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Audit Report

Law Department Service Delivery

January 2004

Office of the City Auditor
Austin, Texas

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TO: Mayor and Council Members

FROM: Stephen L. Morgan, City Auditor

DATE: January 27, 2004

SUBJECT: Law Department Service Delivery Report

I am pleased to present our report on the City of Austin Law Department, which was approved as part of calendar year 2003 service plan. This audit set out to determine how well the Law Department is meeting client needs, whether outside counsel is being used economically and effectively, and if department staffing levels are adequate and used efficiently.

Our work in the areas of client satisfaction and performance indicated that most clients are satisfied, although the department could do more to improve satisfaction in some areas and performance information can be enhanced to improve monitoring of department operations.

In our review of outside counsel we noted that Austin spends more than \$2 million dollars each year on outside counsel, which is higher than many other cities surveyed. We also found that outcomes are comparable between internal staff and outside counsel; however, costs for outside counsel are much higher than the cost of handling matters internally.

In the area of staffing and professional development, we determined that Austin's Law Department is organized following best practice, but does not have enough support staff. We also found that the department can do more to emphasize acquiring and sustaining in-house expertise to decrease reliance on outside counsel.

As a result of our audit work, we issued 20 recommendations. The City Attorney concurs with 18 of these, and disagrees with two. We appreciate the courtesy and cooperation that we received from the City Attorney and Law Department staff during this audit.

Stephen L. Morgan, CIA, CGAP, CFE, CGFM
City Auditor

LAW DEPARTMENT SERVICE DELIVERY COUNCIL SUMMARY

This report presents the results of our audit of the City of Austin Law Department. This audit was approved by the City Council as part of our office's calendar year 2003 service plan. The purpose of our work was to determine how well the department is meeting needs in three areas: client services and performance, use of outside counsel, and staffing and professional development.

We found that the Law Department as a whole is performing well in most areas with room for improvement in some. Comparison of Austin's Law Department to other cities indicates that the department's budget and expenditures are in line with other cities. In addition, most clients of the Law Department are satisfied with services received although we did note some opportunities for improving client services. Specifically, the department could improve service to clients who use services less frequently and clients that report to the City Council. We also found additional measurement is needed to gauge and manage performance of the department's divisions.

In our review of the use of outside counsel, we found that Austin spends more on outside counsel and uses outside counsel for more matters than many other cities we surveyed. We also noted that although matters handled by outside counsel appear to be achieving expected outcomes, matters handled internally are also achieving expected outcomes at a much lower cost. Although spending for outside counsel cannot be eliminated, the City can manage these costs more effectively and can identify areas where outside counsel expenditures can be reduced.

In our review of the Law Department's staffing and professional development, we noted that the Law Department is following best practice in its organizational structure but does not have adequate support staff to provide for efficient legal service delivery. More support staff would enable the department to leverage existing attorney resources more efficiently. In addition, the department has not focused on developing in-house expertise, which limits the department's ability to use in-house attorneys in place of outside counsel.

Recommendations in this report are directed at improving client service in weak areas, collecting more meaningful information on performance, improving management of outside counsel contracts, and developing mechanisms to identify and encourage in-house expertise in high demand areas.



ACTION SUMMARY LAW DEPARTMENT AUDIT



Recommendation Text	Management Concurrence	Proposed Implementation Date
01. In order to present a more accurate picture of client satisfaction, the City Attorney should revise the measures reported to the Budget Office to disaggregate timeliness from other elements of satisfaction.	Concur	August 2004.
02. In order to manage timeliness of legal services, the City Attorney should implement one or more mechanisms to capture the time it takes divisions in the Opinions and Advice Program to respond to requests.	Concur.	October 2004.
03. In order to better meet the needs of clients, the City Attorney should ensure that all of the attorneys have access to training in business communication and problem solving.	Concur.	October 2004.
04. In order to improve satisfaction of clients using services less frequently, the City Attorney should ensure that each is assigned a liaison.	Concur.	Completed.
05. In order to address concerns of less satisfied clients, the City Attorney should meet with Council offices, Council-reporting offices, and the Office of Police Monitor and develop a plan to address concerns of those who are less satisfied.	Concur.	Continual process.
06. In order to measure efficiency and productivity in the Opinions and Advice Program, the City Attorney should institute a mechanism to capture meaningful outputs and a mechanism to capture program staff time by legal matter.	Concur.	October 2004.
07. To secure a higher rate of return on the annual client satisfaction survey, the City Attorney should explore ways to obtain assistance from independent parties to administer the survey in person.	Concur.	August 2004.

Recommendation Text	Management Concurrence	Proposed Implementation Date
08. In order to increase the validity of the survey results, the City Attorney should include Council offices in the department's annual client survey.	Concur.	August 2004.
09. In order to present a more accurate picture of the Litigation division's activities, the City Attorney should:	Concur.	October 2004.
10. To enhance reporting on prosecution division performance, the City Attorney should discuss with the Chief Prosecutor the desirability of using data already available to construct additional measures.	Concur.	Spring 2004.
11. In order to obtain information for evaluating when and why outside counsel is used, the City Attorney should document the reason for selecting outside counsel for each matter in both the contract file and the department's case management system.	Disagree.	
12. In order to better capture the actual cost of outside counsel engagements, the City Attorney should have contract managers within the department track time spent on management for each outside counsel contract.	Concur.	October 2004.
13. In order to better capture information on matters handled by outside counsel for analysis, the City Attorney should ensure that the department maintains an inventory of open and closed outside counsel cases, including the total amount spent, total disposition (litigation only), matter area, and whether the matter is for general counsel or litigation.	Concur.	October 2004.
14. In order to solicit more firms for outside counsel engagements and benefit from competition for engagements, the City Attorney should develop and maintain a list of local firms and their specialties.	Concur.	October 2004.

Recommendation Text	Management Concurrence	Proposed Implementation Date
15. So that future procurement of outside counsel benefits from “lessons learned”, the City Attorney should document justification for firm selection at the beginning of outside counsel engagements and the firm’s performance at the close of the engagements.	Disagree.	
16. To improve consistency in contract management, the City Attorney should: <ul style="list-style-type: none"> • develop and implement written guidelines for obtaining and managing outside counsel contracts, and • identify and send contract managers to training regarding managing outside counsel engagements. 	Concur.	October 2004.
17. To bring Austin’s Law Department up to minimum benchmark standards for legal support staff and to ensure optimum allocation of all support staff, the City Attorney should use valid, reliable workload data to plan for staffing needs.	Concur.	October 2004.
18. To ensure that the Law Department’s attorneys are in compliance with State Bar requirements, the City Attorney should establish an in-house process to periodically verify whether each attorney is in good standing with the State Bar Association.	Concur.	Completed, January 2004.
19. In order to encourage the development of in-house legal expertise and reduce the need for outside counsel, the City Attorney should work with the Human Resources Department to develop an expertise-based career ladder.	Concur.	October 2004.
20. To reduce the need for outside counsel, the City Attorney should use valid, reliable contract performance data to identify areas where acquiring in-house expertise would be cost-effective.	Concur.	October 2004.

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CHAPTER 1 INTRODUCTION

Background

Austin's City Charter specifies that a department of law be established and that the head of that department, the City Attorney, shall be appointed by the City Manager. Austin's Law Department is empowered by the City Charter to serve as the legal advisor of and attorney for all officers and departments of the City. The department also represents the City in all litigation and legal proceedings. The Charter also provides that the City Attorney shall:

- review and "pass upon" all documents, contracts, and legal instruments, and
- draft, approve, or file written legal objections to ordinances before acted upon by the Council.

In addition, the department provides legal counsel to City Boards and Commissions and supports the City's Ethics Commission. The City Attorney is also responsible for hiring outside counsel and managing resulting contracts. To aid in carrying out the functions of the Law Department, the City Manager may appoint Assistant City Attorneys to act for and on behalf of the City Attorney.

Departmental Mission and Overview

The Law Department's mission is to provide quality legal service to the City of Austin so it can govern lawfully and serve the community effectively. The department's goals are to:

- deliver services that customers find relevant, timely, and useful, and
- to attract and retain a highly qualified staff by focusing on increased employee satisfaction.

The Law Department is divided into three programs. The two programs that provide direct legal services are Opinions and Advice and Advocacy and Dispute Resolution. The Support Services program consists of an Administrative and Financial Services division that handles the department's administrative matters such as financial management, information technology services, personnel, and purchasing. Exhibit 1 describes the programs, activities, and divisions of the department.

EXHIBIT 1
Law Department Programs and Divisions

PROGRAMS	OPINIONS AND ADVICE	ADVOCACY AND DISPUTE RESOLUTION	SUPPORT SERVICES
Activities	<ul style="list-style-type: none"> • General Counsel • Contract Development, Preparation and Review 	<ul style="list-style-type: none"> • Civil Litigation • Criminal Prosecution 	<ul style="list-style-type: none"> • Administration and Management • IT Support • Financial Monitoring • Purchasing • Personnel/Training • Facility Expenses
Divisions	<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px; width: fit-content;">General Counsel and Employment</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px; width: fit-content;">Construction, Land & Water</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px; width: fit-content;">Opinions & Research</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px; width: fit-content;">Austin Energy</div>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 20px; width: fit-content; text-align: center;">Litigation</div> <div style="border: 1px solid black; padding: 5px; width: fit-content; text-align: center;">Municipal Court Prosecution</div>	<div style="border: 1px solid black; padding: 5px; width: fit-content; text-align: center; margin: 0 auto;">Administrative & Financial Services</div>

SOURCE: FY 03 Approved City Budget and departmental organization chart.

The **Opinions and Advice** program of the department serves City clients by providing advice, documents, and other appropriate responses through two activities: General Counsel and Contract Development, Preparation, and Review. Four divisions carry out these activities.

In the General Counsel and Employment division, attorneys handle the unique legal needs of assigned departments and employment issues. This division also represents the City in proceedings, such as Civil Service hearings and proceedings before the Texas Commission on Human Rights and the Equal Employment Opportunity Commission.

The Construction, Land and Water division handles legal matters regarding environmental issues, construction law, real estate transactions, zoning and development, water and wastewater matters, and solid waste issues.

The Opinions and Research division drafts and reviews ordinances, conducts in-depth legal research, prepares and reviews most City Attorney opinions, and handles specific subject matter areas, such as housing, open records and open meetings, ethics, purchasing, and public finance.

The Austin Energy division provides legal assistance and general counsel functions for the Austin Energy department.

The **Advocacy and Dispute Resolution** program encompasses Civil Litigation and Criminal Prosecution. The Litigation division defends actions against the City and sues on the City's behalf. Lawsuits handled by the Litigation division may involve civil rights, collections, contracts, eminent domain, and tort matters. The division also includes two claims investigators responsible for investigating, evaluating, and disposing of hundreds of claims against the City involving property damage and bodily injury. The Criminal Prosecution attorneys handle prosecution of all Class "C" misdemeanors under state law and violations of the City Code through the City's Municipal Court and Community Court.

In addition, at the City Attorney's discretion, outside legal counsel is employed in situations when:

- 1) anticipated workload exceeds available in-house resources,
- 2) a particular expertise is needed that is not available in-house,
- 3) a conflict of interest exists, or
- 4) political or strategic considerations necessitate using a particular attorney.

Law Department Budgets and Staffing

Since FY 99, the department's budget has ranged from \$6.2 million to as much as \$7.8 million. Staffing has ranged from 90 authorized Full Time Equivalents (FTEs) during much of the time to a low of 73 FTEs for the current fiscal year. Exhibit 2 shows the variations in both expenditures and staffing levels since FY 99.

**EXHIBIT 2
Law Department Expenditures and Staffing Level**

FISCAL YEARS	98-99	99-00	00-01	01-02	02-03	03-04
Budgeted Expenditures	\$6,567,761	\$6,229,474	\$7,538,132	\$7,796,694	\$6,902,127	\$6,196,893
Actual Expenditures	\$6,524,607	\$6,141,878	\$7,100,607	\$7,080,836	\$6,543,061*	--
Authorized FTEs**	89.00	90.00	90.00	90.00	79.50	73.00
Actual FTEs**	80.00	86.00	82.25	76.50	74.50	70.93

SOURCE: Data from the City of Austin Approved Budgets, AFS2, and Banner, FY 99 - FY04.

* Year-end estimate.

** Does not include FTEs budgeted in Austin Energy and Austin Police Department budgets.

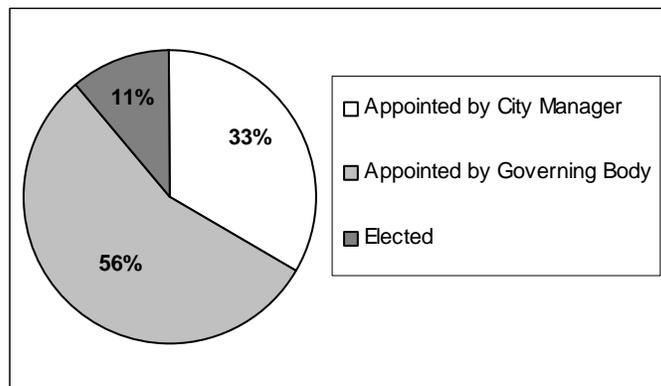
Budgetary pressures associated with the current economic climate represent a challenge to the department's ability to meet the City's legal needs. From FY 00 to FY 04, the department has faced an 18 percent decrease in the number of actual staff, even as client departments are seeking new legal services and enhanced service delivery. Additional challenges for departmental management include several key retirements over the next few years and continued turnover in the Municipal Court Prosecutor's Office.

To achieve departmental goals in this fiscal year, Law Department staff modified their strategies in order to provide services with fewer resources. For example, Law Department management narrowed their focus on delivering all legal services in a timely fashion to a focus on delivering services they consider essential in a timely fashion.

City Attorney Reporting Structures

During our review of other cities' law departments, we noted that the City Attorney does not always report to the City Manager. In some other cities, the City Attorney is either appointed by the governing body (in our case the Council) or elected at-large. City attorneys reporting to the governing body or elected at-large are less prevalent in cities using the Council-Manager form of government used by Austin, but still constitute a majority. The City Attorney is appointed by the City Manager in two of the four Texas cities besides Austin using the Council-Manager form of government. Exhibit 3 below shows the reporting structure for the 18 of the 50 largest U.S cities that use a Council-Manager form of government. Appendix B shows the City Attorney reporting structure and form of government for all 50 cities.

EXHIBIT 3
City Attorney Reporting Structures in 18 Council-Manager Cities



SOURCE: OCA analysis of data collected for the 50 largest U.S. cities.

Objectives, Scope, and Methodology

This audit of the Law Department was approved by the Austin City Council as part of the Office of the City Auditor's annual performance plan for calendar year 2003 and represents the first audit of the department conducted since December 1988.

Objectives

This audit focuses on how well the department is meeting needs in three areas: client services and performance, use of outside counsel, and staffing and professional development.

In client services and performance, the objectives were to determine:

- whether the Law Department is meeting the diverse needs of all the clients it serves, and
- how to enhance the quality and use of performance information to improve decision making.

For use of outside counsel, determine:

- whether outside counsel is being used effectively, and
- if the financial resources used to employ outside counsel can be reduced.

To assess the department's achievement of goals for staffing and professional development, auditors determined:

- if existing staffing levels are adequate and used efficiently to support current legal operations, and
- how well the Law Department focuses on professional development and training to serve the City's interests.

