

OFFICE OF THE CITY CONTROLLER



**LEGAL DEPARTMENT
PERFORMANCE REVIEW FOLLOW-UP**

Annise D. Parker, City Controller

Steve Schoonover, City Auditor



OFFICE OF THE CITY CONTROLLER
CITY OF HOUSTON
TEXAS

ANNISE D. PARKER

April 25, 2005

The Honorable Bill White, Mayor
City of Houston, Texas

SUBJECT: Legal Department - Performance Review Follow-Up (Report 04-13)

Dear Mayor White:

The City Controller's Office Audit Division has completed a Follow-Up of the Legal Department Performance Review Report (report) that was issued in August 2000. The findings and recommendations that were presented at the time of the report were distributed to the Mayor and City Council Members. Our review was designed to determine the progress the department has made towards implementation of the recommendations made in the original report. The review consisted primarily of conducting on-site interviews with department personnel and reviewing relevant documentation related to recommendations implemented.

The report, attached for your review, concluded that the Legal Department has made progress in implementation of the recommendations identified in the original report or has implemented alternative procedures in certain instances. Two concerns that were brought to our attention during the performance of the follow-up are noted as new findings, which are presented in the body of the report.

We appreciate the cooperation extended to our auditors by Department personnel during the course of their work and commend the Department for taking actions to address the recommendations noted in the report.

Respectfully submitted,

Annise D. Parker
City Controller

xc: City Council Members
Anthony Hall, Chief Administrative Officer
Michael Moore, Chief of Staff, Mayor's Office
Arturo G. Michel, City Attorney, Legal Department
Judy Gray Johnson, Director, Finance and Administration Department

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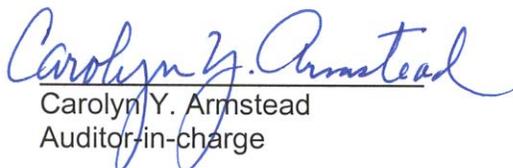
SCOPE AND PURPOSE

We have completed a follow-up review of the findings and recommendations that were presented in the Legal Department Performance Review Report No. 00-22 (report) dated August 10, 2000. Our review was designed to determine the progress the department has made towards implementation of the recommendations made to the department in the original report.

The review consisted principally of conducting on-site interviews with department personnel; reviewing relevant documentation related to recommendations implemented; and creating a compliance matrix categorizing the status of action taken by management. The scope was limited to the recommendations from the report and any new concerns that came to our attention during performance of this work. The review included examining the Legal Department's responses in detail to determine whether management considered the recommendations and strategies for implementation as presented in the report and whether progress was made since its issuance.

CONCLUSION

Based on the results of our review, we conclude the Legal Department has made progress in implementation of the recommendations or has implemented alternative procedures in certain instances. Management provided an explanation for recommendations not implemented. Concerns that were brought to our attention during the performance of this follow-up are noted as new findings, which are presented in the body of the report.


Carolyn Y. Armstead
Auditor-in-charge


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AUDIT FINDING	RECOMMENDATION	ACTION STATUS	WORK PERFORMED	MANAGEMENT RESPONSES	
OVERALL QUALITY OF THE LEGAL FUNCTION					
<p><u>Dept. Organizational Structure</u></p> <p>The organizational structure and the fact that the department performs well with fewer managers than we see elsewhere, demonstrates a "best practice." It was also observed, however that the divisions tend to behave as "silos," interacting quite infrequently with each other, often unaware what the other divisions are doing.</p>	1	Develop strategies to increase communication and collaboration across divisions. Opening the lines of communication between and among the divisions would afford the department greater opportunities to identify synergistic and complementary workflows and procedures.	Implemented	Discussion with Deputy City Attorney indicated weekly meetings are held to go over the next week's Council Agenda and any issues from the Division Chiefs. There are no minutes taken.	The Division Chiefs, Deputy City Attorney and City Attorney meet every Friday to discuss matters pertaining to each area of operations as relates to individual divisions and the department, in general. For the most part, each division handles work that has no relation to the work handled by other divisions. Inter-divisional task forces have been created to deal with specific topics that cross divisions.
<p><u>City Council</u></p> <p>Two (former or present) City Council members were very critical of the Legal Department, with their biggest complaints being timeliness and responsiveness.</p> <p>Although the vast majority of clients perceive the quality of legal services as very high overall, some also see it as inconsistent.</p>	2	<p>The Legal Department should institute procedures, such as opportunity interviews, to monitor client satisfaction on a continuous basis.</p> <p>This large body of knowledge concerning client needs and expectations should be used to generate a set of specific performance measurements.</p> <p>Client satisfaction assessments, in the form of a written client survey, should occur at least every two years. Implement a regularly scheduled and systematic system to use client feedback as a mechanism for assessing client satisfaction and work performance.</p>	Implemented	<p>Discussion with Deputy City Attorney indicated a formal survey was conducted March 2004. Additionally, each Division Chief informally inquires on a continuous basis as to how the Legal Department's service level is perceived.</p> <p>Examined a copy of the Legal Services Survey sent to all departments (clients).</p>	<p>The department has surveyed client satisfaction and uses the results to determine focal points for improvement. The department is working with the IT Department to improve its primary database of work handled to generate reports that will reflect productivity and efficiency. The information will be used to elevate client responsiveness to new levels.</p> <p>Opportunity interviews conducted by managers ad hoc.</p>
<p><u>The "Naysayer" Factor</u></p>	3	The Legal Department should develop a training and	Alternative Implemented	Discussion with Deputy City Attorney indicated that	The Legal Department agrees with the assessment that it is perceived

