



CITY OF
PORTLAND, OREGON
OFFICE OF THE CITY ATTORNEY

Tracy Reeve, City Attorney
1221 S.W. 4th Avenue, Suite 430
Portland, Oregon 97204
Telephone: (503) 823-4047
Fax: (503) 823-3089

September 12, 2016

INTEROFFICE MEMORANDUM

TO: City Budget Office

FROM: Tracy Reeve *TR*
City Attorney

SUBJECT: FY2016-17 Fall Budget Monitoring Process

Attached is the City Attorney's Office's Fall Budget Monitoring Report for FY2016-17. In summary, the office's prior year expenditures were 5% under budget. There are no significant issues to report for the prior year.

The office is requesting an adjustment to its interagency agreement with the Police Bureau to fund temporary legal staff to support PPB policy development and training. PPB is able to fund this additional legal work through current year vacancy savings. The City Attorney's Office requires one temporary attorney and one temporary paralegal through June 30, 2017. There are approximately 47 policies subject to DOJ/COCL approval and the City's strategic objective is to obtain approval for all policies by the end of 2017. PPB has added additional internal staff to meet that objective, which will result in an increased demand for legal review of the policies as well as requests for training on the new policies.

The second request is for General Fund resources to fund an enterprise solution for capturing text message public records. With the increased use of texting, and no Citywide solution for capturing these records, the City is risking non-compliance with public records, archiving and litigation retention requirements. The office plans to work with Council and the City Budget Office to develop a policy and funding mechanism for Citywide application of text and social media capture during the next budget development process. However, in the meantime, 1200 of the approximately 4500 devices used by the City have an immediate increased legal risk of non-compliance. The office recommends funding \$55,000 for this fiscal year to pay for text capture for about 1200 phones used by elected officials and their staff, bureau directors and the police bureau.

Thank you for your consideration.

TPR/ccj
Encls.

**CBO Discussion and Recommendations
FY 2016-17 Fall BMP**

Bureau: Office of the City Attorney

Type: New Request

Request: AT_001 - IA Adjustment with PPB

	Fall BMP Requested Adjustments	Fall BMP CBO/Council Changes	Fall BMP Total Adjustments
EXPENDITURES			
Personnel Services	310,000	0	310,000
External Materials and Services	26,552	0	26,552
TOTAL EXPENDITURES	336,552	0	336,552
REVENUES			
Interagency Revenue	336,552	0	336,552
TOTAL REVENUES	336,552	0	336,552

Bureau Description:

Increase Interagency funding for additional temporary staffing to support Portland Police Bureau (PPB) policy development and training. Work includes researching relevant legal standards, synthesizing input from multiple internal and external stakeholders, producing documents and training materials, and negotiating with the US Department of Justice (DOJ) and the Compliance Officer and Community Liaison (COCL) where necessary to obtain approvals in conformance with the City's Settlement Agreement. There are approximately 47 policies subject to DOJ/COCL approval. The City's strategic objective is to obtain approval for all policies by the end of 2017. PPB has added additional internal staff to meet that objective. This will result in an increased demand for legal review of the policies as well as requests for training on the new policies. Attorneys and support staff are currently working at or above capacity and attorneys are working extra hours for the City to expedite policy review. In FY2013, the office anticipated the need for two to three additional full time attorneys to handle implementation of the Settlement Agreement but requested only for 1 FTE attorney with no additional support staff to keep initial costs as low as possible. However, it was also noted that "FY 13/14 and beyond will require one additional attorney with staff support [and] may need to request additional attorney or paralegal FTEs if workload demands." So far, the City Attorney's Office has been able to provide timely and cost-effective legal services related to implementation without additional resources. However, the workload demand has increased, is expected to rise significantly in the next year, and work must be completed in an expedited manner to meet the City's legal obligations under the Settlement Agreement.

CBO Discussion and Recommendation

**CBO Discussion and Recommendations
FY 2016-17 Fall BMP**

Bureau: Office of the City Attorney

Type: New Request

Request: AT_002 - Text Message Public Records

	Fall BMP Requested Adjustments	Fall BMP CBO/Council Changes	Fall BMP Total Adjustments
EXPENDITURES			
External Materials and Services	55,000	0	55,000
TOTAL EXPENDITURES	55,000	0	55,000
REVENUES			
General Fund Discretionary	55,000	0	55,000
TOTAL REVENUES	55,000	0	55,000

Bureau Description:

The Oregon Public Records law is a pillar of open government in Oregon. The City of Portland supports this policy by striving to make records available to the public efficiently, accurately and cost-effectively. The City is also required to initiate legal holds and retain records for litigation purposes. To continue to meet these goals the City must stay current with the changing methods of record creation, retention and retrieval. The City needs an enterprise-wide solution to archive social media and text messages.