Scope

The scope for our audit work is FY99 to FY03 with an emphasis on the last two fiscal years for most objectives. For outside counsel contracts, our scope includes all contracts initiated or closed during the FY99 to FY03 period. Where appropriate, FY 04 budget figures are included.

Methodologies

We used the best practice criteria for city and county civil law offices promulgated by a national legal consulting firm, Altman Weil, Inc., which has conducted such reviews for municipal law departments. This firm acknowledged the challenges of practicing law in the public arena with limited resources and much public scrutiny. Best practices, based in part on those used by private sector firms and corporate law departments, are identified for five major issues: client service, organization, productivity, outside counsel, and technology. Auditors also identified performance measures and benchmarks in David Ammons' *Municipal Benchmarks*, 2nd edition.

To achieve our objectives we administered and analyzed a survey of 45 of the City's department directors and other officials served by the Law Department. This survey included all City offices and departments except for the City Manager. We also surveyed law departments in the six largest Texas cities. In addition, we researched law budgets and staffing for the 50 largest cities in the United States, which includes the six largest Texas cities. With the assistance of a team of University of Texas McCombs School of Business graduate students, we conducted a detailed survey of an additional 20 of these cities regarding

performance measures, career ladders, and outside counsel. All 50 cities are shown in Appendix B, with the cities surveyed in detail highlighted. We also developed a pilot of additional identified measures for the Law Department to administer, reviewed training and performance data, and interviewed Law Department staff. In addition, we reviewed outside counsel contract documentation, interviewed Law Department contract managers, and analyzed financial data related to these contracts.

Data for this audit was obtained from other cities' documents, from surveys, from department systems, and from the City of Austin's internal systems. City of Austin systems include:

- Banner, the City's human resources management system,
- AFS2, the City's financial system, and
- CARMA, the City's performance reporting system.

Data from all of these systems is considered unaudited data. This means that we did not test the systems that produced the data.

This performance audit was conducted in accordance with the generally accepted government auditing standards.

CHAPTER 2

CLIENT SATISFACTION AND DEPARTMENT PERFORMANCE

Where available, information indicates that the department as a whole is performing well in most areas with room for improvement in some. Comparison of Austin's Law Department to other cities indicates that the department's budget and expenditures are in line with other cities. In addition, most clients of the Law Department are satisfied with services received although we did note some opportunities for improvement. At the activity level, additional measurement is needed to gauge and manage performance.

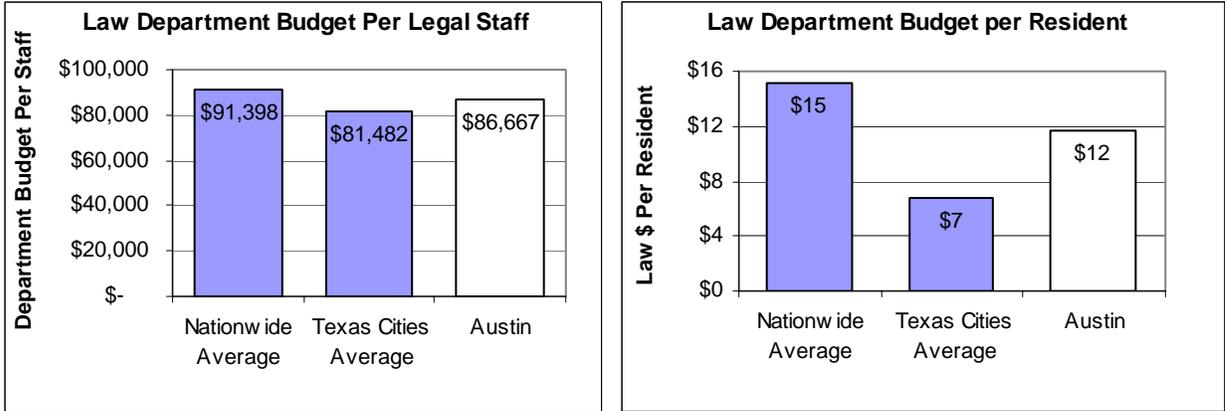
Although efficiency indicators are in line with other cities and most clients are satisfied, the department could do more to improve satisfaction in some areas.

At the department level, Austin's Law Department compares favorably to other cities in terms of operational efficiency. In addition, most department clients are satisfied with legal services received. However, results of our survey of department clients indicate that they are more satisfied with the quality than the timeliness of services, and some groups of clients are clearly less satisfied than others.

Austin's Law Department is comparable to other cities for department efficiency indicators. Austin's Law Department falls between the nationwide average and the average for Texas cities in terms of both department budget per legal staff or full-time equivalent (FTE) and Law Department budget per resident. This indicates that although Austin's Law Department spending is higher than other cities in Texas, the department spending is not out of line compared to cities' nationwide. Exhibit 4 shows these figures for cities nationwide, Texas cities, and Austin.

Variations in law department budgets among cities may be driven by many factors including differences in the form of government, the size of city governing bodies, differences in city programs and responsibilities, environmental externalities and geographic location, and legal relationships with other governmental and public entities. Consequently, while Exhibit 4 contains raw data comparisons, it does not reflect underlying root causes for budget level differences between Austin and other cities.

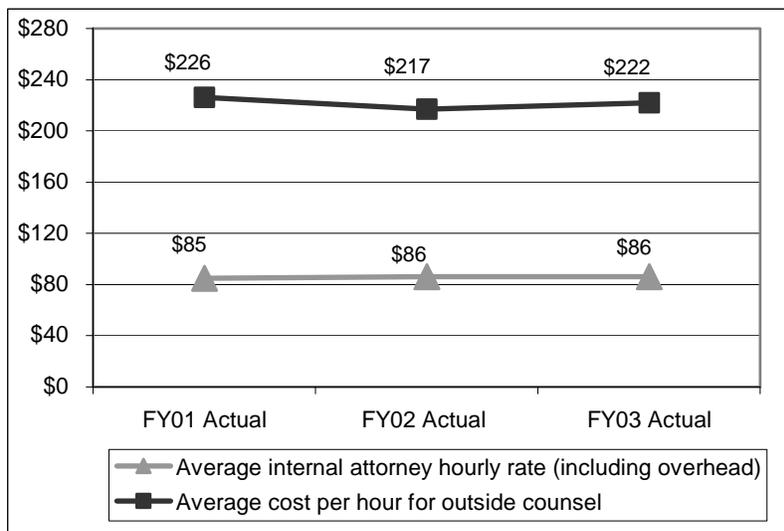
EXHIBIT 4
Comparison of Austin Law Department FY 02
Budget Per Legal Staff and Residents
To Other City Law Departments



SOURCE: OCA analysis of FY 02 budget data for Austin, OCA survey of the six largest Texas cities, and OCA survey of other cities nationwide.

The department uses key indicators comparing internal and external hourly rates to describe departmentwide performance. For FY03, the Law Department reported an average internal hourly rate of \$86 per hour, and an average rate for outside counsel of \$222. Both internal and external rates have remained fairly consistent over the past few years, as depicted in Exhibit 5. For Austin, the cost of handling matters with outside counsel is 2.6 times higher than the cost of handling matters internally.

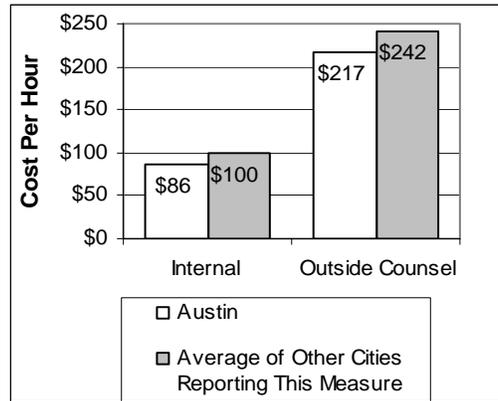
EXHIBIT 5
Austin Law Department Hourly Rates for
Internal and Outside Counsel, FY 01 - FY 03



SOURCE: OCA analysis of Law Department performance measures.

As shown in Exhibit 6 below, Austin’s internal cost per hour is lower than some other cities we surveyed, and compares well with the average of all cities we surveyed that reported this measure. Austin’s cost per hour for outside counsel is also in line with other cities.

EXHIBIT 6
Cost Per Hour of Internal and Outside Counsel for Austin and Other Cities, FY 02



SOURCE: OCA analysis of FY 02 performance results and OCA survey of other cities.

Relatively high ratings of satisfaction by users indicate that most clients are satisfied with services received. Literature describing best practices indicates that the Law Department should show a clear commitment to client satisfaction as the top service priority. As part of our review, we conducted a survey of all client departments in the City to collect information on their satisfaction with the quality and timeliness of Law Department services. This survey included 45 clients who responded to questions regarding ten service areas of the Law Department. As not all services were used by all clients, out of a total of 450 responses the survey received 329 responses. The number of responses for each Law Department service is shown in Exhibit 7.

Overall, 82 percent of client responses indicated satisfaction with the timeliness of services, while 88 percent indicated satisfaction that services were meeting legal needs. Some services, such as contract review and legal advice, received lower ratings in terms of meeting needs and not being done in a timely manner, while other services such as support for commissions and committees and policy drafting and review received higher ratings. Results of our survey by service area are shown in Exhibit 7.

EXHIBIT 7
Client Responses by Legal Service

SERVICE	# OF CLIENT RESPONSES	ARE SERVICES TIMELY?			DO SERVICES MEET NEEDS?		
		NO	SOMETIMES	YES	NO	SOMETIMES	YES
Contract preparation	30	7%	10%	83%	7%	7%	87%
Contract review	34	6%	15%	79%	12%	12%	76%
Legal advice	42	2%	20%	78%	5%	14%	81%
Legal opinions	39	15%	10%	74%	5%	3%	92%
Litigation	28	4%	0%	96%	7%	4%	89%
Ordinances	38	5%	24%	71%	3%	5%	92%
Personnel matters	10*	10%	0%	90%	0%	0%	100%
Policy drafting/review	28	11%	4%	85%	0%	7%	93%
Prosecution	16	13%	0%	87%	13%	0%	88%
Resolutions	39	5%	13%	82%	3%	5%	92%
Support for commissions/ committees	25	4%	0%	96%	4%	8%	88%
All Responses	329	7%	11%	82%	5%	7%	88%

SOURCE: OCA Survey of 45 COA Offices and Departments, Spring 2003

* "Personnel matters" was identified as a service by client departments and was not included in the service list used to administer surveys.

Client interviews also indicated that attorneys are familiar with business issues and able to handle legal matters in their practice area. Assignment of liaisons to individual departments gives attorneys the time to become familiar with the client's business and makes attorneys better able to meet client needs. For several high-volume clients, counsel has been physically located at the department, which gives clients immediate access to legal counsel. Of the 45 clients interviewed, 19 commented positively about their work with the Law Department. For example, one client stated that they "couldn't have asked for better service," and another said "the department is conscientious and responsive." One exception to overall satisfaction with legal services was the Office of Police Monitor, who reported dissatisfaction with several services due to a political conflict between the office and the Police Department, both of whom are represented by the Law Department.

As a means to improve customer service, the Law Department identifies and addresses concerns through an on-line annual survey of departmental clients. Our interviews with clients confirmed that the Law Department is asking department clients to complete a customer satisfaction survey, as well as soliciting feedback on a case-by-case basis. Information collected by the department in formal and informal surveys is used to improve delivery of services.

Our survey of department clients indicated that they are less satisfied with the timeliness of services than the quality of services, meaning the Law Department can do more to measure and improve timeliness. Research on best practices suggests that the Law Department should emphasize the timeliness of legal services and responsiveness of lawyers and support staff to clients. As indicated in Exhibit 6, clients are more satisfied overall with the quality of legal services than the timeliness of services. During our surveys with Law

Department clients, 19 of 45 commented about the timeliness of the Law Department's services. These comments ranged from recognition that "timely responses are tied to workload" and the department "has too much to do" to comments that "some requests were never fulfilled or required excessive prompting to obtain."

The Law Department uses two performance measures related to timeliness of services. Both are measures for activities located in the Opinions and Advice Program:

- 1) The General Counsel activity measures percent of clients reporting that advice was clear, relevant, and timely, and
- 2) The Contract Development, Preparation and Review activity measures percent of clients reporting that documents received were timely and accomplished the client's objective.

Although these measures do address timeliness and responsiveness, department survey results as currently reported do not separate satisfaction with timeliness from other factors. In addition, survey results are not used to identify areas to monitor for improvement in timely service delivery.

The department does not currently record the time used in responding to requests and does not require attorneys to record when requests are received or when responses are provided. In late summer 2002, the Law Department implemented an automated work tracking system called Time Matters[®] that has the ability to track information relating to requests received. At the time of our review, only a few employees were using the Time Matters[®] system for logging and tracking client requests. Tracking all requests using Time Matters[®] would allow reminders to be set, tied to a department, and marked as completed. Because Law Department staff are not required to log requests in this way, managers can only monitor work timeliness and status for those transactions that are entered into the Time Matters[®] system.

Several clients attributed slowness of legal services to reductions in Law Department staffing. Over the past few years, the department has experienced staffing reductions and has not had enough legal support staff. At the same time, reductions in the City's workforce have increased the need for legal services related to employment. Department staffing is discussed in more detail in Chapter 4.

Delays in legal service provision have negative effects. Clients not receiving advice in a timely manner may make business decisions without full knowledge of the legal implications of those decisions. This heightens the City's risk of increased liability. Conversely, clients not receiving advice in a timely manner may choose to spend more money to mitigate risk than is actually necessary because legal advice is not available.

Recommendations

01. In order to present a more accurate picture of client satisfaction, the City Attorney should revise the measures reported to the Budget Office to disaggregate timeliness from other elements of satisfaction.

MANAGEMENT RESPONSE: CONCUR

The department will implement this recommendation. The proposed FY2005 business plan submitted in December 2003 separated timeliness from other elements of satisfaction.

02. In order to manage timeliness of legal services, the City Attorney should implement one or more mechanisms to capture the time it takes divisions in the Opinions and Advice Program to respond to requests.

MANAGEMENT RESPONSE: CONCUR

The department will implement this recommendation.

Several client departments indicated that attorneys often provide “no” as the answer to a legal question, without discussing alternative legal solutions or attempting to solve the problem at hand. Research on best practices suggests that Law Department management should be encouraging lawyers to identify creative solutions to client problems so that “‘no’ is the start of the legal process, not the end.” During our survey of client departments, 15 of 45 clients made comments about the lack of proactive, problem-solving behavior on the part of City attorneys. For example, one client explained that City attorneys are “problem identifiers, not problem solvers.” Another client said “it would be helpful to sometimes have advice on resolving problems by saying ‘you can’t do it that way but you could do it this way’.”

Literature on government law offices indicates that this is often a problem and terms this phenomenon the “naysayer factor.” Austin Law Department management has indicated that they are aware of this as a problem, but our review did not identify any strategies underway to improve attorneys’ problem-solving approach. Because attorneys sometimes leave legal responses at “no” rather than pursuing legal alternatives, client departments may spend more time identifying ways to circumvent laws and regulations without having the legal expertise to identify appropriate solutions. In addition, this type of response may discourage client departments from seeking the advice of attorneys, which could increase the City’s risk for legal liability.

Recommendation

03. In order to better meet the needs of clients, the City Attorney should ensure that all of the attorneys have access to training in business communication and problem solving.