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<p>The “naysayer” factor refers to the phenomenon where clients of in-house law departments perceive that too many attorneys are quick to dismiss issues or problems by asserting that clients cannot do what they want to and leave it at that. Clients are frustrated at the “nos” they get from the attorneys.</p>	<p>development strategy to address the “naysayer” factor in the department, including increased communication and discussion, and “feedback forums”. Overall, the Legal Department needs more lawyers who are facilitators of the of the City’s operational objectives and who do not just answer with a “no, you can’t do that”.</p> <p>A good approach is to emphasize this in training and bring in counsel from private practice.</p>		<p>through regular weekly staff meetings with the Division Chiefs, the City Attorney discusses providing quality client service and achieving goals of the Mayor. There are no minutes taken.</p>	<p>by some as a “naysayer.” Of course, in reality, this view may have resulted from the department’s functional role in restructuring initiatives in such a way as to preserve the City’s legal position. However, unreasonable deadlines and not being included in “the team” early can frustrate this endeavor by compressing the time by which better alternative legal approaches can be developed.</p> <p>Departmental cultural changes have been made to train attorneys to offer positive alternatives when proposals must be rejected for legal reasons, and to offer risk assessments along with legal advice.</p>
<p><u>Timeliness and Responsiveness</u></p> <p>With the exception of the Real Estate and Contracts Divisions, the Legal Department lacks a systematic approach for tracking the status of legal work. It also lacks an automated matter management system.</p> <p>The department has few resources to assist it in the management of “institutional legal knowledge.” For the most part, the compilations of work product are done on an <i>ad hoc</i> basis, developed by individual divisions as the need arises, and rarely is this compilation of work</p>	<p>4</p> <p>Until such time as it has an automated matter (case) management system, the Legal Department should design and implement a work tracking system (similar to the one that now exists in the Real Estate Division).</p>	<p>Partially Implemented</p>	<p>Discussion with Deputy City Attorney indicated there has not been any development of a new matter database as of yet from the IT Department. However, users in each division of the Legal Department are using the current database KlaimQuest. Examined samples of print screens of KlaimQuest.</p>	<p>The department has long been interested in developing a more useful matter database system. The current one has been in place since Y2K and is obsolete. Although it has been effective in managing a wealth of data related to the department’s matters received, it has been ineffective in generating the types of reports that would empower management in analyzing workload and making decisions.</p> <p>Enhanced current database and initiated pursuit of a solution with the assistance of the City’s IT Department.</p>

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<p>consumption.</p> <p>The division exhibits little to no formal communication processes. Most employees feel comfortable talking to their supervisors when problems arise but there is no formal medium for discussion of division or department-wide issues and concerns or for the dissemination and discussion of division or department-wide policies, procedures, and events.</p>				<p>Management Response.</p>	<p>visible. Hence, we have not experienced an item "out of stock" except in very rare instances. Furthermore, the City's contract with Office Depot combined with the utilization of a P-Card for purchases has accelerated the procurement of office supplies dramatically.</p>

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<p><u>Business Litigation Division</u></p> <p>This division is significantly understaffed with support staff; there is currently one secretary available to support 14 attorneys and legal assistant.</p> <p>The legal assistants do too much secretarial work and too little paraprofessional work appropriate for their training and compensation levels.</p> <p>Compromise and Settlement Agreements (CSAs) take far too long to draft and execute. Some members of this division conceded that it can sometimes take six months from the time of agreement to the payment of the settlement. The CSA process, however, is city-wide and not under the sole control of the Legal Department.</p>	7	<p>On a city-wide basis (i.e., inter-departmentally), reengineer the CSA process, from inception to settlement and payment.</p> <p>Hire three additional support staff to manage the clerical and administrative workload of the division.</p> <p>Delegate all clerical work to the support staff and make sure legal assistants spend the majority of their time performing appropriate legal work.</p>	<p>Not Implemented</p> <p>Same Above</p> <p>Same Above</p>	<p>Interviewed the Division Chief of Business Litigation, Audit Division concurs with Management Response.</p> <p>Same Above</p> <p>Same Above</p>	<p>The recommendation to “re-engineer the CSA process” has been considered and rejected. The CSA process must, at a minimum, include the following elements and flow in the following sequence: (1) The client department requests assistance with a specified problem. (2) The attorney assigned to the matter gathers information and drafts the settlement documents. In some cases, protracted negotiations are required to reach an agreement as to the substance and, in some cases, the form that the settlement is to take. The client department must make the business decisions involved in the negotiation. Once that is achieved, the assigned attorney prepares an ordinance and a request for council action and stewards the documents necessary to place the matter before Council through the bureaucracy. The actual preparation of the documents necessary to present the matter to council typically requires no more than a day or two. (3) If Council passes an ordinance authorizing execution of the agreement, the documents are circulated for signature to the director of the client department, the City Attorney, the Mayor, the City Secretary and the Controller in that order. Once the fully executed originals are returned</p>

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					<p>by the Controller's Office, the client department is notified to take whatever action is required by the Controller to have a check cut and delivered to the Legal Department. Generally, the Legal Department then exchanges the check and a duplicate original of the executed CSA for an agreed take-nothing judgment or other dismissal document to be filed with the Court.</p> <p>We have identified no extra steps in the process that can be removed, nor can the sequence of events be re-engineered.</p> <p>The recommendations regarding word processors and legal assistants have been considered and rejected. For the small difference in the salary burden, well educated and trained legal assistants are much preferred in this division for their broader range of skills over word processors, who have a more limited skill-set.</p>
<p><u>Defense Litigation Division</u></p> <p>Often, the division has to track deadlines into the following year, and does so by writing long lists of deadlines on the backs of used calendar pages, which are tacked to the wall in the attorneys' offices.</p>	8	<p>Implement an automated case/matter management system. This system should include: the ability to track dockets and deadlines providing a "tickler" system that delivers alerts and reminders of upcoming deadlines to all involved parties both within and without the division.</p>	Alternative Implemented	<p>Discussed with Division Chief and Legal Assistant of Defense Litigation the process of tracking deadlines. Examined the Trial Schedules Report, the log maintained and calendars of cases and the various corresponding dates maintained by the Division.</p>	<p>Presently, a three tier tracking system is being utilized. The Division Chief's legal assistant tracks all deadlines on a calendar in WordPerfect. Every trial date, mediation setting, deposition date and scheduling order is entered onto this calendar. Attorneys and legal assistants are provided ticklers. Every date and deadline is recorded</p>