As part of its ongoing Legal Records Management Program, the City Attorney's Office conducted a survey of the current use of social media by all City bureaus. There are currently 175 social media accounts in use. Social media is public outreach, which has a permanent retention schedule, as do the social media accounts of elected officials and bureau directors. When the City creates public records which are held by third party providers, (e.g. Facebook, YouTube) the capture and archiving can be more difficult. It is further complicated when multiple bureaus use different archiving solutions. The time, effort and coordination currently required to capture records across multiple bureaus, media types and devices can be overwhelming and increases the City's legal risk.

The City has approximately 4500 connected devices such as smartphones, tablets and laptops. With the increased use of texting, and no Citywide solution for capturing these records, the City is risking non-compliance with public records, archiving and litigation retention requirements. Currently, if the City receives a public records request or initiates a legal hold for text messages, the employee must surrender their phone for outside forensic retrieval at a cost of \$300 per phone, and lose use of the phone for a period of time.

The City Attorney's Office has identified and is recommending a contract with Smarsh, a local Portland business with an efficient enterprise solution that can capture all web pages, text messages and social media types currently authorized by the City's Social Media Policy (HR4.08A). It can be CJIS compliant and has been approved by the Portland Police Bureau. The solution allows for individual bureau accounts and the data can be migrated into HP Records Manager, the City's official electronic archive system.

An enterprise solution for multiple media types is a wise investment in ensuring City compliance at a reasonable cost. The Smarsh enterprise platform cost is \$12,000 per year. Each social media account costs \$60 per year and text message capturing is \$48 per year per device. The City Attorney's Office plans to work with Council and the City Budget Office to develop a policy and funding mechanism for Citywide application in the next fiscal year.

However, due to the high level of legal risk this year, the City Attorney's Office is requesting funding for the enterprise platform cost and text message archiving on high priority phones including elected officials and their staff, bureau directors, and the Portland Police Bureau - about 1200 phones. The cost for the remainder of this fiscal year to continuously capture all text messages for these phones, including the enterprise platform, is \$55,000.

Expected results include:

- Increased compliance of public records archiving per state law and city code
- Legally defensible capture for litigation holds and e-discovery
- CJIS compliant tool that meets Portland Police Bureau requirements
- Import into HPRM
- Cost efficiency with enterprise wide solution for multiple media types
- Citywide search efficiency with enterprise platform for all City social media, text messages, and web pages
- Uniformity and consistency in public records searches
- Decreased employee time in searching, gathering, sorting and responding to public record requests
- Service level increase with improved response time for public records requests
- Decreased cost for public records requests
- Hosted solution that is quick to implement, no individual applications to install, phone carrier level capture
- Numerous technical tools to enable smart searching for confidential and restricted information
- Reduced chance of sanctions for failure to maintain and produce records

**CBO Discussion and Recommendations
FY 2016-17 Fall BMP**

Bureau: Office of the City Attorney

Type: New Request

Request: AT_002 - Text Message Public Records

Fall BMP Requested Adjustments	Fall BMP CBO/Council Changes	Fall BMP Total Adjustments
--------------------------------------	------------------------------------	----------------------------------

CBO Discussion and Recommendation

Prior Year Business Area Reconciliation Report

	FY 2015-16 Revised Budget	FY 2015-16 Year-End Actuals	Percent of Actuals to Revised
Office of the City Attorney			
EXPENDITURES			
Personnel Services	\$9,839,964	\$9,336,196	95%
External Materials and Services	\$549,652	\$457,210	83%
Internal Materials and Services	\$997,151	\$974,502	98%
TOTAL EXPENDITURES	\$11,386,767	\$10,767,908	95%
REVENUES			
Charges for Services	\$78,049	\$85,708	110%
Interagency Revenue	\$5,625,426	\$5,625,426	100%
General Fund Discretionary	\$2,508,328	\$0	0%
General Fund Overhead	\$3,174,964	\$0	0%
TOTAL REVENUES	\$11,386,767	\$5,711,134	50%

Bureau Reconciliation Narrative

Expenditures were 5% under budget primarily due to vacancy savings and unpaid leaves of absence. The office had \$100,000 allocated for training on Removing Barriers to Employment but was unable to accomplish this before year end. However, \$90,000 was carried over to FY16/17 for this purpose.