MANAGEMENT RESPONSE: CONCUR

The department is exploring several mechanisms that will not adversely affect the department’s budget to implement this recommendation, including internal training seminars.

Client departments who use services less frequently and those who report to Council, rather than to the City Manager, are less satisfied with timeliness than other client departments. Exhibit 8 shows that responses from low and medium frequency clients represented 69 percent of survey responses. Although this group’s responses indicate satisfaction with services meeting needs, their responses indicate slightly less satisfaction with the timeliness of responses. Eighty-two percent and 77 percent of responses for low and medium frequency users, respectively, indicated that services were timely, as compared to 87 percent of high frequency client responses.

**EXHIBIT 8
Client Responses by Frequency of Use**

FREQUENCY OF LEGAL SERVICE USE	ARE SERVICES TIMELY?			DO SERVICES MEET NEEDS?			% OF RESPONSES
	NO	SOMETIMES	YES	NO	SOMETIMES	YES	
Low	8%	10%	82%	6%	6%	88%	45%
Medium	5%	18%	77%	3%	8%	90%	24%
High	7%	6%	87%	6%	7%	87%	31%
All Responses	7%	11%	82%	5%	7%	88%	100%

SOURCE: OCA Survey of COA Offices and Departments, Spring 2003

Several reasons may explain why less frequent clients are not as satisfied with timeliness as other clients. Most apparent is that these clients may not receive services as quickly as more frequent clients. Reasons that these clients do not receive services as quickly may relate to the legal urgency of the matter or the client’s expectation of how quickly legal service requests should be completed. In addition, lower frequency clients may not know the appropriate attorney to contact within the Law Department for different kinds of question. This is especially true if the lower frequency client is not assigned a liaison to contact with requests and has to identify the appropriate Law Department staff without assistance. Effects of dissatisfaction among lower frequency clients are the same as effects of slow responses by the department: clients may ultimately make decisions without legal input or may spend more to avoid taking risks.

Responses from clients reporting directly to Council rather than through the City Manager- represented 16 percent of responses to our survey. Only 4 percent of responses from departments reporting to the City Manager indicated dissatisfaction with the timeliness of services, while 22 percent of responses from clients reporting to the City Council indicated dissatisfaction with timeliness. Likewise, only 4 percent of responses from City Manager reporting clients indicated dissatisfaction with services meeting needs, while 13 percent of responses from Council-reporting clients indicated dissatisfaction with services meeting needs. Client responses by reporting structure are shown in Exhibit 9.

EXHIBIT 9
Client Responses by Reporting Structure

REPORTING TO	ARE SERVICES TIMELY?			DO SERVICES MEET NEEDS?			%/# OF RESPONSES
	NO	SOMETIMES	YES	NO	SOMETIMES	YES	
City Council*	22%	16%	62%	13%	13%	74%	16% / 55
City Manager	4%	10%	86%	4%	5%	91%	84% / 274
Overall	7%	11%	82%	5%	7%	88%	100% / 329

SOURCE: OCA Survey of COA Offices and Departments, Spring 2003.

* Includes City Council offices and Council Reporting departments. Does not include the City Manager.

There are ten Council offices and Council-reporting clients represented in our survey. Of these ten clients, six commented about the lack of timeliness of legal services and six commented about the lack of problem solving by attorneys. Other comments addressed inaccessibility of attorneys, inconsistency of service from the Law Department, and a need for independent advice when Council and City management have incongruent goals. The Office of Police Monitor also cited a need for independent advice.

Recommendations

04. In order to improve satisfaction of clients using services less frequently, the City Attorney should ensure that each is assigned a liaison.

MANAGEMENT RESPONSE: CONCUR

Liaisons are assigned to areas of responsibility with the City Attorney, Division Chiefs and the City Attorney's Legal Secretary coordinating the assignment of specific attorneys to specific issues.

05. In order to address concerns of less satisfied clients, the City Attorney should meet with Council offices, Council-reporting offices, and the Office of Police Monitor and develop a plan to address concerns of those who are less satisfied.

MANAGEMENT RESPONSE: CONCUR

The City Attorney will continue to work with these offices to address concerns the offices may have.

At the activity level, the department is not using relevant performance information to monitor and evaluate operations.

Although the activities in Austin's Law Department appear to be performing well, the department is not using, and in some cases, not collecting, relevant information with which to gauge performance and allocate resources.

Performance of the Law Department is captured at the activity level. As indicated in Chapter 1, the Law Department is divided into two direct services programs with the following activities:

- 1) Opinions and Advice Program
 - Contract Development, Preparation, and Review activity
 - General Counsel activity
- 2) Advocacy and Dispute Resolution Program
 - Civil Litigation activity
 - Criminal Prosecution activity

For activities in the Opinions and Advice program, the department has little information on performance, and information that is available is not used. The Opinions and Advice program and its activities encompass three of the Law Department's organizational divisions: The Construction Land and Water, General Counsel and Employment, and Research and Opinions divisions which encompass two business plan activities, General Counsel and Contract Development, Preparation, and Review.

The current measure of output for general counsel and contract matters does not provide sufficient information about staff work. This output measure requires attorneys to log, through tick marks, the number of things they do by client department in the categories general counsel, contracts, events, and people. Tick marks represent work ranging from phone calls and attendance at meetings to preparation and review of lengthy contracts. Because a tick mark can represent such a wide variation in actual work done, the data collected are not particularly useful. They do not allow for comparison among divisions or to other similar organizations or provide information to improve resource allocation. In addition, data that is collected on outputs is not reviewed or analyzed by the department.

The Law Department recently implemented a case management system to track and manage the department's work. This system could be used to better track demand for services and program outputs. However, at this time, not all staff are proficient in using the software.

Measures of input for the Opinions and Advice program are also weak. Activity cost for the program, which is based on allocations to the program in the financial system, is used as the only input measure. Although this measure gives some idea of the cost of the program and cost per output over time, using only cost as a measure limits the department's ability to gauge relationships between inputs and outputs and improve efficiency by addressing inputs. A stronger and more direct measure of attorney productivity would be a measure of attorney time spent on matters within each activity. At this time, the Law Department does not use time accounting.

Without valid input measurement such as time records, the program cannot measure efficiency of legal services or productivity of legal staff, nor can it effectively plan for resource allocation

and future work. Measuring time spent on discrete matters or services has several benefits. Data on time spent gives more accurate information on the time necessary to initiate and close matters and identifies matters that are more labor intensive or demanding. Time accounting information also gives the department more information to assess workload, identify and plan for high-need departments, and assign client liaisons.

The Law Department collects information on satisfaction with the Opinions and Advice program through its annual survey of clients, but the design and administration of this survey can be improved to better measure program success. For the last two years, the response rate for Law Department client surveys has been low, with a 41 percent response rate in FY 02 and a 30 percent response rate in FY 01. Moreover, Council offices were not surveyed in either year. The department is not, therefore, getting a full picture of its client satisfaction through these surveys.

Recommendations

06. In order to measure efficiency and productivity in the Opinions and Advice Program, the City Attorney should institute a mechanism to capture meaningful outputs and a mechanism to capture program staff time by legal matter.

MANAGEMENT RESPONSE: CONCUR

The department will implement a time keeping program. The department has explored the development of a mechanism to capture meaningful outputs for several years and has found that the development of such a measure is extremely difficult because of the nature of the services rendered by the department. The quantitative measurement of whether legal advice is competent or adequate to a particular issue is an illusive goal at best. However, the department will continue to explore all suggestions and possibilities. The ultimate goal of the department is to maintain a high level of client satisfaction by providing the best legal advice for any given situation in a timely manner.

07. To secure a higher rate of return on the annual client satisfaction survey, the City Attorney should explore ways to obtain assistance from independent parties to administer the survey in person.

MANAGEMENT RESPONSE: CONCUR

The proposed FY2005 business plan "Action Plan" includes "Explore ways to obtain assistance from independent parties to administer the survey in person".

08. In order to increase the validity of the survey results, the City Attorney should include Council offices in the department's annual client survey.

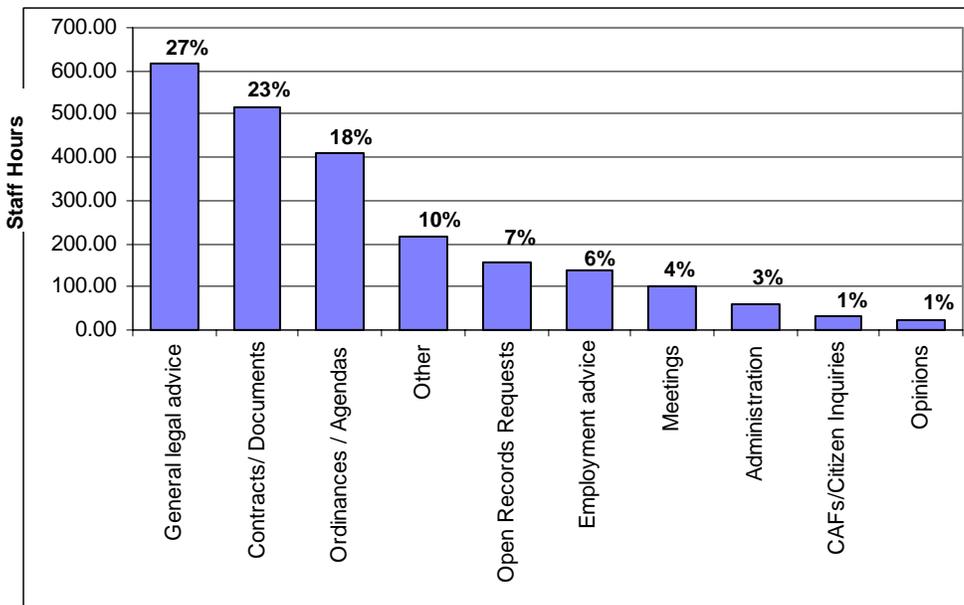
MANAGEMENT RESPONSE: CONCUR

The department will include Council offices in the department's annual client survey.

Our assessment of performance indicates that the Opinions and Advice program is performing well as compared to other cities. Because current measures of output are not adequate to analyze program workload, during this audit, department attorneys and paralegals in the three Opinions and Advice divisions collected data on time spent and outputs achieved for a two-week period. Data was collected by 26 attorneys and two paralegals.

During this two-week period, program staff spent the most time, 27 percent of total hours, providing legal advice, followed by document (e.g. contract) preparation and review, 23 percent, and addressing ordinance and agenda matters, 18 percent. The distribution of hours by service is shown in Exhibit 10. The “other” category, which represents 10 percent of time spent by program staff, includes time spent on requests that did not fall into a listed category.

**EXHIBIT 10
Opinions and Advice Program Hours by Legal Service**



SOURCE: OCA analysis of time collected for the two-week period October 27th - November 7th, 2003

Some activities that attorneys are spending considerable time on, such as handling of open records requests and review of contracts, could be handled by paralegals rather than attorneys if paralegals were available in the department. More discussion of the department’s staffing follows in Chapter 4.

Although results from only two weeks are not representative of an entire year, Austin’s outputs can be roughly compared to weekly averages for the other Texas cities that track similar outputs annually, Houston, San Antonio, and Fort Worth. As shown in Exhibit 11, our analysis indicates that Austin is handling similar amounts of contracts and opinions as these cities. Comparison of the number of FTEs in Austin to FTEs in these cities indicates that Austin may be doing as much work in these areas with fewer resources.

EXHIBIT 11
Comparison of General Counsel Outputs in Texas Cities

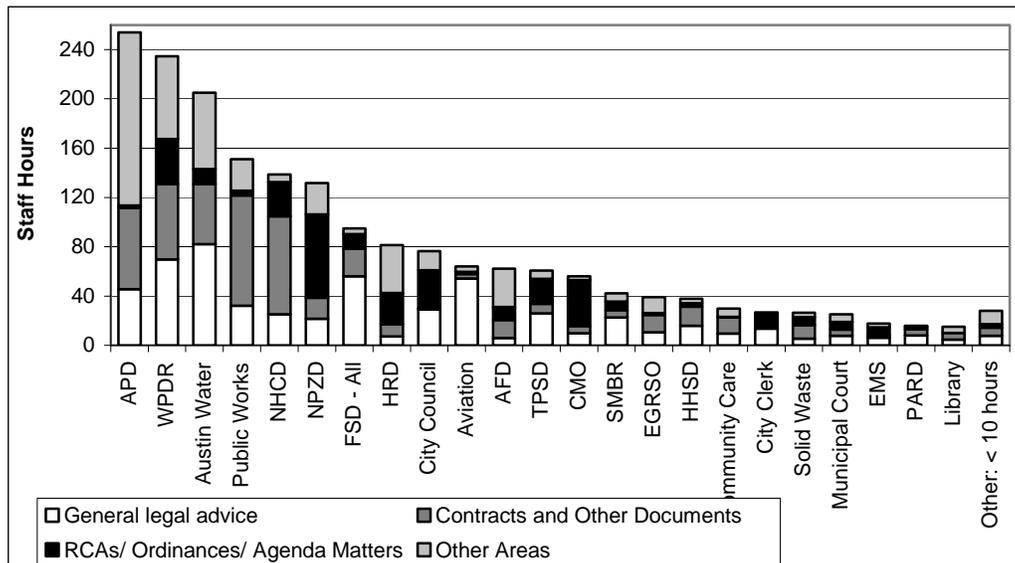
	AUSTIN	HOUSTON	SAN ANTONIO	FORT WORTH
Department Budget (FY03)	\$6.9 M	\$10.8 M	\$5.7 M	\$3.6 M
Department FTEs (FY03)	79.5	160.5	101.0	42.0
Number of opinions - annual	--	550	487	--
Number of opinions - average per week	9	11	9	--
Number of contracts - annual	--	1300	--	929
Number of contracts - average per week	28	25	--	18

SOURCE: OCA analysis of two weeks of data collected by the Law Department, OCA analysis of FY 02 performance reported by Houston, San Antonio, and Fort Worth, and FY 03 budget documents for all four cities.

-- Not collected or not calculated.

The distribution of Opinions and Advice staff hours by City client is shown on Exhibit 12. Most client departments with heavy workloads have attorneys dedicated exclusively to them. For example, the Austin Police Department and the Neighborhood Housing and Community Development Department both have two dedicated attorneys to meet their legal needs. Likewise, Watershed Protection and Development Review and Public Works are both heavy workload departments and are served by attorneys in the Construction, Land and Water division. Some areas that do not have dedicated attorneys may warrant them, but data would need to be collected on an ongoing basis for a longer period of time to determine this need.

EXHIBIT 12
Opinions and Advice Hours by City Client*



SOURCE: OCA analysis of time collected for the two-week period October 27th - November 7th, 2003.

* Austin Energy attorney time is not included in this analysis.

Within the Advocacy and Dispute Resolution program, the Litigation division is performing well and collecting relevant information about its work, but this information is not used to assess performance. The litigation division is responsible for defending the City against lawsuits and filing lawsuits on the City’s behalf. The litigation division also includes two claims investigators, who work to resolve claims against the City prior to litigation. When a claim against the City is filed, the claims investigators examine the claim and then either settle or deny it. If the claim is denied, the claimant may file a lawsuit. In litigation, cases are filed either by or against the City and resolved in civil court by the City’s litigators or outside counsel for litigation. The division collects data on its activities through several internal systems. This data provides useful information about the division’s performance and further analysis of this data could support more meaningful performance measures.