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<p>Attorneys are not always sharing the documents they do create with the rest of the division, because there is no reasonably convenient automated means to retrieve and reuse work product (although work product is shared via the H drive on the network, and the division has a large repository of paper documents).</p> <p>As subpoenas come in, they are assigned to an attorney, who must review and respond to the subpoena immediately. This process consumes a great deal of time and often interferes with the "normal course" of work for the attorneys, and is in most cases –at least in part- better suited to be handled by a legal assistant.</p>		<p>Implement a document management system as the foundation for the Legal Department's system of knowledge management.</p> <p>Assign as much of the work as possible regarding subpoenas to legal assistants rather than lawyers.</p>	<p>Not Implemented</p> <p>Same as Above</p>	<p>Interviewed the Division Chief of Defense Litigation, Audit Division concurs with Management Response.</p> <p>Same as above</p>	<p>in Outlook in addition to maintaining wall and desk calendars and date books. Additional software is being reviewed by IT at Legal Department's request.</p> <p>The division has a large repository of documents housed on its own drive on the department's network, accessible to the entire division. Insofar as a formal document management system is concerned, implementation would require funding and expertise from the IT Department, which we understand is reviewing a City-wide solution. We expanded electronic repository and referred to IT.</p> <p>It is impractical for legal assistants to handle work related to subpoenas because most require that an attorney accompany the subpoenaed City employee to court. Furthermore, the determination of which, documents are subject to the subpoena is best handled by an attorney. New Health Insurance Portability and Accountability Act (HIPAA) requirements make attorney involvement mandatory.</p>
<p><u>Claims and Subrogation Division</u></p> <p>An opportunity exists to significantly improve the efficiency, speed accuracy, and cost-effectiveness of the claims and</p>	<p>9</p>	<p><u>Process Improvement:</u> It is recommended that the Claims and Subrogation Division serve as one of two "reinvention laboratories" for the introduction of continuous process improvement concepts,</p>	<p>Alternative Implemented</p>	<p>Discussion with Division Chief of the Claims and Subrogation Division indicated the division has untaken steps to streamline the entire process resulting in</p>	<p><u>Inefficient Information Collection From Other Departments</u></p> <p>With regard to process improvement concepts and training, the Division is continuously reviewing its processes to identify any area that may be</p>

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<p>subrogation processes. Specific weaknesses include:</p> <p>Inefficient Information Collection from Other Departments. – Perhaps the biggest frustration for Claims and Subrogation personnel is the delay in obtaining factual information, such as incident reports, from the city department or agency whose activities gave rise to the claim.</p> <p>Intake Delay. – The Claims and Subrogation staff report that it can take two to three weeks for received claims to be forwarded by the City Secretary's Office to the claims adjuster in the Claims and Subrogation Division of the Legal Department.</p> <p>Internal Review Delays. – Before claims can be approved for payment, the recommended settlement goes through multiple internal reviews. The Claims and Subrogation staff reports that the review process can add as much as two weeks to the process, but they question what value the multiple reviews actually add.</p> <p>Technology. – Fax and telephone are the only means to communicate with other city departments and agencies; hence,</p>	<p>tools, and methods.</p> <p>A process improvement initiative in the Claims and Subrogation Division should include: provide training to all Claims and Subrogation Division personnel on basic process improvement concepts and methods, which each person can apply to his or her own work.</p> <p>Execute improvements on a pilot basis, measure the results, and refine improvements as necessary. Measurable and substantial improvements in performance should be observable within 45 to 60 days.</p> <p>Publish the results throughout the Legal Department, as well as "lessons learned" during the process improvement project.</p> <p><u>Technology</u> Consolidation of all claims and subrogation databases into a single system. The system should be expandable to permit limited direct input, file transfer, and report generation capabilities for other city departments and agencies.</p> <p>Communicate with other</p>	<p style="text-align: center;">Partially Implemented</p>	<p>a significant decline in the number of claims outstanding especially with HPD claims, which had the most claims outstanding.</p> <p>Examined current outstanding Master List of the Houston Police Department Vehicles Without Damage Appraisals and compared it to the outstanding list from prior year. Verified a 90% decrease of outstanding claims over an 18-month period.</p> <p>Additionally, the process has improved with the passing of Ordinance 2004-460 in May 2004, increasing the threshold amount in which claims against the City can be settled without Council's approval. Examined copy of ordinance.</p> <p>Discussion with Division Chief indicated the division is currently utilizing KlaimQuest database for maintaining all claims and subrogation cases. Examined sample print screens of the database.</p>	<p>modified to increase efficiency. Members of the Division routinely hold round table discussions to share experiences with co-workers on methods and practices to reduce a claim life. Historically, Houston's liability payouts have been extremely low in comparison to the ten largest national cities.</p> <p>With regard to inefficient collection of information from other departments, the Legal Dept purchased new PCs and upgraded Microsoft Outlook, which has increased efficiency in requesting and receiving information from the departments. Further, F & A is working with the Human Resources Safety Division to create a citywide database for all information pertaining to collisions of City vehicles. It will contain electronic copies of accident reports, which will expedite the processing of claims. The Division must still rely upon other departments for supporting documentation including appraisals to repair/ replace the damaged property. HPD, which has always had the most outstanding subrogation claims without appraisals, has employed an in-house appraiser, which has enabled them to remain current.</p>

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<p>the claims process is still very paper-intensive.</p>	<p>departments and agencies. Direct network communications with other departments and agencies would provide a channel to speed up transfer of information and files that claims adjusters need to do their work.</p>			<p><u>Intake Delay</u> With regard to the intake delay, the City, a home-rule municipality of the State of Texas, is immune from liability for torts involving governmental functions except to the extent the immunity has been waived by the State Legislature. With the enactment of the Texas Tort Claims Act in 1969 (as amended in 1987) the Legislature partially waived the government's immunity and codified thirty-three functions as governmental. The Legislature, however, placed conditions on the waiver, one of which was requiring claimants to timely notify the governmental entity of the claim. Houston's City Council, by Ordinance No. 94-957, designated the City Secretary's Office as the place of official filing of notices of claims. While it may appear to a layperson that this requirement is a bureaucratic runaround, notice of claim is a fundamental requirement in both the private and public sector. The City Secretary's Office, the official custodian of City records, is the most reliable recipient for this information. Claimants may provide a courtesy copy of their claim to the City Attorney's Office when they file the original with the City Secretary's Office.</p>

