$7,850		\$7,490	\$11,362	\$44,373
Convention & Travel	\$35,407	\$11,470	\$1,638		\$2,879	\$891
Dues & Subscriptions		\$3,015				\$500
Education Supplies	\$78,357	\$106,838	\$95,914	\$152,498	\$125,298	\$57,021
Legal Professional Services	\$582,715	\$929,816	\$312,525	\$878,208	\$702,041	\$556,808
Miscellaneous	\$493,247	\$87,489		\$59,093	\$24,355	\$62,708
Motor Vehicle Repairs	\$1,149					
Office Furniture & Equip	\$12,957	\$1,060	\$102	\$19,712	\$7,538	\$13,052
Office Supplies	\$31,354	\$22,230	\$7,497	\$18,133	\$22,536	\$18,361
Postage	\$452	\$777	\$46			
Printing & Binding	\$1,820	\$288		\$7,577		\$3,301
Professional Services	\$57,142	\$165,921	\$117,808	\$141,819	\$540,100	\$472,624
Rent & Lease Cell Phones			\$17,460	\$40,805	\$28,105	\$30,318
Rent & Lease Land & Bldg.	\$3,323	\$1,296	\$11,155	\$70,000		\$6,915
Rent & Lease Other Prop	\$14,892	\$23,707	\$3,272			
Special Dept. Supplies	\$10					
Sundry Claims					\$45,000	
Telephone	\$4,731	1,906				
Total	\$1,425,775	\$1,409,300	\$612,107	\$1,484,029	\$1,496,029	\$1,272,886

IX. APPENDIX C. PERFORMANCE MEASURES

LAW DEPARTMENT PERFORMANCE MEASURES (2008-2013)

Program	Measure	2008 ⁵⁹	2009 ⁶⁰	2010 ⁶¹	2011 ⁶²	2012 ⁶³	2013 ⁶⁴
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⁵⁹ City of New Orleans, *Adopted 2010 Operating Budget* (New Orleans, LA: City of New Orleans, 2010), 167-169.

⁶⁰ City of New Orleans, *Adopted 2011 Annual Operating Budget* (New Orleans, LA: City of New Orleans, 2011), 129, accessed January 27, 2015, http://www.nola.gov/nola/media/Mayor-s-Office/Files/2011%20Budget/2011_NOLA_ADOPTED_Budget-FINAL.pdf.

⁶¹ Did not report.

⁶² City of New Orleans, *ResultsNOLA Report: Fourth Quarter 2011* (New Orleans, LA: City of New Orleans, 2011), 90-96, accessed January 27, 2015, <http://www.nola.gov/getattachment/9935b395-27ea-4dbb-bbd6-241b5e72c727/ResultsNOLA-2011-Q4/>.

⁶³ City of New Orleans, *ResultsNOLA 2012* (New Orleans, LA: City of New Orleans, 2013), 47, accessed January 27, 2015, <http://www.nola.gov/getattachment/af969e33-59ca-42d2-83cb-90f3b209d169/ResultsNOLA-2012-Q4/>.

⁶⁴ City of New Orleans, *ResultsNOLA 2013* (New Orleans, LA: City of New Orleans, 2014), 187, accessed January 27, 2015, [http://www.nola.gov/getattachment/5fe2a9a7-f1e9-49c9-aeac-8ee8215ef75b/ResultsNOLA-2013-Year-End-Report-\(1\)/](http://www.nola.gov/getattachment/5fe2a9a7-f1e9-49c9-aeac-8ee8215ef75b/ResultsNOLA-2013-Year-End-Report-(1)/).

Program	Measure	2008 ⁵⁹	2009 ⁶⁰	2010 ⁶¹	2011 ⁶²	2012 ⁶³	2013 ⁶⁴
Administration	Number of advice/opinion and research requests	92					
Administration	Number of advice/opinion and research requests responded to within 30 days or less	68					
Administration	Number of contracts reviewed and negotiated	817					1,167
Administration	Number of ordinances drafted and/or reviewed	312					
Administration	Number of public records requests completed	560	552		573	563	1,047
Administration	Percent of contracts drafted and reviewed by the Department and signed by the City Attorney within 30 days					84%	94%
Administration	Percent of contracts reviewed and negotiated within 45 days	75%					
Housing and Finance Unit	Amount collected and deposited with Civil District Court	\$225,269					
Housing and Finance Unit	Number of administrative hearings	4,153					
Housing and Finance Unit	Number of tax adjudicated properties sold or donated	488					
Housing and Finance Unit	Number of writs filed so that properties can be sold or remediated through foreclosure				1,003		