OCA’s analysis of data available shows that the litigation division is performing well as compared to their own performance targets and to similar measures in other cities. The litigation division currently reports several performance measures regarding its activities. These measures along with their targets and actuals for FY 02 are shown in Exhibit 13.

**EXHIBIT 13
Litigation Division FY 02 Performance Measures**

MEASURE TITLE	TARGET	ACTUAL
Number of lawsuits and employee cases received	90	117
Number of lawsuits/appeals resolved	80	72
Number of claims received	1,100	1,142
Number of claims resolved	1,050	1,169
Percent of cases resolved in favor of the City or within settlement range	65%	100%

SOURCE: OCA analysis of litigation division performance.

Our review of measures used by other cities’ litigation divisions revealed that some also use a result measure similar to Austin’s: percent of cases resolved in favor of the City or within an established settlement range. This measure is based on the number of cases that are either won or resolved within a settlement range estimated by the litigation division as the case proceeds through court. As shown in Exhibit 14, Austin’s FY 02 results for this measure are similar to the results of these other cities for measures using the same methodology.

**EXHIBIT 14
Litigation Division Results Measure Compared to Other Cities for FY 02**

CITY	MEASURE TITLE	ACTUAL
Austin	Percent of cases resolved in favor of the City or within settlement range	100%
San Antonio	Percent of lawsuits tried with favorable disposition	86%
Tucson	Percent of cases with favorable outcomes	95%*
San Jose	Percent of cases with results within staff analyses	90%

SOURCE: OCA analysis of litigation division data and OCA data collected from other cities.

* Year-end estimate.

Although Austin is similar to other cities reporting this measure, the measure does not provide clear information on the litigation division's results. The percent of cases resolved in favor of the City or within an established settlement range reflects the ability of the division to project settlement ranges, rather than its' ability to settle or win cases.

The division could use other more meaningful measures to report performance externally and monitor performance internally. Measures such as cost per case closed and cases per litigator would be useful for monitoring internal workload over time. Likewise, an additional results measure such as percent of cases resolved without payment would provide a better picture of the division's performance than the current results measure.

Because claims activities are designed to reduce litigation, results measures for the claims activity would do well to include a measure of percent of claims in litigation. Other useful results measures are the settlement amount per claim and the percent of claims resolved. These measures allow comparison of claims activities to other cities and to Austin over time.

Exhibit 15 shows our calculation of Austin's performance as compared to other cities reporting similar measures. This analysis indicates that Austin's claims and litigation activities are performing well in comparison to other cities.

EXHIBIT 15
Litigation Division Performance Measures Compared to Other Cities for FY 02

CITY	MEASURE TITLE	ACTUAL
Austin	Percent of cases resolved without payment	79%
Philadelphia	Percent of cases closed without payment by City	56%
Oakland	Percent of lawsuits resolved without payment	54%*
Sacramento	Percent of litigation cases closed without payout	57%
Austin	Settlement amount per claim	\$1804
Nashville	Settlement amount per claim	\$498
San Francisco	Average settlement per claim	\$2,620
Austin	Percent of claims settled	47%
San Francisco	Percent of claims settled	48%
Austin	Percent of claims in litigation	Unknown
Oakland	Percent of claims in litigation	12%*

SOURCE: OCA analysis of litigation division data and OCA data collected on other cities. Selection of other cities was based on their having similar measures to those reported by Austin.

* FY 01 results, FY 02 unavailable for this city.

Although much data is available to analyze litigation and claims work, this data would be more meaningful if attorneys tracked time by matter. This tracking could be accomplished using the case management system and would yield more accurate information on the actual cost of individual cases rather than the current average cost per case. Tracking in this way would also

allow the department to compare the actual cost per case internally to the cost per case handled by outside counsel, which is discussed in more detail in Chapter 3.

Recommendation

09. In order to present a more accurate picture of the Litigation division's activities, the City Attorney should:

- Adopt a comprehensive family of valid performance measures.
- Direct the department's administrative and financial manager to incorporate collection of data and reporting of new measures into the department's performance measurement tracking system.

MANAGEMENT RESPONSE: CONCUR

The following **new** operational measures are included in the proposed FY2005 business plan:

- Percent of lawsuits resolved without payment
 - Percent of claims resolved without payment
 - Percent of claims settled
 - Percent of claims that lead to litigation
 - Turnaround time for processing claims
-

While some additional measures of demand and results might be useful for managing the Criminal Prosecution division, the division has a balanced set of performance measures based on existing data, and performance compares well with other cities. Austin’s Municipal Court prosecutors are responsible for prosecuting all Class C misdemeanors, City ordinance violations, and traffic cases that are not handled through administrative processes. Prosecutors negotiate and/or communicate penalties when “guilty” or “no contest” pleas are entered, and prosecute on the City’s behalf at court trials when “not guilty” pleas are entered. The prosecution division collects data on its activities through the Municipal Court database, which provides a record of the prosecutors’ performance.

The prosecution division is performing well compared to targets and similar measures in other cities. The division’s current measures along with their targets and actuals for FY 02 are shown in Exhibit 16.

EXHIBIT 16
Prosecution Division FY 02 Performance Measures

MEASURE TITLE	TARGET	ACTUAL
Number of cases resolved after prosecutor action	37,000	31,156
Percentage of cases resolved after prosecutor action	Not Reported	40%
Number of cases received	Not Reported	78,421
Cost per case resolved	\$17.75	\$27.76

SOURCE: OCA analysis of prosecution division performance data.

In addition to existing measures, the division could use measures such as “cases per prosecutor” and “percent of convictions from tried cases” for monitoring internal workload and reporting more meaningful results. The division already has the data necessary to monitor these indicators. Our computation of results for these measures for Austin indicate that Austin’s prosecutors are doing as well as or better than those in other cities, as shown in Exhibit 17.

EXHIBIT 17
Prosecution Division Performance Measures Compared to Other Cities for FY 02

CITY	MEASURE TITLE	ACTUAL
Austin	Cases per prosecutor	4,450
Colorado Springs	Cases per prosecutor	5,812
Austin	Percent of convictions for all tried cases	98%
San Antonio	Percent of convictions for all cases tried at Municipal Court	92%*
Tucson	Percent of actions won through prosecution	86%*

SOURCE: OCA analysis of litigation division data and OCA data collected on other cities. Selection of other cities was based on their having similar measures to those reported by Austin.

* Actual not available, FY 02 estimate used.

Recommendation

10. To enhance reporting on prosecution division performance, the City Attorney should discuss with the Chief Prosecutor the desirability of using data already available to construct additional measures.

MANAGEMENT RESPONSE: CONCUR

Will discuss with the Chief Prosecutor the desirability of using data already available to construct additional measures.

CHAPTER 3 OUTSIDE COUNSEL

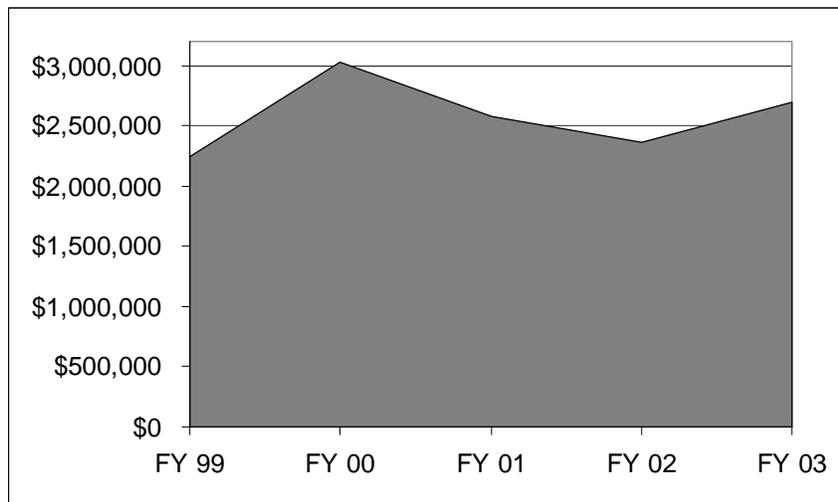
Austin spends more on outside counsel and uses outside counsel for more matters than other cities we surveyed. Available data indicates that matters managed by outside counsel are achieving outcomes, but no more or less so than matters handled internally. Although spending for outside counsel cannot be eliminated, the City can manage these costs more effectively and can identify areas where outside counsel expenditures can be reduced.

Austin uses outside counsel for a variety of matters, and the amount spent is greater than many other cities we surveyed.

Austin's outside counsel spending has varied, but has remained above \$2 million per year since FY 99. Matters handled by outside counsel include both general counsel and litigation cases in a wide range of City service areas. Austin's outside counsel spending is among the highest for Texas cities and is higher than several cities outside of Texas.

For the past five years, Austin's outside counsel expenditures have been greater than \$2 million each year. Exhibit 18 shows an estimate of Austin's outside counsel spending by fiscal year since FY 99. Outside counsel expenditures were greatest in FY 00, exceeding \$3 million.

EXHIBIT 18
Estimated Outside Counsel Spending by Fiscal Year, FY 99 - FY 03

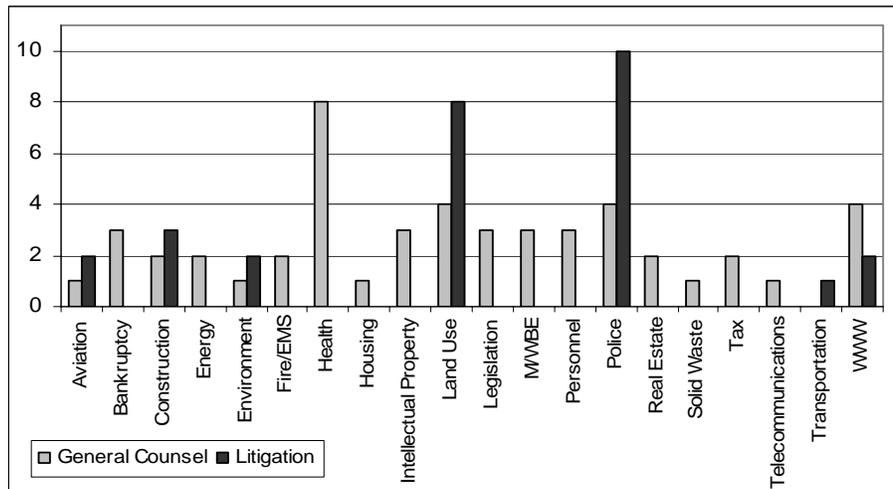


SOURCE: OCA analysis of AFS2 data; does not include disposition amounts.

Open outside counsel cases include matters for both general counsel and litigation in a wide range of City service areas. Outside counsel is used for both general counsel matters, such as contract negotiations, and litigation matters. At the time of our review, the City of Austin had 78 open outside counsel cases and 28, or 36 percent, of these were for litigation matters. The remaining 50, or 64 percent, were for general counsel matters. Of the 78 open cases, 14, or 18 percent, are related to police. There are two reasons for the high percentage of

matters relating to police: first, police are involved in more liability-creating activities, and second, police cases are more likely to involve outside counsel because the City Attorney cannot represent both the officer and the Police Department in a lawsuit. Other areas with high usage of outside counsel include land use, health, and water/wastewater.

EXHIBIT 19
Open Outside Counsel Cases by Area



SOURCE: OCA analysis of open cases handled by outside counsel, as of June 2003.

By charter, the City Attorney is responsible for obtaining any outside counsel used by the City. In addition, an attorney from the Law Department is assigned as the contract manager for each outside counsel engagement. The Law Department uses the following criteria when deciding to hire outside counsel:

- 1) anticipated workload exceeds available in-house resources,
- 2) a particular expertise is needed that is not available in house,
- 3) a perceived or actual conflict of interest exists, and
- 4) for politically sensitive matters.

At this time, the Law Department does not document the reasons outside counsel is obtained for individual matters.

Austin’s outside counsel spending is among the highest for Texas cities and is higher than several cities outside of Texas. When compared to other Texas cities, Austin has a greater number of matters using outside counsel and spends more than these cities. Although no two cities are alike in terms of the number and types of departments supported, each Texas city supports several enterprise departments along with general fund departments. Exhibit 20 shows spending on outside counsel and number of matters using outside counsel, where known, for Texas cities.

EXHIBIT 20
Outside Counsel Expenditures for Texas Cities

CITY	FY 02 - OUTSIDE COUNSEL MATTERS	FY 02 - OUTSIDE COUNSEL AMOUNT	FY 02 - COST PER MATTER
Austin	74	\$2,359,650	\$31,887
San Antonio	--	\$2,872,200	--
Dallas	35	\$1,627,658	\$46,505
El Paso	--	\$657,252	--
Houston	28	\$618,894	\$22,103
Ft. Worth	20	\$484,685	\$24,234

SOURCE: OCA analysis of outside counsel expenditures from AFS2 and OCA survey of Texas cities.

* Approximated based on FY03 data.

Outside of Texas, some cities spend as much or more than Austin, but many cities use outside counsel for very few matters. Exhibit 21 below shows Austin as compared to several non-Texas cities in amount spent on outside counsel and number of outside counsel matters, where available.

EXHIBIT 21
Outside Counsel Expenditures for Selected Cities

CITY	FY 02 - OUTSIDE COUNSEL MATTERS	FY 02 - OUTSIDE COUNSEL AMOUNT	FY 02 - COST PER MATTER
Austin	74	\$2,359,650	\$31,887
Philadelphia	80*	\$5,049,428	\$63,117
Tucson	60	\$1,759,340	\$29,322
Indianapolis	40*	\$1,382,068	\$34,552
Portland	17	\$1,303,000	\$76,647
Oklahoma City	7*	\$250,000*	\$35,714
Sacramento	8	\$166,094	\$20,762

SOURCE: OCA analysis of outside counsel expenditures and OCA survey of selected cities.

* Approximate. Philadelphia and Indianapolis track number of outside counsel contracts rather than number of matters, and Oklahoma City could not provide the exact amount spent on outside counsel.

Recommendation

11. In order to obtain information for evaluating when and why outside counsel is used, the City Attorney should document the reason for selecting outside counsel for each matter in both the contract file and the department's case management system.

MANAGEMENT RESPONSE: DISAGREE

Outcomes, where measurable, are comparable between internal staff and outside counsel; however, costs for outside counsel are much higher than the cost of handling matters internally.

Both anecdotal and documented information indicate that outcomes obtained through the use of outside counsel have generally been good. However, outcomes achieved by outside counsel come at a high price, and comparable matters handled internally also achieve good outcomes.

Matters handled by outside counsel have generally had favorable outcomes. For our review, we selected a representative sample of 25 matters being handled by outside counsel. This sample included open and closed cases, and cases for both litigation and general counsel. During interviews, all contract managers indicated that expectations were met, and in some cases, exceeded by the outside counsel hired for the matter.

For matters that do have documented results, outcomes for internal attorneys and outside counsel are comparable. For litigated cases, performance of outside counsel has resulted in lower payouts by the City than cases handled internally. In order to compare the cost of matters handled internally to those handled by outside counsel, several factors must be taken into account. The actual cost of a case handled by outside counsel can be compared to the actual cost internally if the following are captured:

- The amount of time spent by contract managers for outside counsel cases,
- The total contract amount, and
- The amount paid for case disposition (litigation only).