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					<p><u>Internal Review</u> With regard to the internal review delays, the liability claim process does include multiple levels of review. At least in part because of ordinance requirements, however, the review process has been streamlined. The ordinance that permits the City Attorney to settle claims and lawsuits without City Council approval was recently amended to \$25,000, which facilitates the processing of payments.</p> <p><u>Technology</u> The Legal Dept has purchased new computers and upgraded to Microsoft Outlook. The Division is utilizing Outlook to submit requests for information to other departments, which has increased the efficiency of claims processing. In addition, all claims and subrogation matters are maintained in KlaimQuest database, which is accessible to all members of the Legal Dept., which permits direct input, file transfer, and report generation capabilities.</p>
<p><u>Contracts Division</u></p> <p>Some clients stated that the division is slow in providing advice and services. Understaffing. - Some clients assume that delays are due to inadequate lawyer staffing in the</p>	10	<p>In addition to department-wide initiatives, the Contracts Division should closely examine internal review and quality assurance procedures to ensure that they do not unnecessarily add delay or otherwise interfere with meeting client needs and expectations.</p>	Implemented	<p>Discussion with the Division Chief of the Contracts Division indicated there are forms that have been standardized that the Division Chief does not have to review, thereby reducing delay time.</p>	<p>The division's tracking system was transitioned to the departmental system but it has been unable to produce useful reports. The departmental database system is in the process of being replaced with a more productive version.</p>

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<p>Contracts Division.</p> <p>Internal Review Procedures – Internal review of staff attorney work, before it is transmitted to the clients, is viewed by some clients as adding delay, but not adding proportionate value, to the provision of legal advice.</p> <p>Unclear Priorities – Almost every client representative stated that when they describe a contact as a high-priority item, the Contracts Division meets their expectations. When priorities are not expressly stated, however, timeliness tends to be highly variable.</p> <p>The Lawyer's Role In Contract Advice – Some client representatives complained that contract lawyers go beyond their expected role of providing legal analysis and advice and attempt to interject themselves into business (operational) issues.</p> <p>Many clients have expressed an interest in using boilerplate templates, which they would fill out and complete, and which could cover many of the contracts they need.</p>	<p>The division chief needs to more closely monitor and control the timeliness of the work of all lawyers in the division.</p> <p>The division should develop electronic boilerplate templates for appropriate contracts and allow clients to start the contract-writing process with these templates for appropriate contracts and allow clients to start the contract-writing process with these templates in the majority of situations.</p>	<p>Same as above</p> <p>Implemented</p>	<p>Examined samples of pre-approved contract forms.</p> <p>Same as above</p> <p>The Contracts Division has developed standard contracts for various departments such as in the case of Public Works and Engineering Department. The department electronically sends information that's needed as in the case of engineering contracts. Examined example of Electronic Merge for Engineering Contracts.</p>	<p>In response to the original report considerable time was spent identifying additional fields and features to be added to the department's file database to monitor the timeliness of matters handled.</p> <p>The Building Services and PWE departments have assisted the division by providing funding for temporary legal services during peak demand periods.</p> <p>Construction management, health services, engineering, and strategic partnership contracts have been reduced to forms that need not be reviewed by the division chief. The Administration requires that the Deputy City Attorney review contracts that are to be executed by the Mayor without City Council approval, however, form agreements are approved expeditiously.</p> <p>A high volume of priority matters (as designated by the client department of the Administration) makes it difficult to process routine matters in a timely manner. Agenda preparation meetings are being attended to obtain clarification of client needs.</p> <p>Except where the issue is a legal one, we may warn the client about</p>

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					<p>the consequences of a decision with regard to contract terms, but the decision is theirs. We have also developed several innovative ways to get “impossible things” done – such as the developer reimbursement ordinance.</p> <p>The division is working with the Agenda Director to establish single points of contact with departments to further identify priorities, especially at calendar and fiscal year end. Finally, a contract has been entered into for professional review of the City’s contractor insurance requirements. It is the opinion of this division that this is the primary cause of delayed contract approval.</p> <p>Since the audit, we have developed a number of forms that client departments can use to generate their own contracts and ordinances. We have found this approach to be effective with some clients but not with others depending upon the individuals involved. New fields and features will be added to the department’s intake database to better monitor timeliness and turnaround time.</p>
<p><u>General Counsel Division</u> The General Counsel Division is charged with managing all of the Texas Open Records Act (TORA)</p>	11	Reengineer the work processes and procedures in the General Counsel Division. The Legal Department needs to evaluate the specific work and process issues	Implemented	Discussion with Division Chief of the General Counsel Division indicated the process has been more evenly distributed with schedules	Trained employees in each department who function as public information officers (PIOs) to handle routine requests with little or no oversight by division attorneys.

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<p>requests for the city.</p> <p>A small group of attorneys are assigned a highly disproportionate number of these requests, and the TORA work effectively consumes all their time, leaving little for the other duties of the General Counsel Division resulting in a significant amount of this work could and should be performed by legal assistants, not attorneys, with final review of the responses to the document requests by the attorneys or division management.</p> <p>There is a significant disparity among the attorneys in terms of TORA workload. Some have little or no TORA responsibilities, while others are overwhelmed with TORA workloads that effectively remove them other types of work.</p> <p>Several clients were very pleased with the service they receive on open records work, but they complained about the lack of timeliness in getting legal opinions and other work from the General Counsel Division.</p>	<p>affecting this division to realign the management and oversight process along with the proper delegation of work among attorneys, legal assistants and support staff.</p> <p>Review the mix and skills of legal assistants in the General Counsel Division for appropriateness.</p>		<p>among the attorneys.</p> <p>Examined training materials and rotation schedule for attorneys.</p>	<p>Trained PIOs on open records enabling them to identify situations requiring assistance from the division's attorneys resulting in greater efficiency in handling open record requests.</p> <p>Attorneys assigned to open records matters work as the intake attorney on a rotation schedule which allows each more time to handle other assigned matters.</p> <p>Division hires only formally trained legal assistants which has provided a higher level of assistance to all division attorneys and allowed delegation of a larger share of the open records and other legal tasks, freeing up division attorneys to handle other tasks.</p>

