



Office of the City Auditor

**Audit of the Office of the
City Attorney**

Report Date: August 15, 2017

Office of the City Auditor
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"Promoting Accountability and Integrity in City Operations"



Office of the City Auditor

"Promoting Accountability and Integrity in City Operations"

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Office of the City Auditor
Transmittal Letter

August 15, 2017

Mark D. Stiles, City Attorney



Subject: Audit of the Office of the City Attorney

I am pleased to present the report of our audit of the Office of the City Attorney.

The objectives of our audit were to:

- Identify areas of financial risk in the City Attorney's Office.
- Document and assess the design of the controls over the areas of financial risk.
- Test the controls for compliance and make recommendations.

Findings considered to be of insignificant risk have been discussed with management. We completed fieldwork on July 15, 2017.

The Office of the City Auditor reports to City Council through the City's Audit Committee and is organizationally independent of all other City Departments. This report is intended solely for the information and use of the Audit Committee, City Council, the Office of the City Attorney, and appropriate management. It is not intended to be and should not be used by anyone other than these specified parties. However, this report is a matter of public record and its distribution is not limited.

We would like to thank the Office of the City Attorney for their courteous and prompt assistance during our audit. The staff was receptive and excellent to work with.

If you have any questions about this report, or any audit-related issue, I can be reached at 385.5872 or via email at lremias@vbgov.com.

Respectfully submitted,

Lyndon S. Remias, CPA, CIA
City Auditor

c: City Council Members
Audit Committee Members



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Purpose

The purpose of our audit was to identify the areas of financial risk in the City Attorney's Office, document, and assess the design of the controls over those areas, test those controls for compliance, and make appropriate recommendations.

Scope & Objectives

The scope of the audit covered the fiscal year (FY) ending June 30, 2017. We tested various areas from July 1, 2016 until the time of testing. It was not important that we test for an entire fiscal year, as we are not comparing annual totals. We were most concerned with the risk and control environment currently in place.

The objectives of our review were:

- Identify the areas of financial risk in the Office of the City Attorney.
- Identify and document the control structure over those areas of risk.
- Assess whether the design of the controls reduces risk to an acceptable level.
- For those controls deemed to be designed to reduce risk to an acceptable level, test the controls for compliance.

Methodology

To accomplish our objectives, we performed the following procedures:

- Researched the Office of the City Attorney's web page for background information.
- Obtained and researched Management Services' budget files for relevant information concerning the office.
- Obtained and reviewed prior years City Attorney's annual reports prepared for and presented to City Council.
- Ran InSITE reports to gain an understanding of the financial makeup of the Office of the City Attorney (budget unit 03010) and to identify significant revenue and expense areas.
- Researched the purpose and mission of the five functional sections of the Office: Real Estate, Litigation, Land Use, Education, and Policy and Administration.
- Interviewed the five Deputy City Attorneys over the five functional sections with an emphasis on financial risk.
- Identified, documented and assessed the design and tested the controls over the areas of financial risk including Freedom of Information Act (FOIA) charges and real estate closings.
- Obtained and reviewed the Funds Receipts Process as documented in section 4.25 of the City Attorney's Policy Manual.



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- Assessed the design of the Funds Receipts Process controls and tested the receipts including each type of receipt.
- Obtained and reviewed Administrative Directive 8.01 "Freedom of Information Act Responses" particularly sections 6.0 (G-M) which details payments /charges for FOIA responses.
- Reported appropriate findings and recommendations.



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Standards

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained during this audit provides a reasonable basis for our findings and conclusions based on our audit objectives.

The Office of the City Auditor reports to City Council through the Audit Committee and is organizationally independent of all City Departments. This report will be distributed to the City's Audit Committee, City Council, the Office of the City Attorney, and appropriate management. This report will also be made available to the public.



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Background

The City Attorney's Office is divided into five functional sections, each headed by a Deputy City Attorney reporting to the City Attorney. The five sections are as follows:

1. **POLICY & ADMINISTRATION**

This section delivers legal services in support of core governmental and administrative functions, including public policy, public facilities, human resources, public finance, and public safety. The services provided include drafting policies, ordinances, resolutions, and procedures, responding to inquiries, and issuing legal opinions where legal interpretation may affect the policies of the client.