For litigation cases between FY 99 and FY 03, the department was able to collect information on the amounts paid to outside counsel and for settlement of cases. However, the department has not historically captured time spent by contract managers, so we were only able to include the total contract amount and the amount for case disposition in comparison to cases handled internally.

During the period FY 99 to FY 03, the department closed 423 litigation cases. Of these, 375, or 89 percent, were handled internally by the department's litigation division. The remaining 48 cases were handled by outside counsel. Exhibit 22 below compares the average cost and average payout for cases handled by the litigation division and by outside counsel. It should be noted that the average disposition amount per case does not take into account the types of cases handled and therefore does not separate cases without any potential payout from those with potential payout.

EXHIBIT 22
Cost Comparison of Closed Litigation Cases, FY 99 - FY 03

HANDLED BY:	LITIGATION DIVISION	OUTSIDE COUNSEL
Average Disposition Amount Per Case**	\$27,032	\$16,555
Average Cost Per Case Including Overhead	\$15,334	\$72,550*
Cost to Obtain & Manage Outside Counsel	0	Not known, but > 0
Total	\$42,366	> \$89,105

SOURCE: OCA analysis of Controller's litigation data.

* Amount paid to outside counsel was only available for 35 of the cases closed FY 99 to 03.

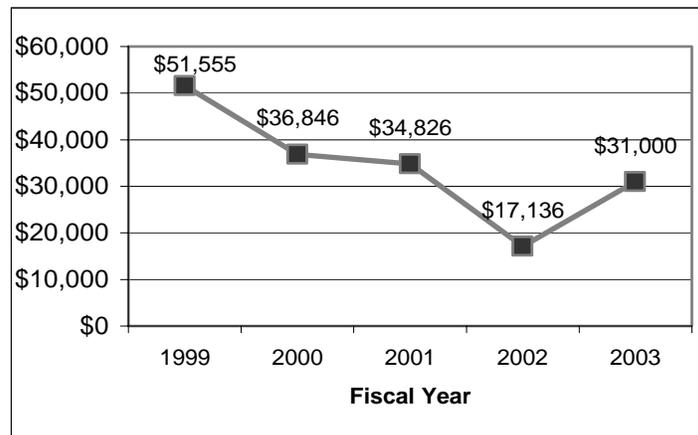
** Includes all cases, including those without any payout.

As shown in the exhibit, cases handled by outside counsel averaged lower payouts to litigants, although the average cost per case for outside counsel was nearly five times greater than the cost to handle cases internally. Because of this disparity in the cost of handling cases, the total cost is more than twice as much for cases handled by outside counsel.

For general counsel cases, the department does not have a complete inventory of all closed matters. Information on cases prior to FY 02 is collected by obtaining the original contract file and manually calculating the contract amount based on invoices. Not all files for the period prior to FY 02 are complete, and not all could be located. However, the department is now using its case management system to track outside counsel cases; so in the future, information on total spent by case should be available.

At the time of our review, there were 50 open general counsel matters, and the average amount paid per case to date to outside counsel was \$56,393. Data available for closed matters contracted to outside attorneys included 59 cases at an average cost per case closed of \$31,567 for the period FY 99 to FY 03. This inventory does not include all closed cases in that time period, but does give a general idea of how much was spent per case based on the data that is available.

EXHIBIT 23
General Counsel Matters Handled by Outside Attorneys:
Average Cost Per Case Closed



SOURCE: OCA analysis of Law Department data on outside counsel.

Recommendations

12. In order to better capture the actual cost of outside counsel engagements, the City Attorney should have contract managers within the department track time spent on management for each outside counsel contract.

MANAGEMENT RESPONSE: CONCUR

The department will explore several mechanisms that will not adversely affect the department's budget to implement track these costs and conduct a cost benefit analysis of the contract managers' tracking their time.

13. In order to better capture information on matters handled by outside counsel for analysis, the City Attorney should ensure that the department maintains an inventory of open and closed outside counsel cases, including the total amount spent, total disposition (litigation only), matter area, and whether the matter is for general counsel or litigation.

MANAGEMENT RESPONSE: CONCUR

The department will implement this recommendation.

Although Austin cannot eliminate use of outside counsel, costs of outside counsel engagement can be managed better.

During our review we noted several weaknesses in the current practices for managing outside counsel. The Law Department does not:

- use a formal process to identify and select firms,
- use alternatives to hourly billing in contracts,
- have guidelines for contract managers to monitor outside counsel contracts, or
- have a process in place to evaluate outside counsel at the end of an engagement.

Making adjustments in these areas may decrease the cost of outside counsel engagements.

Austin's current process for identifying outside counsel does not encourage competition, which could reduce the amount paid for outside counsel contracts. The Law Department does not have a formal competitive process for selecting outside counsel. Research on best practices indicates that the Law Department should use a competitive process, including selection criteria, for awarding legal matters to firms providing the most cost-effective services. By state law, legal service procurement is exempt from competitive bidding requirements. However, some aspects of a competitive procurement process could be used for legal services. Some cities, such as Houston, San Diego, and Denver, use competitive bidding proposals to select outside counsel for some or all outside counsel matters.

Other elements of procurement such as a Request for Qualification (RFQ) process or list of available firms could help the department identify attorneys for work. For example, Columbus, Ohio uses an RFQ process to collect information from attorneys and firms when contracting for outside counsel matters. Similarly, Portland, Oregon maintains a list of attorneys and firms and their specializations to identify available attorneys and firms.

The Austin Law Department does not use either of these mechanisms to identify the firms and attorneys available for work. Instead, the department uses internal staff knowledge and institutional memory to identify and solicit outside counsel. By selecting firms in this way, the department is unable to take advantage of competition between firms and may not be getting the best price for services. A list of firms obtained through the RFQ process and their specialization areas might expand the number of known firms with expertise in certain areas and help the department obtain more competitive pricing.

In the period of our review, FY 99 to FY 03, the Austin Law Department used 96 firms. The matters handled by the five most frequently used firms accounted for 58 percent of the outside counsel matters. Because the Austin Law Department does not document why firms were selected, the department cannot show its reasons for repeatedly selecting the same firms for outside counsel matters. Written documentation of selection criteria would help identify the strengths of certain firms and ensure that matters are spread among qualified firms.

Alternative pricing methods may reduce cost of outside counsel for some engagements.

The Law Department rarely uses alternatives to hourly billing, which can reduce cost of outside counsel. There is a recent trend among law departments to move away from open-ended hourly billing when outside counsel is used because this arrangement provides little incentive for outside counsel to control fees. Examples of both hourly and non-hourly alternative pricing are:

- Discounted hourly rates - A discount, typically by a specified percentage, on standard hourly rates based on volume or type of work.
- Blended hourly rates - A set rate is billed, regardless of whether the work is performed by a partner or an associate.
- Contingency billing - Payment to the firm is contingent on the outcome or results achieved by the firm's work. This method is usually used in combination with another billing arrangement such as reduced hourly rates with a bonus based on achieved results or early resolution of a matter.
- Fixed fee billing - A fixed amount agreed to by the client and outside counsel is paid for all work either for an entire matter, discrete tasks of a matter, or a specific period of time. Fixed fees are frequently used for repetitive jobs where what is being done and the time it will take is reasonably predictable from past experience.
- Capped fee billing - The client and outside counsel agree that work will not exceed a certain dollar figure through closure of the matter.

Although the department says that outside counsel matters are reviewed to determine if any alternative pricing structures are viable, there is no evidence of this review. In addition, non-hourly pricing is rarely used in outside counsel agreements. During the course of our work, we identified one current contract where a fixed-fee agreement was being negotiated.

Many of the department's contracts take advantage of savings methods for hourly billing through discounted rates. All of the contracts we reviewed used hourly billing, hence billing was based on varying rates for different attorneys and staff spending time on the case. Several of the contracts reviewed appeared to have discounted rates. In 3 of the 25 contracts, the discount was documented. For other contracts, contract managers explained that the department negotiated discounted rates. In addition, one case reviewed involved an arrangement where the rate decreased following the first 30 hours spent on the case each month.

Billing rates for outside counsel in our sample ranged from \$125 to \$405 dollars per hour, with an average rate per hour of \$215.

Although capped fee arrangements are written into each contract, the capped amount can be exceeded by amendment. A “not to exceed” or capped amount is written into every contract with outside counsel. This amount is set based on a budget submitted by the firm when the contract is initiated. However, the capped contract amount can be exceeded by administrative or Council-approved amendments to contracts. Of the 25 contracts reviewed, 56 percent or 14 contracts had amendments ranging in total accumulated amounts from \$3,000 to \$958,000. For those contracts having amendments, the average increase was \$181,750. Not all reasons for amendments to contracts were documented in Law Department contract files.

None of the 25 contracts reviewed used the alternative methods of fixed fee or contingency fee billing. Considering pricing structures other than hourly billing could save the City money for certain contracts and provide incentives for outside counsel to reduce fees. In addition, non-hourly billing would reduce the need for line-by-line review of invoices by contract managers, and give attorneys more time to work on legal matters. Some general counsel matters such as negotiation of lease agreements could be handled through a fixed fee arrangement. Many matters that are currently handled through hourly billing could be more economically handled by combining hourly billing with capped- or contingency-fee billing.

Improving the contract management guidelines and process may also reduce the cost of outside counsel. The Law Department should have effective controls over the direction and cost of every outside counsel matter according to best practice research. Although the assigned Assistant City Attorney is the point of control over direction and cost of outside counsel, the department does not have written procedures or training on managing/monitoring outside counsel contracts. Those attorneys who reviewed bills vary in their practices. Some scrutinize the bill by checking their own calendars for meeting and phone call dates and duration, and look at the task performed to ensure that it is necessary and related to the legal matter. They also review the number of hours charged for each task and the rates charged. Other department attorneys “glance over” the bill to see if it is reasonable.

The City could be paying more than needed if all contract managers are not closely monitoring outside counsel billing. Some contract managers explained that they had to limit extraneous research by outside counsel. Because the department lacks written procedures or training for managing and monitoring contracts, some attorneys may not pay sufficient attention to tasks performed, hours billed, or rates used for billing.

According to literature describing best practices, the Law Department should have a formal system for assessing the performance of outside counsel and determining whether any future work should be referred to that lawyer or law firm. The current contract and the engagement document used by the Law Department do not contain any means for assessing the performance of outside counsel.

Performance of firms is occasionally noted and passed along by the contract manager. Contract managers explained that judgment of firms' performance is based on:

- how the outside counsel works with the contract manager,
- whether or not the City gets what it has paid for,
- whether the attorney was aggressive enough,
- whether counsel stays within budget, and
- whether billing is accurate.

This evaluation is not in writing and may only be passed on to the City Attorney upon inquiry.

Because there is no mechanism in place to assess and document performance of outside counsel following an engagement, the department does not have a consistent way of knowing whether or not to use a firm for subsequent engagements. Hence, the department could be reusing non-performing firms.

Recommendations

14. In order to solicit more firms for outside counsel engagements and benefit from competition for engagements, the City Attorney should develop and maintain a list of local firms and their specialties.

MANAGEMENT RESPONSE: CONCUR

The department will implement this recommendation.

15. So that future procurement of outside counsel benefits from "lessons learned", the City Attorney should document justification for firm selection at the beginning of outside counsel engagements and the firm's performance at the close of the engagements.

MANAGEMENT RESPONSE: DISAGREE

16. To improve consistency in contract management, the City Attorney should:
- develop and implement written guidelines for obtaining and managing outside counsel contracts, and
 - identify and send contract managers to training regarding managing outside counsel engagements.

MANAGEMENT RESPONSE: CONCUR

The department will implement this recommendation including identifying or conducting in-house training.

Some matters currently handled by outside counsel could be handled internally by hiring or developing expertise in high demand areas.

Although outside counsel cannot be reduced for some matters such as conflict of interest cases, developing internal expertise in areas where outside counsel is used frequently would be more cost-effective in the long run. Best practice literature suggests that law departments should have an appropriate mix of both in-house and outside counsel. Because the department does not document in-house expertise and areas where outside counsel is regularly obtained, the City Attorney cannot identify areas where in-house expertise should be developed to meet client demands and save money. Documenting both what in-house attorneys are interested in and what areas are regularly outsourced would allow the City Attorney to develop in-house expertise through training and practice or hire additional expertise in areas where outside counsel is regularly obtained. This is discussed in further detail in Chapter 4, Staffing and Professional Development.

CHAPTER 4

STAFFING AND PROFESSIONAL DEVELOPMENT

While the Law Department follows best practice in its organizational structure, it does not conform to best practice in the areas of staffing and professional development. Also, more support staff would enable the department to leverage existing attorney resources. The department's lack of focus on developing in-house expertise has limited the department's option to call on highly trained in-house experts rather than hire outside counsel.

The Law Department is organized following best practice, but does not have enough support staff.

Austin's Law Department attorneys serve as liaisons to City departments, and attorneys who support specific areas such as public works or the water utility report to the appropriate division of the Law Department. Management of legal services has a flat structure with a span of control following best practice recommendations. In the area of legal support staff to attorneys, the Law Department does not meet recommended benchmarks and in some divisions, support staff is missing altogether.

The department is using a best practice organizational structure by assigning attorneys based on functional divisions and client needs. Best practice studies recommend that municipal law departments:

- use a matrix structure that groups lawyers by subject-matter orientation for supervision purposes,
- use a program-centered orientation for client purposes, and
- assign department counsel to heavy users of services, where the department counsel coordinates legal resources for the department.

Attorneys in the Opinions and Advice program are assigned as liaisons to City departments. These liaisons develop familiarity with the legal needs and program orientation of their departments and can call on other in-house attorneys should they need assistance in specific areas. For example, attorneys in the Construction, Land, and Water Division have as their clients those departments involved in areas such as Public Works, Austin Water Utility, and Watershed Protection. In addition, six departments provide funding for positions in the department and therefore have specific legal staff assigned to them: Austin Energy, Austin Water, Community Care Services, Neighborhood Housing and Community Development, Solid Waste Services, and the Austin Police Department.

Organization and methods of Law Department management also follow best practices. Best practices research also suggests having a flat structure with minimal management lawyers and assigning all support staff to a law office administrator for internal functions. Best practices for management of attorneys include being available to assist them with day-to-day matters, and supervising legal work through regular and face-to-face file reviews.

The Law Department has a lean management structure with six to eight attorneys for every management attorney. Additionally, the Law Department has a flat structure with six

management attorneys, or division chiefs, supervising a total of 44 attorneys. One of these division chief positions is currently filled by an acting division chief. Recommended best practice advisories suggest a ratio of one management attorney for every eight to ten attorneys. Division chiefs report directly to the City Attorney. The Litigation, General Counsel and Employment, and Municipal Court divisions have the greatest number of attorneys to manage with 1 manager for 8 attorneys in each of these divisions, and the Austin Energy division has the fewest number of attorneys to manage with 1 manager for 6 attorneys. The Chief Prosecutor, who supervises eight prosecutors, reports to the Division Chief who is over the General Counsel and Employment division. Exhibit 24 shows suggested benchmark ratios for staffing municipal law departments.

Division chiefs informally review work following different processes. Most indicated they require staff to keep them in the loop on complicated or high profile matters and keep informed of what specific attorneys are dealing with. The division chiefs are available for assistance and all are involved in direct legal services. Division chiefs report that they review work for completeness, accuracy, clarity, and timeliness.