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<p><u>Labor Division</u></p> <p>The principal client frustration with this division is delay, which is viewed as a result of the city's cumbersome process for review of complaints by city employees. In addition, one client indicated that division lawyers are not always adequately prepared for arbitration hearings, although that same client said that the lawyers are always well prepared for court hearings and trials.</p>	12	<p>The Division Chief should take whatever steps are necessary to address client concerns regarding timeliness, and preparation for arbitration hearings.</p>	Implemented	<p>Discussion with Division Chief of the Labor Division indicated the manager attends Civil Service Commission hearings to critique the attorneys and give them feedback of their presentation. Monthly reports of division statistics and open and closed cases are prepared. In addition, the Labor Division has resumed staff meetings, which are held approximately every six weeks. Examined the Monthly Division Report and Monthly General Report (of open and closed cases and their status and aging).</p>	<p>The Legal Dept does not set dates for hearings, etc. These are done by arbitrators and the parties collectively; the departments themselves set Lauderfills and the HR Dept schedules Step IIIs. Courts set docket dates for trials and appeals have statutory time scheduling. The Legal Dept has little control over timing except for the time from Lauderfill to approval of the Indefinite Suspension letter. That can be accelerated or delayed when more information is needed. The Labor Division relies on the Department to give the go ahead to authorize the Indefinite Suspension.</p> <p>We monitor time from open to close.</p> <p>All attorneys are required to be prepared for arbitrations, hearings and trials. This Division has an excellent track record for successful results. More facts are needed to determine whether the one comment regarding arbitration preparedness actually involved one attorney being unprepared, multiple attorneys, a situational issue or a systemic problem.</p> <p>Regular Division lunch gatherings are held to discuss issues and assist in preparedness. Reiterated expectation for preparedness.</p>

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<p><u>Criminal Law Division</u></p> <p>The Criminal Law Division is a remarkable organization. The consulting team had never observed a group of lawyers who manage such a crushing caseload – measured in terms of millions of cases annually – with such high morale.</p>	<p>13</p> <p>We recommend that the Criminal Law Division serve as one of two "reinvention laboratories" for the introduction of continuous process improvement concepts, tools, and methods.</p> <p>The Altman Weil team believes that Criminal Law Division – the division with the heaviest workload in the entire Legal Department – can lead the department to breakthrough improvements in internal operating efficiency.</p> <p>Provide training to all Criminal Law Division personnel on basic process improvement concepts and methods, which each person can apply to his or her own work.</p>	<p>Partially Implemented</p>	<p>Discussion with Division Chief of the Criminal Law Division indicated the Integrated Case Management System (ICMS) project is on target for going live in June 2005, which will heavily benefit processes in the division as well as Municipal Courts and Police departments.</p> <p>Examined the ICMS Status Update Report as of May 2004 outlining the project overview and timelines.</p>	<p>The Criminal Law Division supports the audit recommendation. The new ICMS is scheduled to be operational in June 2005 and we anticipate that it will dramatically improve our operations and enhance the training of our prosecutors and staff.</p> <p>Final touches of ICMS project are almost complete (Maximus and Deloitte).</p>

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SYSTEMS, PROCEDURES AND MANAGEMENT REPORTING					
<p><u>Management Reporting</u></p> <p>The majority of reporting in the Legal Department is both <i>ad hoc</i> and manually prepared. It appears that many of the management reports generated for years in the Legal Department are extremely time consuming to provide and add very little value.</p> <p>Aside from the caseload reports generated from the KlaimsQuest file management system, there is no automated report capability. The City Attorney's Office does not have a means for generating automated reports on important management factors.</p> <p>The Department also does not have the ability to track, manage, and report outside and third-party vendor costs as they relate to specific matters, nor do they have the ability to track and manage outside counsel costs and compare firms regarding efficiencies and productivity.</p>	<p>14</p>	<p>Review every management report to determine for each whether the management information value it provides is worth the time it takes to produce it. This includes reviewing the current cache of automated and manual reports used throughout the divisions, compiling and concatenating them based on their value and usefulness, and developing a comprehensive set of additional reporting requirements.</p> <p>The management reporting requirements should then be integrated with case/matter management requirements for developing an automated system for generating the reports management needs to make important decisions and run the legal department effectively. (See original Performance Review Report No. 00-22 for listing of recommended reports).</p>	<p>Not Implemented</p>	<p>Interviewed Division Manager of the Administration Division and Division Chief of the Contracts Division. It was indicated the Strategic Purchasing Division has been contacted (as of January 2005) for assistance in developing a Technology RFP to engage a vendor for a department-wide database. No timeline has been set as of yet.</p>	<p>The department is working with the IT Department to improve its primary database of work handled to generate reports that will reflect productivity and efficiency. Additionally, the final product as envisioned will remove the need for each division to produce monthly activity reports.</p>
<p><u>Information Systems Strategy and Planning</u></p> <p>The City Attorney's Office is currently pursuing several technology initiatives. Despite these ambitions, however, the</p>	<p>15</p>	<p>The Legal Department should consider and develop a short-term strategic technology plan to address those initiatives that the Legal Department must accomplish within the next 12 months.</p>	<p>Partially Implemented</p>	<p>Discussion with Deputy City Attorney and Division Manager of Administration Division indicated the department has addressed their short-term goals of providing new PC's and</p>	<p>Since the IT Department came into existence, the Legal Department has deferred to its expertise in plotting the direction of the department's technology initiative. Our focus has become less technical and more operational in the nature of planning</p>

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<p>Department lacks a cohesive and comprehensive information systems <i>plan</i> designed to guide current and future technology initiatives to be in line with the Department's and the divisions' strategic and tactical requirements.</p>	<p>The department should also develop a long-term strategic plan to address longer-term objectives and considerations.</p> <p>The Technology Committee should develop a clear mission statement, and set a strategy and structure for meetings, processes and procedures for its activities.</p> <p>The Information Systems organization should develop a strategy for soliciting feedback and measuring client (Legal Department users) service and satisfaction with the IS support function.</p>		<p>Windows 2000.</p> <p>Technology Committee meetings are held periodically as issues arise since purchase of new PCs. However, the Information Technology Department has not provided the Legal Department with a long-range strategy of technology initiatives. Examined copies of Technology Committee Meeting Agendas and the legal services survey conducted in March 2004.</p>	<p>our course. We are in contact with the IT Department about requirements as they arise.</p> <p>We schedule a technology meeting every 2nd week in the month (if needed) to discuss issues or new technology introduced into the department. New desktops and laptops have been purchased. All desktop systems have Windows XP Professional; laptops have Windows 2000 Professional. All desktops have 256 MB of ram 40 gig of hard drive space.</p> <p>The Staff Administration Division conducts a periodic survey of the department to determine satisfaction with services provided. Included within the scope of the survey is feedback relating to the information technology group</p>