2. **REAL ESTATE, INFRASTRUCTURE & DEVELOPMENT**

Provides legal services for the acquisition, maintenance, and operation of the City's infrastructure and supports development activities intended to enhance the City's tax base. These attorneys are engaged in all aspects of municipal real estate and development including title searches, drafting deeds, complex transactional documents, and eminent domain cases. They also have responsibility for legal services in support of the City's APZ-1 and ITA Acquisition programs to reduce encroachment around Naval Air Station Oceana.

3. **LAND USE**

Performs legal tasks involved in the development, implementation, administration, and enforcement of the City's zoning, land use, (including AICUZ- related), environmental, agricultural, and neighborhood preservation programs. In addition, the land use attorneys serve as primary legal counsel to the Planning Commission, Board of Zoning Appeals, Wetlands Board, Chesapeake Bay Preservation Area Board, Agricultural Advisory Commission, Bay Front Advisory Committee, Green ribbon Committee, Workforce Housing Advisory Board, and the Military Economic Development Advisory Committee

4. **LITIGATION**

Provides representation in all civil litigation cases involving the City, its departments, boards, commissions, employees, and volunteers. Representation includes defending and prosecuting tort claims, civil rights claims, collection actions, contract disputes, and construction claims. In addition, the litigation section represents the Human Services Department in cases seeking to protect at-risk children and handicapped or elderly adults from abuse and neglect. Litigation attorneys are also actively involved with the Risk Management Division and other city departments in evaluating and minimizing potential exposure to tort and contract claims before they arise.



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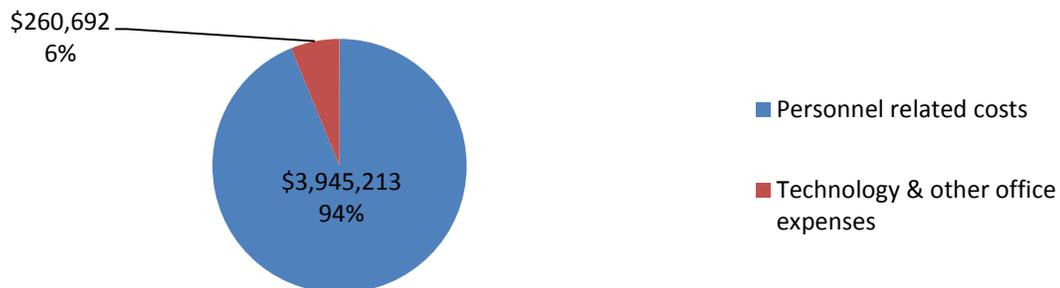
5. EDUCATION

Provides legal services in support of core public education and administrative functions including student issues, human resources, School Board policies, administrative support and public policy issues, and school finance matters. Supplemental services in support of the School Board's initiatives include litigation and real estate services. All work is performed through a cooperative agreement with the School Board that mandates a minimum number of legal service hours per year. The school system provides funding for 4.5 positions in the City Attorney's Office.

Financial Overview

The Office of the City Attorney's finances are housed in budget unit #03010 within the general fund. The fiscal year 2017 budget provides for expenditures of \$4,205,905 of which \$3,945,213 (94%) are personnel related salaries and benefits. The remaining \$260,692 (6%) is for office phone and technology, training and certifications, office publications/subscriptions and supplies, risk management and other office related expenditures. The office generates a small amount of revenue from FOIA cost reimbursements. \$1,091 was received in FY 17.

Office of the City Attorney - 03010



Financial Risk

Considering the above financial overview of budget unit #03010, it would appear the office has very little financial risk – their budget is disbursed through approved payroll, benefits, and standard office costs. However, in discharging its legal services for the city, it is regularly involved in receiving and processing numerous and various financial transactions related to those services.