Attorneys are supported by legal secretaries, who are responsible for providing document preparation and delivery, scheduling and coordinating events, managing and filing documents, and routine office matters. Paralegals perform some of the same functions, but also conduct legal research and fact investigation and provide litigation assistance. The Law Department also has an administrator who supervises all internal administrative and financial functions that support attorneys.

EXHIBIT 24
Municipal Law Department Benchmark Ratios

RATIOS	AUSTIN	BENCHMARK
Supervising Attorneys to Attorney	1 per 7 attorneys	1 per 8 to 10 attorneys
Total Support Staff per Attorney	1 per 2 attorneys	1 per 1 attorney
Legal Secretaries per Attorney	1 per 4 attorneys	1 per 2 attorneys
Paralegals per Attorney	1 per 6 attorneys	1 per 4 attorneys

SOURCE: OCA analysis of Banner data for FY 03 and Altman Weil, "Best Practices of City and County Civil Law Offices," *Report to Legal Management*, February 2002.

While the Law Department has an appropriate number of managers, the department does not have adequate support staff. Total support staff is defined as the sum of legal secretaries, paralegals, and other administrative staff. Best practice research suggests that having a lean ratio of support staff to lawyers is considered good management. Lean department ratios suggest no more than one legal secretary for every two attorneys and no more than a one to one ratio for total support staff per lawyer. However, when ratios are too lean, attorneys do work that could be performed by less costly support staff.

According to both best practice advisories and departmental reports, attorneys do not have enough staff to support their work. In the City of Austin, the proportion of total support staff to attorneys is very lean. Instead of a one to one ratio of total support staff to attorneys, the Law

Department has .67 total support staff per lawyer. Further, there is one legal secretary for every four attorneys, rather than one for every two, as suggested by the literature. The General Counsel and Employment division has no permanent legal secretaries. Some of the legal secretaries in the department are funded by and dedicated to specific departments and are not available for work in other areas.

Recommended best practice ratios for municipal law departments assert that there should be strong paralegal support with at least one paralegal for every four lawyers. The Law Department has less than the benchmark with each paralegal supporting approximately six lawyers. These ratios vary by division, with some divisions having no paralegals and others having paralegals that are dedicated to supporting specific departments. Exhibits 25 and 26 show the allocation of Law Department staff by division.

**EXHIBIT 25
Staffing in the Opinions and Advice Program**

Recommended Best Practices for Divisions

Division Chief (1)	●
Attorneys (9)	●●●●●●●●●
Paralegals (2)	●●
Legal Secretaries (4)	●●●●

City of Austin Division Staffing

General Counsel and Employment Division

Division Chief (1)	●
Attorneys (8)	●●●●●●●● <small>CCS APD</small>
Paralegals (2)	● ● <small>APD</small>
Legal Secretaries (1)	● <small>Temporary</small>

Construction, Land, and Water Division

Division Chief (1)	●
Attorneys (7.5)	●●●●●●● <small>SW AW A</small>
Paralegals (3)	●●● <small>AW</small>
Legal Secretaries (2)	●●

Opinions and Research Division

Division Chief (1)	●
Attorneys (7)	●●●●●●● <small>NH NH</small>
Paralegals (0)	
Legal Secretaries (2)	● ● <small>NH</small>

Electric Division

Division Chief (1)	● <small>AE</small>
Attorneys (5.5)	●●●●● <small>AE AE AE AE AE</small>
Investigators (1)	● <small>AE</small>
Paralegals (0)	
Legal Secretaries (2)	●● <small>AE AE</small>

-  Benchmark
-  Full-time position
-  Temporary position
-  Funded by indicated department, not available for work with other clients

SOURCE: Altman-Weil Best Practices for City/County Government, February 2002 and OCA analysis of Law Department organization chart and staffing information, October 2003.

EXHIBIT 26
Staffing in the Advocacy and Dispute Resolution Program

Recommended Best Practices for Divisions

Division Chief (1)	●
Attorneys (9)	●●●●●●●●●
Paralegals (2)	●●
Legal Secretaries (4)	●●●●

City of Austin Division Staffing

Civil Litigation Division

Division Chief (1)	⊘
Attorneys (9)	●●●●●●●●●
Investigators (2)	●●
Paralegals (2.75)	●●●
Legal Secretaries (3.75)	●●●●

Criminal Prosecution Division

Chief Prosecutor (1)	●
Attorneys (8)	●●●●●●●●
Paralegals (0)	
Legal Secretaries (2)	●●

- Benchmark
- Full-time position
- ⊘ Vacant position
- Acting division chief

SOURCE: Altman-Weil Best Practices for City/County Government, February 2002 and OCA analysis of Law Department organization chart and staffing information, October 2003.

Division chiefs and senior attorneys indicated repeatedly that the shortage of paralegals and legal secretaries is a serious concern. In one division, a particular paralegal was described as “stretched beyond belief in completing work and additionally is called on by other divisions in the department.” One division chief indicated that the value of paralegals is lost if they are “so over-loaded they can’t get the work out.”

Insufficient numbers of support staff could result in attorneys’ handling work that could more appropriately be the responsibility of legal secretaries or paralegals. This costs more and decreases attorneys’ ability to focus on work that requires their legal expertise.

While constraints imposed by the City’s budget crisis limit hiring of support staff, the inability of the department to accurately evaluate allocation of time and efforts prevents the department from adequately predicting where support staff are most needed. Allocation of support staff is made based on experiential knowledge without actual performance data to support needs.

Recommendation:

17. To bring Austin’s Law Department up to minimum benchmark standards for legal support staff and to ensure optimum allocation of all support staff, the City Attorney should use valid, reliable workload data to plan for staffing needs.

MANAGEMENT RESPONSE: CONCUR

The department will implement this recommendation.

Although Law Department compensation is competitive with other Texas law departments, the department has not emphasized acquiring and sustaining in-house expertise to decrease reliance on outside counsel.

Following market studies in 2001, Law Department compensation was comparable to other Texas cities' law departments and lower than the average national compensation for government attorneys. In administering attorney performance reviews, the department does not assure attorney compliance with requirements of the State Bar. Also, there is no career path for attorneys who acquire and sustain a specialized expertise area. Encouraging the development of specific expertise areas could eventually reduce the need for hiring outside counsel.

Compensation compares well to other cities. To prevent turnover and ensure adequate retention of experienced staff, employee compensation levels should be competitive with comparable positions. Market studies were carried out for Law Department legal staff as recently as April 2001 and resulted in increases in pay for both groups.

Attorney and paralegal compensation is competitive with compensation in other Texas cities, although attorneys in Texas cities receive lower compensation than the national average government attorney salary according to an annual salary survey. However, the average government attorney salary does not appear to take into account cost of living in different cities,

and cities surveyed are unknown because they are not disclosed in the survey. A comparison of Texas salaries and the average government salary is shown in Exhibit 27.

EXHIBIT 27
Average Attorney and Paralegal Salaries in Texas

POSITION	AUSTIN	SAN ANTONIO	HOUSTON	NATIONWIDE
Managing Attorney	\$99,008	\$81,254	\$94,349	\$123,874
Senior Attorney	\$78,274	\$55,392	\$62,916	\$109,050
Staff Attorney	\$53,231	\$44,895	\$44,314	\$79,752
Paralegal	\$40,916	\$26,500	\$28,522	\$38,309

SOURCE: City of Austin - Banner data, 2003; City of San Antonio - Performance Review by Altman-Weil, 2001; City of Houston - Performance Review by Altman-Weil, 2000; and other government law departments nationwide - Compensation Benchmarking Survey by Altman-Weil, 2001.

The Law Department does not have a reliable process for ensuring attorney compliance with State Bar requirements. The legal profession places responsibility on each individual attorney for maintaining eligibility to practice through the Texas State Bar, and judges are ultimately responsible for making sure that attorneys appearing in court are licensed in good standing.

A Law Department policy states that individual attorneys are responsible for maintaining their law license, which entails such aspects as obtaining required training. The Bar has a minimum 90-day window for ensuring compliance with training requirements and an elaborate process for reinstatement of attorneys falling out of compliance, but these processes are all between the individual and the State Bar. The Bar association will not notify an employer if an attorney is not in good standing.

The department has no requirement to report “good standing” with the Bar. The State Bar website gives the public basic information, including if an attorney is currently eligible to practice in Texas and whether an attorney has ever faced disciplinary action. Review of this information indicated that all Austin Law Department attorneys are in good standing and eligible to practice law in Texas. However, a process to periodically verify compliance would ensure that the department is apprised of any changes in attorney eligibility.

Recommendation:

18. To ensure that the Law Department’s attorneys are in compliance with State Bar requirements, the City Attorney should establish an in-house process to periodically verify whether each attorney is in good standing with the State Bar Association.

MANAGEMENT RESPONSE: CONCUR

The Law Department has started conducting quarterly reviews of each attorney's State Bar eligibility.

The City's Law Department has no formal mechanism for encouraging attorneys to develop specialized expertise in needed areas. In some municipal law departments, attorneys have two tracks on which they can advance, the traditional supervisory and management track and a track based on developing legal expertise without assuming supervisory and management duties. In Philadelphia, for example, attorneys who achieve a higher level of skill and expertise have the same salary structure as managing attorneys.

In the City of Austin, there is no career path for attorneys who through practice and training acquire a specialized expertise area. Instead, the department's pay scale follows the standard City pay scale format, where placement or promotion is based on position, years of experience, and time with the City. Therefore, attorneys who develop subject matter expertise can only be promoted into the upper management career path, thus utilizing less of the expertise they have gained. At this time, 38 percent of the department's non-management attorneys have reached the last zone in their pay scale and cannot promote without moving into a management position.

Developing subject matter expertise in the Law Department could eventually reduce need for outside counsel. Constraints imposed by the City's budgetary crisis have a negative impact on the Law Department. Outside counsel as reported earlier is called for generally in three instances, when there is: overwhelming workload, conflict of interest, or a need for expertise. While little can be done to limit outside counsel for conflict-of-interest matters, mitigating the support staff shortages could better support the attorneys and remedy the heavy workload. Adding attorneys in areas of either great demand or those often requiring specialized experience, could ultimately achieve savings. Emphasizing the development of expertise in areas with heavy demand and paying commensurately could limit the need to seek and pay for outside counsel expertise.

Prosecutors currently leaving the City within a few years could be recruited and trained to work as attorneys in other department divisions. In the case of Municipal Court Prosecutors, attorneys frequently come fresh out of law school and are eager to gain courtroom experience in an entry-level position. Their salaries are the lowest in the department, and their work is the most narrowly defined. Turnover among prosecutors is high and is accepted as an inevitable consequence of the type of work, the experience level of the employee, and the salary. However, this exit of attorneys in which the City has invested resources for development and training need not be accepted quite so readily.

The fact that attorneys have devoted their interest and energies to working for a municipal law department might, indeed, make them a candidate for continued employment with other divisions of the department. The fact that high turnover is regarded as normal may be preventing department management from using Municipal Court Prosecutors as an avenue for recruiting successful attorneys for the City. The department could develop such candidates through careful screening and cross-training opportunities.

Recommendations:

19. In order to encourage the development of in-house legal expertise and reduce the need for outside counsel, the City Attorney should work with the Human Resources Department to develop an expertise-based career ladder.

MANAGEMENT RESPONSE: CONCUR

The Department will work with Human Resources Department to explore the possibilities of developing an expertise-based career ladder.

20. To reduce the need for outside counsel, the City Attorney should use valid, reliable contract performance data to identify areas where acquiring in-house expertise would be cost-effective.

MANAGEMENT RESPONSE: CONCUR

The department will implement this recommendation.

**APPENDIX A
MANAGEMENT RESPONSE**



MEMORANDUM

Law Department

TO: Steve Morgan, City Auditor
FROM: David Smith, City Attorney
DATE: January 22, 2004
SUBJECT: Law Audit

Attached are the Law Department's responses to the recommendations contained in the Law Department Service Delivery audit report to be presented on January 27, 2004, to the City Council Audit and Finance Committee.

I appreciate the opportunity that you provided for Law to engage in a dialogue with you and your staff during the audit process, and your receptiveness to many of our observations and suggestions. I also note that your final report reflects compromises in some areas where there was disagreement.

Beyond that, I also appreciate your staff's willingness to help educate us on concrete methods for implementing many of the recommendations. That fact has already given us a head start.

As you will note from those responses, the Law Department concurs with almost all of the stated recommendations, some of which have already been completed, and many of which are underway. With only one exception, our plan is to implement the remainder by the end of this fiscal year, within budgetary constraints.

I have viewed this process as largely a cooperative effort, and have confidence that the implementation of those recommendations with which I have concurred will be of benefit to the Law Department, the City, and the citizens of Austin.

Please feel free to call me if you have any questions.

ACTION PLAN
LAW DEPARTMENT SERVICE DELIVERY AUDIT

Rec #	Recommendation Text	Concurrence	Proposed Strategies for Implementation	Status of Strategies	Responsible Person/ Phone Number	Proposed Implementation Date
01	In order to present a more accurate picture of client satisfaction, the City Attorney should revise the measures reported to the Budget Office to disaggregate timeliness from other elements of satisfaction.	Concur	The department will implement this recommendation. The proposed FY2005 business plan submitted in December, 2003 separated timeliness from other elements of satisfaction.	Included in the FY2005 proposed business plan	Diane Harrison 974-2160	August 2004
02	In order to manage timeliness of legal services, the City Attorney should implement one or more mechanisms to capture the time it takes divisions in the Opinions and Advice Program to respond to requests.	Concur	The department will implement this recommendation.	pending	David Smith 974-2164	October, 2004
03	In order to better meet the needs of clients, the City Attorney should ensure that all of the attorneys have access to training in business communication and problem solving.	Concur	The department is exploring several mechanisms that will not adversely affect the department's budget to implement this recommendation including internal training seminars.	pending	David Smith 974-2164	October, 2004

Rec #	Recommendation Text	Concurrence	Proposed Strategies for Implementation	Status of Strategies	Responsible Person/ Phone Number	Proposed Implementation Date
04	In order to improve satisfaction of clients using services less frequently, the City Attorney should ensure that each is assigned a liaison.	Concur	Liaisons are assigned to areas of responsibility with the City Attorney, Division Chiefs and the City Attorney's Legal Secretary coordinating the assignment of specific attorneys to specific issues.	Done	David Smith 974-2164	Completed
05	In order to address concerns of less satisfied clients, the City Attorney should meet with Council offices, Council reporting offices, and the Office of Police Monitor and develop a plan to address concerns of those who are less satisfied.	Concur	The City Attorney will continue to work with these offices to address concerns the offices may have.	On-going	David Smith 974-2164	Continual process

Rec #	Recommendation Text	Concurrence	Proposed Strategies for Implementation	Status of Strategies	Responsible Person/ Phone Number	Proposed Implementation Date
06	In order to measure efficiency and productivity in the Opinions and Advice Program, the City Attorney should institute a mechanism to capture meaningful outputs and a mechanism to capture program staff time by legal matter.	Concur	The department will implement a time keeping program. The department has explored the development of a mechanism to capture meaningful outputs for several years and has found that the development of such a measure is extremely difficult because of the nature of the services rendered by the department. The quantitative measurement of whether legal advice is competent or adequate to a particular issue is an illusive goal at best. However, the department will continue to explore all suggestions and possibilities. The ultimate goal of the department is to maintain a high level of client satisfaction by providing the best legal advice for any given situation in a timely manner.	pending	David Smith 974-2164	October, 2004