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<p>including the current initiative to roll out the KlaimsQuest system to all the users.</p>	<p>output.</p> <p>The department should consider one system for department-wide system deployment, such as file management, case/matter management, and document management; another system to manage file servers, group collaboration and email; and a web server for internet access and intranet/extranet deployment.</p>		<p>supported by Microsoft, which is potentially high risk for the department. (See New Finding I in Audit Report). Audit Division concurs with Management Response.</p>	<p>Division files and record archive files, respectively. The hardware cannot accept a higher version of Novell due to age. The risk associated with failure of either of these servers is minimal because we have a separate server that is used to run our training room that may be transferred immediately to the site of a failed server where complete backup files may be installed.</p> <p>The primary operating risk to which the department is exposed involves the KlaimQuest server and software. The server operates on Windows NT4.0, which is no longer supported by Microsoft. Upgrading to Windows 2000 is not a workable solution because the platform, upon which KlaimQuest is written, is a version of SQL server that is no longer supported either. The department has recognized this vulnerability and has been attempting to develop a solution with the assistance of the IT department. We are in the last stages of evaluating a solution provided by a vendor identified by the Strategic Purchasing Division of the Finance and Administration Department and hope to finalize a decision by the end of April 2005.</p> <p>Regarding E-Mail, our E-mail is now administered by the IT Dept.</p>

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<p><u>Communications and Facsimile Resources</u></p> <p>The City Attorney's Office currently maintains a fax machine farm. All fax communications are centralized from this room.</p> <p>Because the fax machines are physically centralized, attorneys rely on a delivery system to receive their faxes. Often, this encroaches on the time-sensitivity of urgent, court-related documents. Such delays pose the potential for liability exposure.</p> <p>Outside of regular business hours, the fax room is locked, and there is only one fax machine available for use. This machine, however, is generally tied up after-hours by large incoming faxes, and is effectively rendered unusable by the rest of the department.</p>	18	<p>Implement a RightFax© (or similar) server. This functionality allows faxes to be received centrally, which are then routed electronically via email to the intended recipients(s).</p> <p>Implementing an automated facsimile system is a "best practice" in the industry – it empowers a law department in their communications needs, reducing costs for paper, equipment, service, and time, and it frees up vital resources.</p>	Alternative Implemented	<p>Discussion with Division Manager of Administration indicated several fax machines have been placed on two different floors and all incoming faxes are logged and reviewed at each fax machine.</p> <p>Examined copy of log sheet.</p>	<p>There are legal considerations, which do not permit us to receive faxes via the Xerox docu-centers.</p> <p>Personnel, however, are transmitting faxes via the Xerox Docu-centers.</p>
<p><u>Printers and Document Production Systems</u></p> <p>The Legal Department has a cache of 46 HP LaserJet III, IV, and V printers on an HP Jet Direct network. This seems to be an appropriate mix and amount of printers. However, in discussions with department staff, it was learned that some printers are connected directly to individuals'</p>	19	<p>Develop a departmental printing resource implementation and distribution strategy to ensure meeting resource requirements, fairness, and accountability for load variance. This strategy should also include a plan for upgrading printers as they age and become unusable, and for adding higher volume services as needed.</p>	Alternative Implemented	<p>Interviewed Division Manager of Administration. Examined the Legal Department Printer Comparison Report listing and correspondence regarding the plan for upgrading printers as they are retired.</p>	<p>The IT Dept has a plan to replace aging printers with abundant Xerox docu-center print capability. We have reservations about this strategy but have not yet had to address it because our printers have been remarkably reliable for many years.</p> <p>Our aging HP Printers are all networked; as they are retired, we will consider how we may comply</p>

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<p>computers, and are not available over the network. This practice limits the productivity of the department regarding its available resources. It also perpetuates the attitude that certain staff can have their own dedicated printers, and causes conflict and feelings of ill will among those that do not have dedicated resources.</p>					<p>with IT's initiative to have personnel print to the Xeroxes. All HP printers are networked for IP, which will facilitate the transition to MS Active Directory permitting all personnel to print to any printer in the department.</p>

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very specific department requirement, surrounding the Records Administrator's role in managing the department's file setup management. However, because the use and functionality was specifically developed for a niche work process, it is doubtful whether the system will be embraced and used to its full potential.					

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<p><u>Additional Systems</u></p> <p>Some clients, including the City Controller, have expressed interest in the availability of a formal compilation and codification of formal opinions rendered by the Houston City Attorney's Office.</p>	22	<p>The City Attorney's Office should evaluate the merits and perceived need for an opinions database that is available publicly, or at least made available to the City and its Departments.</p> <p>At the very least, the existence of the current opinions database should be communicated to the Legal Department's clients so that they know it to be available as a resource that they could tap, via the attorneys who serve them.</p>	Not Implemented	Interviewed Deputy City Attorney and Division Manager of the Administration. The Audit Division concurs with Management Response.	Opinions are often issued as attorney-client documents. This privilege would be lost if the database was widely available. Further, there is some concern that a department, without legal training, may erroneously rely on an opinion issued under one set of facts in connection with a similar but legally distinct set of facts. In our view, allowing Legal Department personnel to review and identify prior relevant opinions is the better course of action.
<p><u>Productivity Software and Applications</u></p> <p>The Legal Department has not developed a strategy or policy for standardization of systems and applications on its systems.</p> <p>The Legal Department's systems represent a mix of competing and incompatible applications.</p> <p>The Legal Department has not developed a strategy for upgrading applications and setting policies for the management of system version incompatibilities.</p> <p>The Legal Department has not sought to obtain the most recent product releases for the applications it has deployed.</p>	23	<p>The Legal Department should develop, as part of a comprehensive information systems plan, a strategy for deploying productivity systems for the desktop.</p> <p>The Legal Department should standardize on Microsoft's Office Professional productivity suite, Word, Excel, PowerPoint, Access and Outlook.</p> <p>The Department should consider upgrading its cache of legal research resources to include internet-based access to LEXIS/NEXIS, Westlaw, and other Internet or network-based electronic research and reference systems.</p>	<p>Not Implemented</p> <p>Implemented</p> <p>Implemented</p>	<p>The Audit Division concurs with Management Response.</p> <p>See Worked Performed in # 15.</p> <p>Discussion with Division Manager of Administration Division and LAN Specialist indicated the department uses internet-based resources such as Westlaw, AutoTrack, and Pacer Public Data. Verified resources on the Internet.</p>	<p>We've referred to the IT Department.</p> <p>Completed.</p> <p>Completed.</p>