Program	Measure	2008 ⁵⁹	2009 ⁶⁰	2010 ⁶¹	2011 ⁶²	2012 ⁶³	2013 ⁶⁴
Litigation Civil	Amount in damages paid by the City	\$571,170					
Litigation Civil	Amount of damages demanded in petitions filed against the City	\$1,315,293					
Litigation Civil	Savings achieved by legal team in civil litigation	\$744,123		\$11,781,536			
Litigation Police	Amount in damages paid by the City	\$561,503					
Litigation Police	Amount of damages demanded in petitions filed against the City	\$6,515,000					
Litigation Police	Savings achieved by legal team in police litigation	\$5,961,497		\$5,520,360			
Litigation Police/Civil	# of Pending litigation cases	1,418	1,183				
Litigation Police/Civil	# Resolved litigation cases	294	220				
Litigation Police/Civil	Number of tax and public nuisance cases filed before the ABO Board		32		227	324	268
Litigation Police/Civil	Percent of ABO tax cases resolved within 60 days				96%	95%	94%
Litigation Police/Civil	Savings achieved by legal team in civil/police litigation	\$6,705,620		\$17,301,896	\$10,315,253	\$769,832	

Program	Measure	2008 ⁵⁹	2009 ⁶⁰	2010 ⁶¹	2011 ⁶²	2012 ⁶³	2013 ⁶⁴
Municipal and Traffic	# of Cases prosecuted and resolved	86,066	94,839				
Municipal and Traffic	Average number of Municipal and Traffic Court cases per attorney per month	896	659		869	806	780
Municipal and Traffic	Percent of defendants permitted to enter a diversion program for Municipal charges					43%	
Municipal and Traffic	Revenue from Municipal and Traffic Court claims, settlements, and judgments				\$13,696,003	\$12,760,345	\$13,987,535
Risk Management	Amount paid Worker's Compensation claims (WC) paid	\$13,360,359					
Risk Management	Number of new WC received	825					
Risk Management	Number of WC closed	1,013					
Risk Management	Ratio of WC open to those closed	1:1					
Risk Management	Total number of open WC	877					
Victim Witness Program	Number of clients served	3,448					
Victim Witness Program	Number of clients served	3,448					

BENCHMARK CITIES PERFORMANCE MEASURES⁶⁵

Benchmark City	Performance Measure	Most Recent Measure	Related Function
Oklahoma⁶⁶ City	# of Police and Courts legal services provided	6,155	Prosecution
Oklahoma City	# of prosecutions resolved	136,444	Prosecution

⁶⁵ **Oklahoma City:** The City of Oklahoma City, *2014 2015 Adopted Budget* (Oklahoma City, MO: The City of Oklahoma City, 2014), 245-253, accessed January 27, 2015, <http://www.okc.gov/finance/BudgetDocs/FY15Budget.pdf>.

Baton Rouge: The Consolidated Government of the City of Baton Rouge and Parish of East Baton Rouge Louisiana, *Annual Operating Budget for the Year Beginning January 1, 2014* (Baton Rouge, LA: The Consolidated Government of the City of Baton Rouge and Parish of East Baton Rouge Louisiana, 2014), 94, accessed January 27, 2015, <http://www.brgov.com/dept/finance/pdf/2014%20Budget/2014%20City-Parish%20Budget.pdf>.

Miami: City of Miami, *Adopted Operating Budget Fiscal Year 2014-15* (Miami, FL: City of Miami, 2014), 108, accessed January 27, 2015, http://www.miamigov.com/Budget/pages/budget_docs/FY_2014_2015/FY15-Adopted-Budget-Book.pdf.

Atlanta: City of Atlanta, *Fiscal Year 2014 Adopted Budget* (Atlanta, GA: City of Atlanta), 175, accessed January 27, 2015, accessed January 27, 2015, <http://www.atlantaga.gov/modules/showdocument.aspx?documentid=12016>.