Rec #	Recommendation Text	Concurrence	Proposed Strategies for Implementation	Status of Strategies	Responsible Person/ Phone Number	Proposed Implementation Date
07	To secure a higher rate of return on the annual client satisfaction survey, the City Attorney should explore ways to obtain assistance from independent parties to administer the survey in person.	Concur	The proposed FY2005 business plan "Action Plan" includes "Explore ways to obtain assistance from independent parties to administer the survey in person"	Included in the FY2005 proposed business plan	Diane Harrison 974-2160	August, 2004
08	In order to increase the validity of the survey results, the City Attorney should include Council offices in the department's annual client survey.	Concur	Will include Council offices in the department's annual client survey	Pending	Diane Harrison 974-2160	August, 2004
09	In order to present a more accurate picture of the Litigation division's activities, the City Attorney should: - Adopt a comprehensive family of valid performance measures, and - Direct the department's administrative and financial manager to incorporate collection of data and reporting of new measures into the department's performance measurement tracking system.	Concur	The following new operational measures are included in the proposed FY2005 business plan: <ul style="list-style-type: none"> • Percent of lawsuits resolved without payment • Percent of claims resolved without payment • Percent of claims settled • Percent of claims that lead to litigation • Turnaround time for processing claims 	Included in the FY2005 proposed business plan	Chief of Litigation 974-2507	October, 2004

Rec #	Recommendation Text	Concurrence	Proposed Strategies for Implementation	Status of Strategies	Responsible Person/ Phone Number	Proposed Implementation Date
10	To enhance reporting on prosecution division performance, the City Attorney should discuss with the Chief Prosecutor the desirability of using data already available to construct additional measures.	Concur	Will discuss with the Chief Prosecutor the desirability of using data already available to construct additional measures	Pending	Sally Henly	Spring, 2004
11	In order to obtain information for evaluating when and why outside counsel is used, the City Attorney should document the reason for selecting outside counsel for each matter in both the contract file and the department's case management system.	Do not concur	NA	NA	NA	NA
12	In order to better capture the actual cost of outside counsel engagements, the City Attorney should have contract managers within the department track time spent on management for each outside counsel contract.	Concur	The Department will explore several mechanisms that will not adversely affect the department's budget to implement track these costs and conduct a cost benefit analysis of the contract managers tracking their time.	Pending	David Smith 974-2164	October, 2004

Rec #	Recommendation Text	Concurrence	Proposed Strategies for Implementation	Status of Strategies	Responsible Person/ Phone Number	Proposed Implementation Date
13	In order to better capture information on matters handled by outside counsel for analysis, the City Attorney should ensure that the department maintains an inventory of open and closed outside counsel cases and include the total amount spent, total disposition (litigation only), matter area, and whether the matter is for general counsel or litigation.	Concur	The department will implement this recommendation.	Pending	David Smith 974-2164	October, 2004
14	In order to solicit more firms for outside counsel engagements and benefit from competition for engagements, the City Attorney should develop and maintain a list of local firms and their specialties.	concur	The department will implement this recommendation.	Underway	Diane Harrison 974-2160	October, 2004
15	So that future procurement of outside counsel benefits from “lessons learned”, the City Attorney should document justification for firm selection at the beginning of outside counsel engagements and the firm’s performance at the close of the engagements.	Do not concur	NA	NA	NA	NA

Rec #	Recommendation Text	Concurrence	Proposed Strategies for Implementation	Status of Strategies	Responsible Person/ Phone Number	Proposed Implementation Date
16	To improve consistency in contract management, the City Attorney should: - develop and implement written guidelines for obtaining and managing outside counsel contracts, and - identify and send contract managers to training regarding managing outside counsel engagements.	Concur	The Department will implement this recommendation including identifying or conducting in-house training	Pending	David Smith 974-2164	October, 2004
17	To bring Austin's Law Department up to minimum benchmark standards for legal support staff and to ensure optimum allocation of all support staff, the City Attorney should use valid, reliable workload data to plan for staffing needs.	Concur	The department will implement this recommendation.	Pending	David Smith 974-2164	October, 2004
18	To ensure that the Law Department's attorneys are in compliance with State Bar requirements, the City Attorney should establish an in-house process to periodically verify whether or not each attorney is in good standing with the State Bar Association.	Concur	The Law Department has started conducting quarterly reviews of each attorney's State Bar eligibility	Completed	Diane Harrison 974-2160	January, 2004

Rec #	Recommendation Text	Concurrence	Proposed Strategies for Implementation	Status of Strategies	Responsible Person/ Phone Number	Proposed Implementation Date
19	In order to encourage the development of in-house legal expertise and reduce the need for outside counsel, the City Attorney should work with the Human Resources Department to develop an expertise-based career ladder.	Concur	The Department will work with Human Resources Department to explore the possibilities of developing an expertise-based career ladder	pending	Diane Harrison 974-2160	October, 2004
20	To reduce the need for outside counsel, the City Attorney should use valid, reliable contract performance data to identify areas where acquiring in-house expertise would be cost-effective.	Concur	The department will implement this recommendation.	Pending	Diane Harrison 974-2160	October , 2004

APPENDIX B
LIST OF 50 LARGEST U.S. CITIES

List of 50 Largest Cities with Law Department Information and Surveyed Cities Highlighted

Rank	City	State	Population (2002)	Form of Government	Law FTEs	Law Budget
1	New York	New York	8,084,316	Mayor-Council	1227	94.8 M
2	Los Angeles	California	3,798,981	Mayor-Council	831	96.0 M
3	Chicago	Illinois	2,886,251	Mayor-Council		
4	Houston	Texas	2,009,834	Mayor-Council	169	11.1 M
5	Philadelphia	Pennsylvania	1,492,231	Mayor-Council	243	15.8 M
6	Phoenix	Arizona	1,371,960	Council-Manager	242	18.4 M
7	San Diego	California	1,259,532	Council-Manager	313	26.7 M
8	Dallas	Texas	1,211,467	Council-Manager	128	10.6 M
9	San Antonio	Texas	1,194,222	Council-Manager	105	5.2 M
10	Detroit	Michigan	925,051	Mayor-Council	219	\$31.5 M
11	San Jose	California	900,443	Mayor-Council	105	12.5 M
12	Indianapolis	Indiana	783,612	Mayor-Council (consolidated)	54	2.7 M
13	San Francisco	California	764,049	Mayor-Council (consolidated)	243*	54.9 M*
14	Jacksonville	Florida	762,461	Mayor-Council (consolidated)	60	7.6 M
15	Columbus	Ohio	725,228	Mayor-Council	180	11.0 M
16	Austin	Texas	671,873	Council-Manager	90	7.8 M
17	Memphis	Tennessee	648,882	Mayor-Council	55	7.9 M
18	Baltimore	Maryland	638,614	Mayor-Council	128	3.7 M
19	Milwaukee	Wisconsin	590,895	Mayor-Council	67	6.1 M
20	Boston	Massachusetts	589,281	Mayor-Council	43*	5.1 M*
21	Charlotte	North Carolina	580,597	Council-Manager (consol.)	16*	1.4 M
22	El Paso	Texas	577,415	Mayor-Council	39	4.6 M
23	Washington	District of Columbia	570,898	Mayor-Council	537	52.5 M
24	Seattle	Washington	570,426	Mayor-Council	155	12.7 M
25	Fort Worth	Texas	567,516	Council-Manager	41	3.4 M
26	Denver	Colorado	560,415	Mayor-Council (consolidated)	135	14.3 M
27	Nashville	Tennessee	545,915	Mayor-Council (consolidated)	52	6.2 M
28	Portland	Oregon	539,438	Commission (modified)	40	4.8 M
29	Oklahoma City	Oklahoma	519,034	Council-Manager	55	4.4 M
30	Las Vegas	Nevada	508,604	Council-Manager		5.6 M
31	Tucson	Arizona	503,151	Council-Manager	114	6.9 M
32	New Orleans	Louisiana	473,681	Mayor-Council	99	9.0 M
33	Long Beach	California	472,412	Council-Manager	71	8.6 M
34	Cleveland	Ohio	467,851	Mayor-Council		7.7 M
35	Albuquerque	New Mexico	463,874	Mayor-Council		5.9 M
36	Fresno	California	445,227	Mayor-Council	36	3.4 M
37	Kansas City	Missouri	443,471	Council-Manager	34	3.2 M
38	Sacramento	California	435,245	Council-Manager	53	5.3 M
39	Virginia Beach	Virginia	433,934	Council-Manager	44	3.0 M
40	Mesa	Arizona	426,841	Council-Manager		
41	Atlanta	Georgia	424,868	Mayor-Council	58	4.7 M
42	Oakland	California	402,777	Mayor-Council	79	8.9 M
43	Omaha	Nebraska	399,357	Mayor-Council	43	3.2 M
44	Tulsa	Oklahoma	391,908	Mayor-Council	36	2.4 M
45	Honolulu	Hawaii	378,155	Mayor-Council	90	6.3 M
46	Minneapolis	Minnesota	375,635	Mayor-Council	111	9.2 M
47	Miami	Florida	374,791	Mayor-Commission	57	4.0 M
48	Colorado Springs	Colorado	371,182	Council-Manager	43	3.4 M
49	Wichita	Kansas	355,126	Council-Manager	25	1.8 M
50	Arlington	Texas	349,944	Council-Manager	30	2.7 M

SOURCE: Population from U.S. Census Bureau 2002 Population Estimates, other information collected by OCA from other city documentation and surveys.

* Budget not available, FY02 actual shown.

 Detailed survey conducted by OCA.

 Not available.

APPENDIX C
DETAILED SURVEYS OF OTHER CITIES

This Appendix C shows results of two surveys of other cities' law departments conducted during the course of this audit of Austin's Law Department.

The first matrix contains the results of a survey conducted during the early stage of the audit to determine how comparable Austin's Law Department was with departments of the other six largest Texas cities. Follow-up questions from these departments augmented the results of this survey, but have been incorporated into the report text, rather than altering the initial survey instrument.

The second matrix shows results of a survey conducted by graduate students of the McCombs School of Business at the University of Texas at Austin. Students identified appropriate respondents in 15 municipal law departments and administered a brief telephone survey regarding performance measures, career advancement, and procurement and use of outside counsel. Several more cities were later added—bringing the number surveyed to 20 cities. Not all cities responded to all queries, and some chose not to respond at all.

Survey of National Cities - Performance Measurement

City	Track Time	Current Use of Performance Measures	Additional Performance Measures	Systems for Information Capture
Austin	No	Use performance measures for each department activity, as required by the City budget office.		Various information systems are used in conjunction with financial data to calculate performance measures. The department also has a matter management system that is not used for any performance measures at this time.
Baltimore		Have basic measures that are used for all departments across the city government.	Collection rate, # of Contracts, # of claims, viable claims settled.	City Stat Accountability is used across the government.
Charlotte	No	No performance measures tracked	N/A	N/A
Columbus	No	Department tries to accommodate requirements of budget office who require the perf. based budget measures.	Section chiefs meet monthly with staffs to generate data on nature and estimate volume of activities, since there is no time tracking; they generate logs which feed into annual data; acknowledged subjectivity.	They do not currently use a matter management system, although they are leaning in that direction.
Denver	No	Used for budget reporting only.		Practice Manager (Law.com).
Indianapolis		Do not report any measures.	none	Litigation tracked in Access; prosecution uses Tidemark.
Jacksonville	Yes	Currently the office uses performance measures to track time and case status to assess budgetary needs as well as evaluate individual attorneys performance.		The office uses a combination of Tabs, (detailed billing/time tracking software) and division by division head case management through varied means such as excel and access.
Las Vegas	Yes	New civil cases open, settled and closed. Legal opinions issued. Bankruptcy cases open, amt collected, settled and closed. Bills adopted. New assignments from all 15 city depts. Personnel matters- arbitration, HR, employment.	Information not available	Information not available
Memphis	No	Measures relate to claims and subrogation; track days to resolve claim	None relating to staff as a whole.	Information not available

Survey of National Cities - Performance Measurement

City	Track Time	Current Use of Performance Measures	Additional Performance Measures	Systems for Information Capture
Milwaukee	No	Current performance measures are used for budgetary and evaluation purposes. They also help to evaluate efficiency in attorney's time and projects.	Attorneys are evaluated annually with a standardized document. All other performance evaluations are done with the use of PRO LAW produced reports and statistical data.	The office uses PRO LAW to capture all data relevant to case/matter assignments and tracking.
Nashville	Yes	All staff activities are tracked and reconciled with timesheets. They report claims measures, ordinances and resolutions drafted reviewed and approved for codification.	Some measures are expected to change soon.	CLMS, a customized off the shelf legal software.
Oklahoma City	No	Measures not used for purposes other than budgetary reasons.	Attorneys are evaluated by the division heads in each division.	Peoplesoft
Philadelphia	not known	Measure client satisfaction by practice group; code enforcement; revenues recovered; litigation.	Outside counsel measures under development; internal performance measures pertaining to litigation.	Two databases: 4th Dimension for case mgmt; FAMIS finance; all contracts are entered into a central system.
Phoenix	Yes	Performance Measures are used externally for budget purposes as well as evaluating attorney's individual performance.	Attorneys are grouped into different groups (Att.1, Att.2, Att.3, Att.4) based on level of responsibility and previous performance. Att.1 are evaluated annually, while Att.2-4 are evaluated based accomplishment/performance of goals set at beg. of year.	The civil practice uses PRO LAW extensively to track time-based activities, and various case statistics. It is not currently fully implemented in all divisions or for all purposes.
Portland	Yes	Use some for budget reporting; internal hourly rate; outside counsel expense; Risk Management tracks claims.	None.	Abacus
San Diego	Yes	Average cost per misdemeanor case; City Atty civil litigation cost per \$100 of private attorney cost; average cost tracked by the child abuse and domestic violence unit.	Track other measures which are counts of documents or activities.	Individual atty logs, unit logs, and matter management system (Legal Edge).
San Jose	No	The law dept uses measures to monitor legal services in terms of timeliness, cost effectiveness, and client communication. These measures are compared with prior years annually.	Attorneys receive annual performance evaluations. Written evaluations are prepared by the managers and discussed with the attorneys. A goal-oriented format is the standard structure for evaluations.	PROLAW

Survey of National Cities - Performance Measurement

City	Track Time	Current Use of Performance Measures	Additional Performance Measures	Systems for Information Capture
Seattle	Only on criminal side	Provide quality service to clients.	Surveys	
Tucson	Informal estimates	None captured in the Civil Division; mandated in Litigation division.	Time tracking done extremely informally. Estimated at end of specific time period.	Secretary inputs measures into an Access Database.