Types of Payments the Office of the City Attorney Receives and Processes:

- ✚ Proceeds from real estate sales
- ✚ Fines received from violations assessed by Wetlands Board
- ✚ Collections (many times from payment plans) received via litigation for amounts owed to the City of Virginia Beach from damaged property and other causes



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- ✚ FOIA payments processed by the FOIA office
- ✚ Lease payments received for cell tower usage

These transactions do not appear on the books of the Office of the City Attorney. They are the revenue of other city departments and ultimately are deposited by those departments and appear on their books. As the City Attorney is involved in the processing of the transactions the risk is that the funds are not timely transferred to and ultimately deposited and recorded accurately in the books of the appropriate department.

Funds Receipt Policy and Controls Overview

The Office of the City Attorney has a Policy and Procedures Manual that details the process and controls for all funds received in the office. These procedures are detailed in section 4.25. As noted in the policy;

..."all funds received by this office and payable to the City, Schools or any other client, whether by check, cash or other form, shall be documented in Citylaw (13FM00004), promptly remitted to the appropriate city or school department or official, and a record of such remittance shall also be recorded in the corresponding Citylaw file."

Thus, much of the responsibility for the Office of the City Attorney is in **receiving** the payments, issuing a receipt, recording the receipt in Citylaw, their case management software, and transferring the payment to the proper person in the proper department in a timely manner (two business days in most instances) while documenting these steps. The receiving department then is responsible for preparing a remittance with the proper account code and depositing the payment with the Treasurer. It should be noted that there can be slight variations in implementation of the policy among the five sections depending on the type of payment received. The controls in section 4.25 have the following three sections:

1. Each City Attorney's section's **support staff** accomplishes the above through the following procedure:
 - a. For all **cash** received, prepare and provide to the Payer a written receipt containing the date and subject of the payment.
 - b. Scan and import a copy of the check, money order, or cash receipt into 13FM00004 under the "other files" tab.
 - c. Include the Payer and Citylaw file number in the title.
 - d. Choose which type of payment under the dropdown (Check, MO or Cash)
 - e. Check the "include in file index" button.
 - f. Include the date received, staff initials and to whom it was forwarded to within the summary.



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2. No check, cash, money orders received should stay in the physical possession of the Office of the City Attorney for more than **two working days** absent exceptional circumstances. Any checks, money orders, or cash remaining in the office's possession overnight are to be locked in the safe located in the Legal Office Administrator's office.
3. The Legal Office Administrator shall run a **quarterly report** of all checks, money orders, and cash received and review it with the City Attorney.

Results

Overall Results

In putting our findings and recommendations in perspective it should be emphasized that the controls the City Attorney has designed and put in place over the funds they receive are well designed and compliance with them is strong – we noted no exceptions with the processing of transactions. All of our findings (except for the finding 5 correcting language in AD 8.01) deal with the control in section 4.25 requiring a quarterly report be produced of all funds received in the office and reviewed with the City Attorney. The City Attorney's personnel were very receptive and have already implemented these recommendations.

Design of the controls

In considering the design of the above controls, it should be noted that the Office of the City Attorney's objective is to receive and maintain custody and accountability of the funds (cash check, money order), supply the payor with a receipt, and forward the funds in a timely manner to the proper department whose revenue it is. Thus, it is the department the City Attorney has forwarded the funds to that has the responsibility in most cases to prepare a remittance and deposit the funds with the Treasurer and code the payment with the proper account coding - it is their revenue. The Office of the City Attorney is ensuring they have a record of receiving the funds, what the payment is for and a record of who the funds were forwarded to. Though one person (legal support staff) generally performs all of the procedures, (except running the quarterly report and reviewing it with the City Attorney) the duties are properly segregated. The receiving department actually deposits and records the revenue in the City's accounting system. The receiving department has source documentation of what they should be receiving - thus there is proper segregation. It should be noted that if there were significant cash transactions more segregation would be required within the Office of the City Attorney funds receipt process. However cash transactions are extremely rare with only one noted in our test work.

Results: The controls are adequately designed to reduce risk to an acceptable level.