Nashville: Metropolitan Nashville/Davidson County, *FY 2015 Recommended Budget 06 Law-Program Budgets* (Nashville, TN: Metropolitan Nashville/Davidson County, 2014) K-06-1-3, accessed January 27, 2015,

Memphis: City of Memphis, *2015 Fiscal Year Operating Budget* (Memphis, TN: City of Memphis, 2014), 109, accessed January 27, 2015, http://www.memphistn.gov/Portals/0/pdf_forms/fy2015_adopted_op/CITY_ATTORNEY.pdf.<http://www.nashville.gov/Portals/0/SiteContent/Finance/docs/OMB/FY15/Final/Law%20Program%20Budgets.pdf>.

⁶⁶ Measures in bold related to litigation and prosecution functions.

Benchmark City	Performance Measure	Most Recent Measure	Related Function
Oklahoma City	# of cases not tried resolved by guilty or no contest plea	119,486	Prosecution
Oklahoma City	# of charges filed	133,283	Prosecution
Oklahoma City	# of charges reviewed	140,911	Prosecution
Oklahoma City	# of cases tried that result in guilty verdict	602	Prosecution
Oklahoma City	# of hours in Court for docket appearances	1,478	Prosecution
Baton Rouge	# of interviews/telephone contacts with victims/witnesses in domestic violence cases	2,703	Prosecution
Baton Rouge	# of interviews/telephone contacts with victims/witnesses in criminal cases	14,674	Prosecution
Baton Rouge	# of interviews/telephone contacts with victims/witnesses in DWI and continuance of Pre-Trial Diversion	5,336	Prosecution
Oklahoma City	% of Municipal Court Jury Division charges filed or declined within 45 days of bond posting	99	Prosecution
Oklahoma City	% of responding clients satisfied with the timeliness, effectiveness and overall provision of Police & Courts legal services	100	Prosecution

Benchmark City	Performance Measure	Most Recent Measure	Related Function
Oklahoma City	# of legal services provided by Civil Litigation attorneys	28,492	Litigation
Oklahoma City	# of Labor Litigation legal services provided	8,224	Litigation
Oklahoma City	# of Labor Relations legal services provided	9,246	Litigation
Miami	Litigation matters closed (number)	700	Litigation
Miami	Non-litigation matters closed (number)	1,603	Litigation
Atlanta	Resolved litigation settlements approved by City Council or judgments	206	Litigation
Atlanta	Number of claims settled	302	Litigation
Baton Rouge	# of suits closed	43	Litigation
Miami	Litigation matters opened (number)	567	Litigation
Miami	Non-litigation matters opened (number)	1,513	Litigation

Benchmark City	Performance Measure	Most Recent Measure	Related Function
Atlanta	Pending claims	1,014	Litigation
Atlanta	Pending lawsuits	619	Litigation
Atlanta	Total amount of claim settlements	1,651,898	Litigation
Oklahoma City	% of responding clients satisfied with the timeliness, effectiveness and overall provision of Civil Litigation services	100	Litigation
Oklahoma City	% of responding clients satisfied with the timeliness, effectiveness and overall provision of Labor Litigation legal services	100	Litigation
Oklahoma City	% of responding clients satisfied with the timeliness, effectiveness and provision of Labor Relations services	100	Litigation
Nashville	Percentage of claims settled without litigation	96	Litigation
Baton Rouge	Average length of time between the opening and closing of a file	40 mths	Litigation
Oklahoma City	% of terminations submitted to Personnel Department by termination date	67%	Administration

Benchmark City	Performance Measure	Most Recent Measure	Related Function
Oklahoma City	# of FTE's supported	54	Administration
Oklahoma City	Dollar amount of operating expenditures managed	\$6,455,382	Administration
Oklahoma City	% of performance evaluations completed by the review date	85%	Administration
Oklahoma City	% of key measures achieved	86%	Administration
Miami	Blended Attorney hourly rate (dollars)	\$61.71	Administration
Miami	Blended billable hours per Attorney (hours)	1,100	Administration
Memphis	# of interns/externs serving a City internship through the Law Division (exclusive of other City intern programs)	31	Administration
Nashville	Percentage of contracts reviewed within 4 business days	84%	Contracts
Nashville	Percentage of contracts with completed initial review and approval or client notification of disapproval within two days	81%	Contracts
Oklahoma City	% of responding clients satisfied with the timeliness, effectiveness and overall provision of Economic Development legal services	100%	Housing