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	<p>The Department should augment its desktop resources with a network-based fax system, such as RightFax, that would allow users to send and receive faxes from their desktops.</p> <p>To manage software applications at the desktop, the IS department should consider a network-based ghosting and backup system.</p>	<p>Not Implemented</p> <p>Partially Implemented</p>	<p>Interviewed LAN Specialist and the capability of faxing from desktops are not in place presently. The Audit Division concurs with Management Response</p> <p>Discussion with LAN Specialist indicated a ghost imaging exists currently for desktops with work that's saved to the network. Any documentation on a users desktop hard drive is not backed-up.</p>	<p>We have just been advised that the software issue with the Xerox contract has been resolved and that we may very well be able to fax from the desktop. However, with respect to the receipt of faxes, it has been deemed necessary that all incoming faxes be received by our staff in the fax/supply room so that an accurate record may be maintained. This is of critical importance in that legal "notice" is served to the Legal Department via fax.</p> <p>We maintain a standard Ghost image for each type of PC (we have currently 3, plus the image for training PCs). We do not backup desktop systems at all. The volume would be much too high. All users are encouraged to save files that need backup to our Netware server, which is backed up every night. If a desktop system crashes, we simply restore it from the appropriate Ghost image, recreate the local user accounts and it's back up and running.</p>

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	Develop an in-house self – study training resource.			Center offers very low cost classes that were not widely available at the time of the audit. We have sent numerous employees to training at the E.B. Cape Center on various software applications.
SELECTED ISSUES RELATING TO OUTSIDE COUNSEL				
<u>Outside Attorney and Law Firm Selection, Retention and Monitoring</u> During interviews, it was learned that Division Chiefs, and often the responsible attorneys, personally review the invoices generated by outside counsel to ensure accuracy and efficiency. Divisions are responsible for the individual work they generate, and all the work sent to outside counsel is managed by those who create and/or assign the work.	26	The Legal Department should appoint one of its attorneys to be the department-wide manager of outside counsel. Although it is recommended each division continue to review the bills of outside counsel with whom they are working, the idea here is to create a department-wide resource on techniques and processes for monitoring and controlling outside counsel.	Alternative Implemented	Reviewed the Legal Department's Policy On Engagement Of Outside Legal Counsel. The policy addresses standards such as firm's expertise, coordination of work, fees and expenses and monitoring. Individual attorneys working with an outside firm are in the best position to verify work performed and authorized scope. Centralized standards have been developed and disseminated. Training is conducted department-wide on reviewing and managing outside counsel invoices consistent with City contract terms. Contract compliance responsibilities have been assigned to an Administrative Supervisor in the Staff Administration Division.
<u>Approaches to Alternative Pricing Structures</u> Despite the detailed billing and work requirements in the City's outside counsel guidelines, hourly billing leaves room for inflated and unnecessary time billed by outside counsel. Interviews revealed that Division Chiefs or handling attorneys do line-by-line reviews of all outside counsel bills. Implementing a fixed fee process will allow time to be	27	Develop and require fixed-fee arrangements. Done right, fixed fees will produce a reduction in the amount of money that is being spent on outside counsel, in addition to reduced bill oversight, with no diminution in the quality of legal services. Implement incentives for firms to reduce costs and time. The Legal Department should also consider using cash incentives to firms that settle cases early, and to those that undertake creative settlement	Not Implemented	Interviewed Deputy City Attorney, Audit Division concurs with Management Response. The Legal Department assigns a very limited scope of work and number of cases to outside counsel. We currently spend approximately \$700K on outside counsel fees and expenses, annually. The number of cases is very small and generally limited to the most complex, unusual, and document-intensive cases handled by the department. In certain instances, a fixed-fee arrangement can be made for these cases. However, in the majority of cases of this nature, the scope is somewhat indeterminate and a

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saved and free up attorneys to work on legal matters.	initiatives in litigation matters.			<p>fixed-fee arrangement is often not available. We will, of course, continue to review outside counsel engagements to determine when a fixed-fee arrangement is most reasonable. We certainly recognize that alternative fee structures are a topic of lively debate in the legal community and are aware of the benefit of their use when appropriate.</p> <p>As described above, the Legal Department very rarely engages outside counsel in situations where settlement is a possibility. In most circumstances where a settlement is possible, the Legal Department will have pursued that option prior to engaging outside counsel.</p>	
PRODUCTIVITY AND PERFORMANCE MEASUREMENT					
<p><u>Caseloads, Staffing Levels, and Departmental, Divisional and Performance Measurement</u></p> <p>The principal weakness in Legal Department productivity, however, is not output, but the lack of accurate and reliable systems to measure it. The current case-based systems, however, are not accurate enough to allow Legal Department managers to make decisions with a reasonable degree of accuracy.</p>	28	Develop measurable performance indicators for all lawyers and staff in the department, and relate the performance measurements to client needs and expectations	Partially Implemented	See Work Performed in # 21.	See response to # 21. Referred to IT.

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<p><u>Supervision of Work</u></p> <p>When asked to rate the Legal Department in several areas on a scale of 1 (lowest) to 10 (highest), “adequacy of supervision over lawyers’ work” received an average rating of 8. There is a danger, however, of over-inspection of legal work, which some clients correctly perceive as adding delay, but not value, to the delivery of legal services.</p>	29	<p>Review internal processes for supervision and review of work product to reduce the number of review steps to the minimum needed to ensure accuracy and professional responsibility.</p>	Alternative Implemented	<p>Discussion with Deputy City Attorney indicated the number of review steps has been minimized to the level of Division Chiefs. (Also, see section titled <i>Legal Department Divisional Analysis</i>).</p>	<p>The optimal level of supervisory review of any lawyer’s work is based on the experience and expertise of the lawyer. The analysis is an individualized one that is ongoing.</p> <p>Advised Division Chiefs to adjust the level of reviews as appropriate. Responses above address specific instances where this has occurred.</p>
<p><u>Timekeeping</u></p> <p>The Legal Department does not track attorney or paralegal time. The opinion is that the department is failing to take advantage of the management tool provided by comprehensive timekeeping. They provide information about how much work goes into each type of case, and that information is critical to planning.</p>	30	<p>Develop, require and enforce the following timekeeping practices:</p> <p>All lawyers and paralegals should record every legal matter.</p> <p>Turn in timesheets daily and be recorded in six-minute increments (tenth of hours).</p> <p>Timekeepers should be required to account for all hours worked both legal/client work and more general office and administrative work.</p>	Not Implemented	<p>Interviewed Deputy City Attorney, Audit Division concurs with Management Response.</p>	<p>A number of years ago the Legal Department instituted time accounting for attorneys and legal assistants, regardless of whether the time was reimbursed by another department or a third party. This time billing process, both individually and collectively, did not prove useful. The cost of inputting the data into a usable database, coupled with the time lost through attorneys’ and legal assistants’ maintaining accurate time billing efforts far exceeded any managerial benefits derived from the program. The time billing project was terminated a number of years ago. We continue to believe that having our staff record their activities in six (6) minute increments is of limited value, detrimental to morale and costly in terms of the time required for maintaining such information and entering it into a database.</p>