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Testing of transaction controls

In testing of the above controls the testing involved 2 parts –the testing of transactions to verify compliance with the controls specified in section 4.25 and the testing of the Citylaw report containing all transactions which is used to inform the City Attorney quarterly of *all* transactions flowing through the office. We tested 25 transactions totaling \$129,139 from all sources – in addition to 100% of the real estate transactions deposited in the amount of \$178,645. We also reconciled the City Attorney’s records of real estate sales and deposits with Public Works Real Estate Division records. In addition to the requirements of section 4.25, we traced each transaction to its proper account in InSITE to verify the receiving department had deposited the funds in the proper account.

Results: With our testing of transactions, we noted no exceptions.

Testing of the Quarterly Report

Section 4.25 states that *“The Legal Office Administrator shall run a quarterly report of all checks, money orders and cashed received and review it with the City Attorney.”* We had the Legal Office Administrator run us the report (we ran it for the 2017 fiscal year) from Citylaw that is to be used in informing the City Attorney of all quarterly transactions. We tested the report for completeness and accuracy. We compared it with other sources of data such as the detailed spreadsheet of repayment plans resulting from people losing litigation to the City, Public Works’ Real Estate Division records of real estate sales and various InSITE revenue reports.

Finding 1:

City Attorney section 4.25 states, *“The Legal Office Administrator shall run a quarterly report of all checks, money orders, and cash received and review it with the City Attorney”*. In talking with the Legal Office Administrator, it was determined that this control was not being performed quarterly. Because these transactions do not appear in the financial reports of the City Attorney’s budget unit – they are revenue ultimately recorded on various other departments’ books yet are partially processed by the Office of the City Attorney, this control is important and should be complied with. The City Attorney should know what passes through his department and because they touch all of these transactions and have custody over them, a quick accessible record of them should be maintained for accountability.

Recommendation

1.1 . We recommend the policy be complied with quarterly as written.



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Finding 2:

In performing our audit procedures, it was noted that the Citylaw report generated and to be used as the quarterly report lists a description of each transaction and the date of the transaction but includes no dollar amounts. This makes the report much less meaningful and difficult to identify which specific transaction is being referenced.

Recommendation

- 2.1 Enter the dollar amount in the text description of the transaction and so it will appear in the report listing of each transaction.

Note: The Legal Office Administrator agrees that it will make the report much more meaningful and she has instructed each of the support staff of the various sections to begin entering this information.

Finding 3:

We reviewed for completeness the Citylaw report initially run for us and used as the quarterly report to inform the City Attorney of funds received. In doing so, we gathered information from Public Works Real Estate Division, the Real Estate Division of the City Attorney's office, the detailed spread sheet of litigation payment plan payments and balances, and Citywide InSITE reports, including revenue account 415007 containing FOIA request processing charges. In reviewing these sources, we were able to verify that the report was not picking up *any* of the payments received from real estate sales, FOIA charges and very few of the payments actually received from litigation payment plans. After conferring with the Legal Office Administrator and the Real Estate Division support staff person we were able to determine that the report was not being run in the proper mode – it was being run in the file index mode that did not pick up all of the transactions as opposed to the full report mode. We reran the report in the correct mode and all of the transactions, except for the FOIA charges (see finding 4), were being captured.

Recommendation

- 3.1 Continue to run the quarterly report of funds received transaction in the full report mode to capture all of the transactions.



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FOIA charge payments

In addition to section 4.25, which covers *all* funds received by the City Attorney's Office, the office receives payments for assessed charges for staff time and other expenses in searching for and supplying records in response to FOIA requests. Administrative Directive (AD) 8.01 governs the city's entire FOIA program including section 6 (G-M) "Charges" which details all of the requirements for such payments. Charges can be assessed "*for any request that required significant amounts of staff time or expendable resources in order to respond to the request. If a request requires **more than one hour of staff time** to respond, charges should be assessed, provided that it was reasonable for the request to take that amount of time.*"

Finding 4:

In reviewing the quarterly report for completeness we knew from InSITE reports that no FOIA payments appeared on the quarterly report despite the fact that the City Attorney's Office had processed FOIA payments. The majority of FOIA charges are processed/received by the Police department directly and would not go through the City Attorney's Office and thus would not be subject to section 4.25 nor would be entered into Citylaw or appear on the quarterly report. There are some FOIA payments which the FOIA office *does* receive and process which should be in compliance with section 4.25 and appear on the quarterly report. It was determined that the new employee responsible for FOIA had not been trained to enter the FOIA charges correctly as specified by section 4.25 into Citylaw. The result is none of the FOIA charges processed by the Office of the City Attorney appear on the report used to inform the City Attorney of all quarterly funds received.