Benchmark City	Performance Measure	Most Recent Measure	Related Function
Oklahoma City	# of Economic Development legal services provided	11,975	Housing
Oklahoma City	% of responding clients satisfied with the timeliness, effectiveness and overall provision of Land Use legal services	100%	Housing
Oklahoma City	# of Land Use legal services provided	15,178	Housing
Memphis	# of blight and code enforcement (other) lawsuits closed annually	207	Housing
Baton Rouge	# of condemnations processed	192	Housing
Baton Rouge	# of code enforcement complaints processed	106	Housing
Baton Rouge	# of adjudicated property files processed	67	Housing
Oklahoma City	% of Department Heads receiving monthly communications from the Municipal Counselor's Office	100%	In-House
Memphis	# of formal opinions issued annually	12	In-House
Nashville	Percentage of client advice requests reviewed within 3 days	98%	In-House

Benchmark City	Performance Measure	Most Recent Measure	Related Function
Nashville	Percentage of clients reporting that the client advice provided assisted them in making good business decisions	100%	In-House
Nashville	Percentage of clients responding indicate that council legislation passed accomplishes the stated goal	100%	In-House
Nashville	Fewer than five percent of ordinances and resolutions drafted require legislative amendment	0%	In-House
Nashville	Percentage of dispute resolutions considered high quality as reported by Metropolitan Government clients	99%	In-House
Oklahoma City	% of full-time equivalent employees without an on the job injury (OJI) in the current fiscal year	100	Risk Management
Nashville	Annual percentage of change in the ratio of insurance costs to value of Metropolitan Government assets is equal to or less than the industry standards as reported in reputable insurance periodicals and/or websites	100	Risk Management
Baton Rouge	# of risk management claims handled	1,022	Risk Management
Baton Rouge	# of worker's comp cases handled	492	Risk Management
Oklahoma City	% of clients satisfied with the timeliness, effectiveness and provision of Trusts, Utilities, & Finance services	100	Other

Benchmark City	Performance Measure	Most Recent Measure	Related Function
Oklahoma City	# of Trust, Utilities and Finance legal services provided	29,318	Other
Nashville	Ratio of costs to dollars recovered or paid	9.21	Other
Nashville	Ratio of dollars recovered to dollars owed	73	Other
Baton Rouge	# of citations issued JUDE Task Force	508	Other
Baton Rouge	To increase the number of nights working with JUDE Task Force	144	Other
Baton Rouge	To increase the number of Special Events worked by JUDE	12	Other
Raleigh	No performance measures in budget		
Tampa	No performance measures in budget		

X. OFFICIAL COMMENTS FROM CITY OF NEW ORLEANS

City Ordinance section 2-1120(8)(b) provides that a person or entity who is the subject of a report shall have 30 days to submit a written explanation or rebuttal of the findings before the report is finalized, and that such timely submitted written explanation or rebuttal shall be attached to the finalized report.

An Internal Review Copy of this report was distributed on January 11, 2016 to the entities who were the subject of the evaluation in order that they would have an opportunity to comment on the report prior to the public release of this Final Report. Comments were received from the Law Department; these comments are attached on the following pages.

OIG Comment on City response:

The Law Department states in its response that it cannot track time because “to disseminate our attorneys' timekeeping records would break [attorney/client] privilege, create a public record, and potentially reveal confidential case strategy.”

Evaluators contacted some of the law departments that responded to the OIG's informal survey regarding tracking attorney time in the public sector to determine if those concerns limited other cities' ability to track time by case. Three cities responded: Miami, Florida; Nashville, Tennessee; and Tampa, Florida. All three cities tracked attorney time by case.

Law department representatives in all three cities stated that they:

- tracked attorney time to assist with allocating staff, budgeting, and performance measurement.
- were subject to public records laws, but were able to protect time-keeping data subject to attorney-client privilege either by (1) limiting details in the tracking system or (2) by keeping records closed until cases were complete.

However, it is unfortunate that the City does not recognize that engaging part-time attorneys with outside legal practices as prosecutors in Municipal and Traffic Courts undermines the effective practice of justice and presents serious potential for conflict of interest and poor performance.



MITCHELL J. LANDRIEU
MAYOR

CITY OF NEW ORLEANS
LAW DEPARTMENT
1300 PERDIDO STREET, 5TH FLOOR EAST
NEW ORLEANS, LOUISIANA 70112
TELEPHONE: (504) 658-9800
TELECOPIER: (504) 658-9868

February 10, 2016

REBECCA H. DIETZ
CITY ATTORNEY

Mr. Ed R. Quatrevaux
Office of the Inspector General for the City of New Orleans
525 St. Charles Avenue
New Orleans, Louisiana 70130

Dear Inspector General Quatrevaux:

Thank you for giving us the opportunity to review and comment on your report examining the Law Department's justice system-related funding. We continue to appreciate your efforts to help improve and refine the many services that the City provides to the citizens of New Orleans.