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<p><u>Delegation of Work</u></p> <p>Delegation practices in many places in the Legal Department need to be improved. Some senior lawyers, including Division Chiefs, hold on to too much of the work or insist on reviewing virtually everything produced in the division, and become bottlenecks to efficient and timely workflow.</p>	<p>31</p> <p>Develop a strategy to ensure that lawyers delegate work appropriately to legal assistants. Division-by-division, the department should evaluate the work of legal assistants and develop a plan for efficiently managing and delegating workload to them.</p>	<p>Implemented</p>	<p>Discussion with Deputy City Attorney and Division Chiefs indicated that legal assistants are appropriately supervised and workload is appropriately delegated.</p>	<p>The optimal level of supervisory review of any legal assistant's work is based on the experience and expertise of the legal assistant. The analysis is an individualized one that is ongoing.</p> <p>Advised Division Chiefs to adjust the level of reviews as appropriate. Responses above address specific instances where this has occurred.</p>
LAWYER COMPENSATION AND PROFESSIONAL DEVELOPMENT				
<p><u>Compensation, Survey, Low Compensation Creates High Turnover</u></p> <p>Compared to the lawyer and legal assistants (paralegals) working in the government law offices surveyed, those working for the City of Houston are significantly under-compensated.</p> <p>The primary result of lawyers and legal assistants being paid far below market is its effect on the turnover rate for these positions.</p>	<p>32</p> <p>Increase compensation. It is imperative that the City of Houston look for ways to increase lawyer and legal assistant compensation. At a minimum, the Legal Department should increase compensation to at least the same levels as those found in the other major city and county legal departments in the State of Texas.</p> <p>The Legal Department should consider other ways to reduce turnover.</p>	<p>Not Implemented</p>	<p>Interviewed Deputy City Attorney and Division Chiefs, Audit Division concurs with Management Response.</p>	<p>The department wholeheartedly agrees with the conclusion and recommendation that compensation for lawyers and legal assistants be increased to a level comparable to at least that found in other major municipal and county legal departments in Texas. We believe that the differential between the salaries paid at the City of Houston Legal Department continues to reflect a strong disadvantage vis a vis other municipal and government law departments in the State of Texas.</p> <p>Additional funding was requested in every budget submission since this recommendation was made citing this recommendation, but unable to implement because of fiscal constraints.</p>

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<p><u>Professional Development</u></p> <p>The Legal Department does not track specific course information for each attorney. The department would have no way of knowing whether lawyers fulfill their continuing legal education (CLE) requirements in a timely manner.</p>	33	<p>The department should budget for and track time spent on training, both internal training and outside CLE. The department should also track specific CLE course information for each lawyer.</p>	Implemented	<p>Examined copy of Continuing Legal Education (CLE) Report.</p>	<p>A spreadsheet including all of the information described in a searchable format has been developed and will be fully implemented in FY05. The data recommended to be tracked is centrally retained.</p>

NEW AUDIT FINDINGS AND RECOMMENDATIONS

I. OBSOLETE SERVER AND SOFTWARE

FINDING

The Department has been operating a database with server and software that is obsolete and is no longer supported by Microsoft. There is potentially high risk should there be a problem in this area. Currently, the department is working with Strategic Purchasing Division of the Finance and Administration Department in selecting a vendor for a new contract for server and software.

RECOMMENDATION

We recommend that the Department continue to pursue selection of a vendor to provide a replacement of the server and software for the department-wide database. Further, a temporary maintenance contract should be obtained until an approved vendor has been selected.

II. SYSTEM BACK-UP PROCEDURES

FINDING

The Legal Department has two servers, which are backed up on tape each night. However, the back-up tapes are not properly stored or secured. Through interview and observation, it was noted the back-up tapes for one server is stored on top of the LAN Specialist desk and the back-up tapes for the other server are stored in a box in the same office.

RECOMMENDATION

To ensure that the Department's back-up records are preserved, we recommend the back-up tapes should be secured in a fireproof safe, if maintained in the department, or stored off-site.

EXHIBIT I



CITY OF HOUSTON

Legal Department

Interoffice

Correspondence

To: Annise Parker
City Controller

From: 
Arturo G. Michel
City Attorney

Date: April 6, 2005

Subject: Altman Weil Audit Performance
Review Follow-up

Transmitted herewith is the Legal Department's management response to your office's two recommendations resulting from your follow-up of the Altman Weil audit conducted in FY2000.

Recommendation:

We recommend that the Department continue to pursue selection of a vendor to provide a replacement of the server and software for the department-wide database. Further, a temporary maintenance contract should be obtained until an approved vendor has been selected.

Management Response:

We have met with the IT Department to finalize funding arrangements and request technical guidance in connection with a prospective contract with Legal Files for the replacement of the KlaimQuest database. As to the proposal of entering into a temporary maintenance contract with the developer of the KlaimQuest application (Magellan Technology), we believe our risks would only be partially addressed; failure of Windows NT is not within Magellan's purview and this software is no longer supported by Microsoft. Hence, we believe that our best solution, the one that offers the most immediate route to success is to enter into a contract with Legal Files. In this manner, our vulnerability to risk will be minimized. We maintain a good relationship with the principals of Magellan and should a problem arise for which they could provide relief, we are prepared to fund a PO immediately.

Recommendation:

To ensure that the Department's back-up records are preserved, we recommend the back-up tapes should be secured in a fireproof safe, if maintained in the department, or stored off-site.

**Views of Responsible
Officials**

EXHIBIT I

Annise Parker

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Management Response:

The Legal Department agrees with this recommendation and is procuring a fireproof safe capable of storing backup tapes covering several weeks. Once the safe has been filled to capacity we will relocate its contents offsite to our facility in the Municipal Courts building.

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***Views of Responsible
Officials***