Survey of National Cities - Use of Outside Legal Counsel

CITY	Use of Outside Counsel for Law Dept	Written Policy/Selection Process for Use of Outside legal	Pricing/Billing Processes	Evaluation and Rehiring of Outside Legal Counsel
Austin	Yes, for general counsel and litigation - approximately \$2 million per year	No	Hourly, some discounted rates. One contract with fixed price identified.	No written evaluation.
Baltimore	Yes, little more than \$1 million for 10 matters-union, environmental, conflict of interest (police)	No	Hourly, and government rate could be up to a 20% discount.	No written evaluation. Feedback is given continuously because in-house lawyers review all the work before it goes out.
Charlotte	Yes, used in any situation where the city lacks expertise. This is determined on a case by case basis by the City Attorney	N/A	Selection based on the best rate quoted. However, the City Atty. may select a more expensive firm if they have more expertise in the area needed.	No official evaluation of outside counsel. The City Attorney works closely with the outside counsel and the dept requesting the service. The City Attorney knows if outside counsel is doing a good job.
Columbus	Used for conflict-of-interest; need for expert: patent & trademark; labor law; telecommunications (do not use franchises fees); and occasionally land development. FY 2002, reported \$1.0 million (estimate) for six cases	They try to adhere to city procurement policy, although occasionally depart from it; determined by matter; look for expertise; use a form of RFQ process and will share what has been filed publicly and request a proposal of work and scope of services; open to entire legal community.	Have used flat rates; not to exceed; contingency billing, commensurate with success and negotiated gov't rate; do not exclude firms with past city experience, but must file waivers of conflict. Not doing so would eliminate half the attorneys in Columbus	Code requirement that each contract completed have a comprehensive evaluation; filed with city auditor and open record; Ohio has very liberal open records law; if it is kept by public office it is open. Rehiring based on evaluations and institutional memory.

Survey of National Cities - Use of Outside Legal Counsel

CITY	Use of Outside Counsel for Law Dept	Written Policy/Selection Process for Use of Outside legal	Pricing/Billing Processes	Evaluation and Rehiring of Outside Legal Counsel
Denver	Yes, used for conflicts primarily and sometimes expertise, such as for civil or employment matters. FY 02 estimate \$2 M	No; one RFP was used for an unusually large type of litigation; City Atty and deputy usually make decision (occasionally some political considerations).	99 % negotiated hourly gov't. rate; rarely contingency, based on outcome and they pick up expenses	Based on success and sometimes the case drags on for multiple years, requiring retention of original firm.
Indianapolis	Yes, \$1,382,068 for 40 contracts for litigation and general counsel for city portion of consolidated government	No, exempt from bid requirements; choose for expertise; favor minority/women-owned law firms	No, hourly rate	Not answered
Jacksonville	Yes, in cases that may extend beyond in-house expertise. The last two years have seen a marked increase, as the office spent approx \$275K in FY 2001 and \$1.2M in FY 2002 mainly pertaining to one specific case.	There is no written policy or method for the selection of outside legal. The contact or engaging attorney becomes the lead consultant with council when request is made by client or assessed by office.	The contracts are often shopped around in cities outside Jacksonville, and in all cases the office asks for a discount for government work.	Evaluation of outside legal counsel throughout the engagement. Contract attorney is responsible for evaluation the communication and success of outside legal counsel. No formal documentation is made due to the public information act, and the liability exposure such a document encompasses.
Las Vegas	Yes, used when city lacks needed expertise or there is a conflict of interest.	None. At the discretion of the C.A. and chief prosecutor.	They negotiate an hourly rate with outside counsel firm	No written evaluation of Outside Counsel. A satisfactory experience would be based on outcome and the opinion of the supervising C.A.
Memphis	Yes; unique in that some staff attorneys with expertise work part-time for the city and are allowed to have their own practice as well.	No written policy, but use the same one or two firms for various categories of law, such as for civil rights violations.	Most are hourly with some contracts limiting how much can be charged total.	Done on a daily basis. The in-house attorneys work pretty closely with them and give feed back daily. Tend to use the same one or two firms depending on the issues.
Milwaukee	Used for conflict of interest, expertise, and case/matter overload. In FY 2002 the law dept estimated that it spent less than 1% on outside legal council.	Resolution passed in 1988 which allows City Attorney to hire outside legal council, and then report status to judicial and legislative committee of the city council.	Remarks from several employees indicated that there is a lack of structure for hiring/evaluating outside legal. Reasons given were the City Attorney is an elected official, checking abuses, and low usage of outside legal council.	Currently no formal evaluations or procedures for rehiring exist for outside legal council

Survey of National Cities - Use of Outside Legal Counsel

CITY	Use of Outside Counsel for Law Dept	Written Policy/Selection Process for Use of Outside legal	Pricing/Billing Processes	Evaluation and Rehiring of Outside Legal Counsel
Nashville	Very little; usually \$30-40,000 annually; 2002 unusual <\$100,000	exempt from procurement code; charter dictates representation unless conflict; hire for reputation and expertise; Director of Law decides with Metro Council approval	nonnegotiated hourly rate + expenses	Often use the same firm; No written evaluation, rely on institutional memory.
Oklahoma City	Usually uses outside counsel for a bond issue, or areas where it might have a conflict of interest or lack of expertise. In FY 2002, spent approx. \$250,000 on outside legal council.	Resolution passed in 1988 that allows deputy attorneys to hire outside legal without getting approval from city council. Deputy Atty.. report hiring of outside legal to standing judicial and legislative committee.	The law dept goes through one specific attorney for outside legal council. The department has contracted to with the attorney for a set rate of \$90/hr for cases or matters.	Currently no formal evaluations or procedures for rehiring exist for outside legal council
Philadelphia	Yes, \$5,049,428 in 02 for 55 contracts representing 70-80 matters; seeking to reduce by about half; used when: conflict, expertise, workload	informal; they know the firms and the resources	use retainer; hourly fee with a scale of rates and occasionally flat fee; one contract, matters billed separately; billings are checked by an "advanced clerical" using a database for consistency and legitimacy and then goes to supervising atty and finally 1st deputy	
Phoenix	Mainly used in case of conflict of interest, but rarely because scope of case/matter extends beyond in-house ability. In FY 2002 the law dept spent \$2.4 M on outside legal council.	NA	NA	NA
Portland	Yes. \$1,572,601 on 19 matters	A listing based on a Request for Proposal. Selections made from that list. City Atty has exemption from bidding process. Reputation considered as well.	Negotiated hourly government rates; some fixed rates used in the past.	No written evaluation. Could be taken off list if unsatisfactory.
San Diego	Yes, amount not available	Nothing written; local counsel is given preference; a proposal practice is used	Billing is negotiated	Nothing written; performance evaluated on price, performance, outcome, and service.

Survey of National Cities - Use of Outside Legal Counsel

CITY	Use of Outside Counsel for Law Dept	Written Policy/Selection Process for Use of Outside legal	Pricing/Billing Processes	Evaluation and Rehiring of Outside Legal Counsel
San Jose	Yes. In FY 2002 the law dept spent \$894,613.	The office has no written policy for hiring outside legal council. Selection of outside legal council is a collaborative process among the attorneys, with the final decision made by senior management based on expertise, experience, and track history.	Discounted hourly rates are given for all payments made within thirty days.	Evaluations are completed, however, not with a standardized form. Evaluations are privileged, but made with the same priorities as office evaluations--communication, timeliness, and cost effectiveness. The rehiring of outside legal council is considered using the same process as hiring for the first time, but using the evaluations and notes made on prior case/matter.
Seattle	Yes, amount not disclosed	No	Flat fee. Billed monthly. Each contract differs and is based on negotiation.	No written evaluation. If they didn't do a good job, then it is put in a memo; tend to use same firms repeatedly
Tucson	Yes, in 2002 \$1,759,340	No.	Hourly, mostly continuous contracts with multiple law firms.	Give feedback while contract is going on. Will discuss in meeting when not satisfied with outside councils work or outcome, but don't do written evaluations.

Survey of National Cities - Compensation and Promotion

CITY	Brief Description	Additional Compensation for Building Expertise	Performance Evaluations
Austin	Follow standard City pay scale. Increase through zones based on merit and tenure and then can only promote by moving into supervisory positions.	None	Yes. Annual Success Strategy Performance Reviews and Development Plans prepared by supervisor and employee.
Baltimore	Typical, promotion based on merit.	They are trying to get the ability to give raises on performance that would almost equal the same salary available for those in management positions.	Yes. Employee and Supervisor rank the employees performance on their own. Then they compare.
Charlotte	Starting attorneys begin as an Assistant City Attorney. New attorneys are assigned to a specific department where they remain for at least five years. Attorneys may be promoted to Senior based on good performance. They're stuck in this level until someone above leaves.	None	The city attorney requires of each attorney to write a letter for their performance evaluation. The letter addresses what they've accomplished during the year, explain anything bad that happened, what their goals are for the upcoming year, things they'd like to improve. Compensation is based on the market rate for attorneys in similar cities plus an additional amount for good performance.
Columbus	There is no written plan, more custom & practice. They hire senior counsel from private, corporate, or gov't offices (AG); reward prosecutors with transfer to civil division; they also need supervisory staff; emphasis on training for advanced opportunities.	Yes, though not always the same approach, because pay ranges are sometimes difficult to adapt; sometimes create new position or promote to more supervisory level; protections of civil service, but at-will staff.	Used to perform religiously annually on paper with employee feedback, departed somewhat now not as rigid, spent more time on paperwork than on evaluations.
Denver	Atty Specialist is on par with Unit Leader, further promotion requires supervisory/mgmt duties	Can hire at the specialist level. An atty who demonstrates a higher level of work for a period of time, can be reallocated to a specialist position.	Written, annual standard form.
Indianapolis	Don't have a career path; typical promotion.	None	Annual written appraisal
Jacksonville	The office usually hires lawyers with past experience to fill certain areas of expertise. There are currently two career tracks for attorneys a management track or a senior trial lawyer track.	Additional compensation for building expertise does exist, but on a small scale and is not competitive with the private sector. There is State Board Certifications in Florida, and attorneys are encouraged or allowed to maintain certification.	Attorneys are evaluated annually by division head using TABs tracking system and the varied data stored in division head's files. The attorneys are evaluated in terms of billable hours, client satisfaction and communication, and compliance with management directives.
Las Vegas	Typical. Four levels of attorneys and division chiefs. Designation "senior deputy" for those nearing top of classification.	None	Annual appraisal - takes a varied form. Written instrument once used, but not successful.

Survey of National Cities - Compensation and Promotion

CITY	Brief Description	Additional Compensation for Building Expertise	Performance Evaluations
Memphis	Typical. Promoted first based on time there. Then they have to wait until someone retires or leaves.	No	Yes. Annual evaluations done citywide with the help of Knowledge Point Software.
Milwaukee	Lawyers are recruited are for certain divisions in the office. These lawyers often build their expertise in this area, or refine previous expertise.	Attorneys are not compensated for building expertise. The attorneys in working for Milwaukee are unionized. All compensation, is negotiated with the Union. Also noted that employee interviewed regarded city law dept to be most qualified to handle city issues, cited low turnover and competitive pay.	All attorneys evaluated annually with a standardized form. Additionally, attorneys are evaluated based on % case closures produced by PROLAW.
Nashville	Typical career path; promotion with tenure and performance.	Promoted for acquiring higher levels of legal expertise.	Self-evaluation and then written annual appraisal.
Oklahoma City	The law dept hires based on a division need. No further expertise is encouraged beyond what would be currently needed for filling division needs.	No additional compensation is given for expertise. City Council set all compensation levels based on tenure.	Performance evaluations conducted annually by division head.
Philadelphia	Yes, positions for divisional deputy city solicitor and senior attorney share same salary and legal assistants share salary structure/ supervisor and senior legal assistant	They have the pick of law schools in the East (Penn, Columbia, Georgetown etc.) and so feel they hire for expertise	stick with pretty standard job classifications and pay plan, based on market studies
Phoenix	Lawyers are recruited for certain divisions in the office. These lawyers often build their expertise in this area, or refine previous expertise.	Attorneys are not compensated for building expertise. Attorneys are compensated based on performance evaluations.	Att.1 are evaluated using standard form, by a supervisor at year's end. Attys.2-4 are evaluated using a combination of self-reporting, PROLAW, peer reporting, and supervisor evaluations. No standard for these attorneys.
Portland	Typical. Promoted first based on time there. Then they have to wait until someone retires or leaves.	The City Attorney can give raises at will based on exceptional performance etc.	Yes. City Attorney does evaluation on each employee once a year.
San Diego	All lawyers begin as entry-level prosecutors; pay raises considered twice/yr for newer attys.; once a year for more senior attys.	Yes, success in an assignment is rewarded.	Annual evaluations; different evaluation for attys employed two years or more
San Jose	Six standard job classifications starting with entry level and culminating with City Atty.	No, additional compensation is based on merit and annual performance evaluation.	Annual written evaluations and discussion with the atty; goal-oriented format
Seattle	Typical. Promoted first based on time there. Then they have to wait until someone retires or leaves.	Give merit days and pay as best as possible.	Yes. Surveys are given to each client. Tries to have meeting with clients when available to discuss what they are doing well and what they need to improve on.
Tucson	Typical. Promoted after one year. Then must wait for someone to leave. Increased compensation for going into management.	No	Yes. Annual evaluations in Civil division. Not done in Criminal, but they collect client surveys.

APPENDIX D
OUTSIDE COUNSEL FILE REVIEW

Summary of Sampled Outside Counsel Contract Files

FY	Contract Amt	# Amdmts	Contract Increase	% Increase	Selection Criteria	Documentation of:			
						Engagement Letter	Alternative Pricing	Outcomes	Close-out
1 97	\$20,000	3	\$85,000	525%	None	Yes	No	No	Yes
2 98	\$10,000	6	\$365,000	3750%	None	Yes	No	No	No
3 98	\$10,000	1	\$5,000	150%	None	Yes	No	No	No
4 00	\$40,000	5	\$94,500	336%	None	Yes	No	No	NA
5 00	\$40,000	0	\$0	0%	None	Yes	No	No	NA
6 00	\$39,000	1	\$121,000	410%	None	Yes	No	No	NA
7 00	\$40,000	5	\$497,000	1343%	None	Yes	No	No	NA
8 01	\$10,000	6	\$958,000	9680%	None	Yes	No	No	NA
9 01	\$225,000	1	\$43,000	119%	None	Yes	No	No	Yes
10 01	\$20,000	3	\$97,000	585%	None	Yes	No	No	NA
11 01	\$42,000	0	\$0	0%	None	Yes	No	No	NA
12 01	\$30,000	0	\$0	0%	None	Yes	No	No	NA
13 02	\$3,000	1	\$3,000	200%	None	Yes	No	No	NA
14 02	\$10,000	0	\$0	0%	None	Yes	No	No	Yes
15 02	\$10,000	0	\$0	0%	None	Yes	No	No	Yes
16 02	\$10,000	0	\$0	0%	None	Yes	No	No	Yes
17 02	\$47,450	0	\$0	0%	None	Yes	No	No	NA
18 02	\$1,500	0	\$0	0%	None	Yes	No	No	NA
19 03	\$30,000	1	\$84,000	380%	None	Yes	No	No	NA
20 03	\$25,000	0	\$0	0%	None	Yes	No	No	Yes
21 02	\$85,000	1	\$44,000	152%	None	Yes	No	No	NA
22 02	\$85,000	0	\$0	0%	None	Yes	No	No	NA
23 03	\$71,110	1	\$130,000	283%	None	Yes	No	No	NA
24 03	\$50,000	0	\$0	0%	None	Yes	No	No	NA
25 03	\$7,404	1	\$18,000	343%	None	Yes	No	No	NA
	\$961,464	14	\$2,544,500	365%					

SOURCE: OCA review of a sample of 25 outside counsel contract files, June 2003.

NA - Not applicable, case was open at time of review.