As you know, the Law Department has undergone significant changes since the Landrieu administration took office. Those changes include revised performance measures – specifically, a new methodology for tracking financial savings achieved through litigation. The Department has also realized savings by reducing the number of cases handled by outside counsel, which is a direct result of increased skill and efficiency throughout the office. In the midst of these changes, the Law Department has taken the lead on negotiating, litigating, and enforcing the NOPD Consent Decree – a multi-year and multifaceted task, the results of which already are benefitting the NOPD, the justice system, and our City's residents.

Your report addresses issues tied directly to these justice-related functions. In addition to those specific recommendations, you also have suggested that the Law Department purchase a data management system for the purpose of providing easy and efficient access to case information. We agree. Most law firms rely on such a system for basic data management, including case file storage, search functions, and file sharing. We are in the process of researching systems that are cost effective and will provide the appropriate level of management for our office. Once in place, we believe this technology will have a positive impact in the areas of your remaining recommendations.

Recommendation #1 of your report calls for the City's litigation attorneys to track their time by case in order to help determine whether the attorneys used their time efficiently and to provide the public greater information about how the Law Department uses its resources. While we acknowledge that attorneys in the private sector track their time, it is for a much different purpose: billing their clients. Indeed, timekeeping records are subject to the attorney-client privilege and often reveal case strategy. The Law Department's client is the City – we have no client relationship with the general public (and, in fact, are prohibited by law from providing free legal advice to the public). To disseminate our attorneys' timekeeping records would break privilege, create a public record, and potentially reveal confidential case strategy.

Moreover, timekeeping will decrease – not increase – attorney efficiency. Tracking every time an attorney changes tasks throughout the day, even without reporting those tasks in minute detail, is a time consuming effort. That time is better spent on substantive legal issues. Finally, some of the information

AN EQUAL OPPORTUNITY EMPLOYER

Mr. Ed R. Quatrevaux
Office of the Inspector General for the City of New Orleans
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you assert could help with department operations – such as identifying which cases are related to the NOPD (or any other department) – will become more easily available once a comprehensive data management system is in place and case classification becomes a feasible tool.

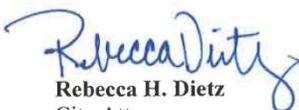
Recommendation #2 of your report calls for improved performance measures. As you recognize, measuring an attorney's performance is a challenging task. Case outcomes are dependent on many factors outside of the attorney's control, such as the underlying facts. Moreover, many of the suits defended by the Law Department involve injunctive relief and, as a result, have no calculable monetary value. In light of your recommendations, we will further explore and consider the performance measures used by other cities.

Your third recommendation is one the City already has begun addressing. Traffic and municipal attorneys are the only small subgroup of the Law Department who currently are permitted to engage in outside legal work, which is the direct result of their limited work hours and salary. The City Attorney recently initiated a month-long pilot program during which prosecuting attorneys alternated working and taking off full weeks to reduce the potential for overlap between outside employment and City work hours. We will continue to investigate options for eliminating any risk of conflict that may arise.

Finally, Recommendation #4 of your report calls for a stronger working relationship among the Law Department litigation team, the City's Risk Management team, and the Public Integrity Bureau (PIB). As noted above, the Law Department has played an increasingly proactive role in NOPD-related matters as a result of the Consent Decree. This provides a unique opportunity for the Department to interact with Risk Management and PIB on NOPD issues both prior to and after receipt of a lawsuit. Introduction of a data management system will assist in the development of an information-sharing protocol among the three entities. In the meantime, we will continue to work closely with Risk Management and PIB to ensure that pertinent information is readily available among the parties.

Thank you again for undertaking this review and for your continued support of the Law Department.

Sincerely,


Rebecca H. Dietz
City Attorney

OFFICE OF INSPECTOR GENERAL
CITY OF NEW ORLEANS



MANAGEMENT RESPONSE FORM

PLEASE COMPLETE THIS FORM AND RETURN AS SPECIFIED BELOW. SUPPLY YOUR RESPONSES IN THE SHADED BOXES.