Recommendation

- 4.1 We recommend the Legal Office Administrator review the report to insure all revenue streams that should be on the report are in fact listed.

Note: The Legal Office Administrator has met with the Office of the City Attorney's FOIA representative and trained her on the proper input of FOIA charge reimbursements into Citylaw to comply with section 4.25. All FOIA charge transactions processed by the Office will now appear on the quarterly report.

Finding 5:

In reviewing AD 8.01 in regards to FOIA charges assessed and received, it is evident that the directive needs to be reworded to reflect how charges are actually processed/received recognizing that many are processed and received internally in the Police Department and some are received in the Freedom of Information Office. This fact effects which payments will be received in the FOIA Office and subject to the section 4.25 procedures and included on the



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quarterly report. In addition, since some payments are tracked and received in the Police Department, they must notify the FOIA Office concerning which payments are over 30 days delinquent so an accurate centralized list of delinquent accounts is maintained to prevent those in delinquency from additional FOIA requests until the account is paid and in compliance with AD8.01 (M).

Recommendation

- 5.1 We recommend the following sections of AD8.01 to be changed to reflect the accurate processing of FOIA charges:
- I. If the estimated cost to respond to respond to a request exceeds two hundred dollars (\$200) the Freedom of Information Office *or City department responding shall*, before continuing to process the request , require the requesting party to pay a deposit in the amount of the estimate, made payable to “City Treasurer.” The deposit shall be credited toward the final cost of supplying the requested records. If the City requires the payment of a deposit, the time in which the agency must respond to the request stops running until the day the deposit is received. Deposit request letters should provide requesters with the option of narrowing the scope of the request so as to minimize their costs.
 - L. The FOIA Office shall create invoices using the FOIA revenue code 415007. The FOIA Office shall include appropriate department codes to ensure that each department that incurred expenses with respect to a request is credited with the appropriate portion of the requester’s payment. Payments shall be sent to the Freedom of Information Office *or the department that invoiced the charges and each shall track when the payments have been received.*
 - M. In the event that a FOIA response invoice remains unpaid 30 days or more after billing, the City shall deny additional requests form the requester until the requester has paid the amount owed. The FOIA Office shall maintain *a centralized list of requesters who have invoices that are unpaid 30 days or more after billing, and such list shall be accessible by all departmental FOIA representatives. Departmental FOIA representatives that process invoices shall inform the FOIA Office any time their department has an unpaid invoice exceeding 30 days, and when the invoice is finally paid so the accuracy of the centralized list is maintained.*



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Conclusion

Based upon our audit test work performed we have determined that the Office of the City Attorney has adequate internal controls over operations. However, as noted in our findings, there are some areas where the internal controls need to be strengthened and/or properly executed to reduce financial and operational risks.

Acknowledgements

We would like to thank the Office of the City Attorney for their assistance during our audit. They were open to our suggestions, very accommodating and have already implemented most of the changes recommended in our report.



MARK D. STILES
CITY ATTORNEY

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August 11, 2017

Lyndon S. Remias, City Auditor
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Re: Audit of the Office of the City Attorney

Dear Mr. Remias:

I am writing to confirm receipt and concurrence with the findings and recommendations contained in the Audit of the Office of the City Attorney, prepared by the Office of the City Auditor. I wish to thank you and your staff for their review and recommendations.

The audit report concluded that the City Attorney's Office has adequate financial controls over operations, but made five specific findings and recommendations. We have implemented four of the five recommendations. The fifth recommendation involves proposed changes to Administrative Directive 8.01, relating to Freedom of Information Act ("FOIA") responses. I concur with the proposed amendments and will work with the City Manager to have these changes made and implemented.

Again, I thank you and Mr. Ford for your professionalism and for your thorough review of our operations.

Sincerely,

Mark D. Stiles
City Attorney