PLEASE INDICATE YOUR AGREEMENT OR DISAGREEMENT WITH EACH OF THE FOLLOWING RECOMMENDATIONS BY SELECTING A RESPONSE FROM THE DROPDOWN BOX. IF YOU REJECT OR PARTIALLY ACCEPT THE RECOMMENDATION, PLEASE EXPLAIN WHY IN THE SPACE PROVIDED. PLEASE DESCRIBE EACH ACTION YOUR AGENCY WILL TAKE TO IMPLEMENT THE RECOMMENDATION, OR FIX THE PROBLEM, ALONG WITH THE NAME AND CONTACT INFORMATION OF THE PERSON(S) RESPONSIBLE FOR THE ACTION AND THE COMPLETION DATE (IF ONE IS ALREADY NOT PROVIDED).

RETURN THIS COMPLETED FORM TO ELIZABETH PAPE AT [REDACTED] BY FEBRUARY 12, 2016.

ENTER NAME HERE: **ELIZABETH PAPE ON BEHALF OF REBECCA DIETZ**

RECOMMENDATION #1 REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
1. The Law Department should require litigation attorneys to track time by case.		Reject
<p>IF YOU <u>REJECT</u> OR <u>PARTIALLY ACCEPT</u> RECOMMENDATION #1, PLEASE EXPLAIN WHY: While we acknowledge that attorneys in the private sector track their time, it is for a much different purpose: billing their clients. Indeed, timekeeping records are subject to the attorney-client privilege and often reveal case strategy. The Law Department's client is the City- we have no client relationship with the general public (and, in fact, are prohibited by law from providing free legal advice to the public). To disseminate our attorneys' timekeeping records would break privilege, create a public record, and potentially reveal confidential case strategy.</p> <p>Moreover, timekeeping will decrease - not increase - attorney efficiency. Tracking every time an attorney changes tasks throughout the day, even without reporting those tasks in minute detail, is a time consuming effort. That time is better spent on substantive legal issues. Finally, some of the information you assert could help with department operations - such as identifying which cases are related to the NOPD (or any other department) - will become more easily available once a comprehensive data management system is in place and case classification becomes a feasible tool.</p>		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #1 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
1.1		
1.2		

Law Department Funding
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Management Response for: Rebecca Dietz

OFFICE OF INSPECTOR GENERAL
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RECOMMENDATION #2 REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
2. The Law Department should revise its performance measures to provide more relevant information to decision-makers.		Partially Accept
IF YOU <u>REJECT</u> OR <u>PARTIALLY ACCEPT</u> RECOMMENDATION #2, PLEASE EXPLAIN WHY:		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #2 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
2.1 we will further explore and consider the performance measures used by other cities.		
2.2		
2.3		
2.4		
2.5		

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CITY OF NEW ORLEANS



RECOMMENDATION #3 REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
3. The Law Department should prohibit outside legal employment for prosecuting attorneys.		Reject
<p>IF YOU <u>REJECT</u> OR <u>PARTIALLY ACCEPT</u> RECOMMENDATION #3, PLEASE EXPLAIN WHY: Traffic and municipal attorneys are the only small subgroup of the Law Department who currently are permitted to engage in outside legal work, which is the direct result of their limited work hours and salary. We will continue to investigate options for eliminating any risk of conflict that may arise.</p>		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #3 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
3.1		
3.2		
3.3		
3.4		
3.5		

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CITY OF NEW ORLEANS



RECOMMENDATION #4 REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
4. The Law Department should establish and improve formal mechanisms to share information about civil lawsuits with PIB and the Risk Manager.		Accept
IF YOU <u>REJECT</u> OR <u>PARTIALLY ACCEPT</u> RECOMMENDATION #4, PLEASE EXPLAIN WHY:		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #4 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
4.1 We will continue to work closely with Risk Management and PIB to ensure that pertinent information is readily available among the parties.		
4.2 Introduction of a data management system will assist in the development of an information-sharing protocol among the three entities.		
4.3		
4.4		
4.5		

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RECOMMENDATION #5 REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
5. The Law Department should improve its data management processes to improve efficiency in its operations and its ability to report on its workload and performance.		Accept
IF YOU <u>REJECT</u> OR <u>PARTIALLY ACCEPT</u> RECOMMENDATION #5, PLEASE EXPLAIN WHY:		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #5 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
5.1 We are in the process of researching systems that are cost effective and will provide the appropriate level of management for our office.		
5.2		
5.3		
5.4		
5.5		

Law Department Funding
 January 11, 2016

Management Response for: Rebecca Dietz