Service Area	Bureau Name	Decision Package Title	Package Description	Funded in:	Package Fundi	Package	Package Status	Package Update
Legislative, Administrative, and Support	Office of the City Attorney	FY 2014-15 Carryover: Portland Harbor	To fund the Portland Harbor Natural Resource Trustees to evaluate the City's proposal for potential early settlement of its natural resource restoration obligation in Portland Harbor.	FY 2015-16 Adopted Budget	\$ 210,020		In Progress	Pursuant to Ordinance No. 186810, the City has entered into a funding and participation agreement with the Portland Harbor Natural Resource Trustees to pursue settlement of natural resource damages. As of September, \$102,019 of the \$210,020 has been spent.
Legislative, Administrative, and Support	Office of the City Attorney	DOJ COCL Realignment	This decision package will transfer existing General Fund resources provided for the implementation of the Compliance Officer and Community Liaison (COCL) contract from the City Attorney's Office to the Mayor's	FY 2015-16 Adopted Budget	\$ (265,000)		Complete	The resources were transferred to the Mayor's office for administration.
Legislative, Administrative, and Support	Office of the City Attorney	Superfund Communications Consultant	Engaging the public to get feedback about potential cleanup options in Portland Harbor and communicating public opinion to regulatory decision makers.	FY 2015-16 Adopted Budget	\$ 75,000		In Progress	This contract has been executed and work is progressing.
Legislative, Administrative, and Support	Office of the City Attorney	Ban the Box Implementation	Add code removing barriers to employment to establish procedures for the use of criminal history information by employers within the City.	FY 2015-16 Adopted Budget	\$ 100,000		In Progress	The FY 2015-16 Adopted Budget included \$100,000 in General Fund one-time resources for training, outreach and other implementation efforts governing the use of criminal background information in employment. Administrative Rules were drafted and brought to Council for consideration and approval. BOLI contract was drafted and executed. Training has begun and a CityLearner class is being developed for all employees whose duties include hiring. The funds will be used for CityLearner creation as well as a YouTube video training that will be available to the public on City and BOLI websites. The funds were not spent in FY2015-16 but have been carried over into FY2016-17 to continue this work.
Legislative, Administrative, and Support	Office of the City Attorney	Litigation Hold Program	This decision package requests 1.0 FTE Assistant Program Specialist, funded through an interagency agreement with Risk Management, to administer the City's Litigation Hold program. The law requires the City to preserve evidence which it knows, or reasonably should know, is relevant to potential litigation. If evidence is not properly preserved, the opposing party may move the court to sanction the City for spoliation	FY 2015-16 Adopted Budget	\$ 97,000	1.00	In Progress	This package authorized 1.0 FTE Assistant Program Specialist (subsequently reclassified to a Management Assistant) to administer the City's Legal Hold program and assist with citywide legal records management. The position was filled immediately. This position is managing approximately 700 active legal holds involving 145 custodians and more than 30 bureaus or departments. An average of 10-15 new holds are issued and 5 holds are released each week. This position is the primary point of contact for all legal holds citywide, provides outreach and support for complex legal holds, develops legal holds and record collection processes, develops training materials, assists with bi-monthly trainings, and provides monthly reports to stakeholders.
Legislative, Administrative, and Support	Office of the City Attorney	Equity and Civil Rights Enforcement	The City of Portland has historically not had any significant capacity to affirmatively enforce City-created civil rights through an administrative process or by prosecuting cases. For example, in 1993 the City adopted what was at the time a cutting edge civil rights ordinance but contracted with BOLI to enforce these rights on behalf of the City. More recently, the City adopted a Sick Leave Ordinance, again contracting with BOLI to provide enforcement services as the City did not have the means to do so in-house. The City lags behind other cities of comparable size in its lack of such capacity, and it is crucial to address this deficit if the City is to meet its policy objectives of affirmatively fostering civil rights and equity. We anticipate that Council's efforts to create equity and opportunity for all Portlanders will continue, whether by ensuring that criminal background information is not used to needlessly limit the job opportunities of those who may have had contact with the criminal justice system at	FY 2015-16 Adopted Budget	\$ 180,000	1.00	In Progress	The Adopted Budget included ongoing funding for a Deputy City Attorney to focus on equity, community justice, and civil rights. The position was filled immediately. Over the past year, this position drafted Administrative Rules and training materials for Removing Barriers to Employment, and continues to work toward the implementation of a CityLearner for all City employees who are engaged in hiring. In addition, a YouTube video will be made available to the public on City and BOLI websites. This position drafted the COCL contract and continues to advise COCL and COAB on fulfilling the contract requirements and obligations under the DOJ Settlement Agreement. This position is currently redrafting the community engagement portions of the Settlement Agreement and will appear before Judge Simon at the status conference in October. This position is representing PPB in the Title VI audit by DOJ regarding the provision of services to people with Limited English Proficiency (LEP) and is working with OEHR to implement better strategies for the provision of City services to Portland's LEP population generally. This position also advises portions of the Auditor's Office, and advises on projects such as Affirmatively Furthering Fair Housing, and civil rights related employment matters. This position leads the City Attorney's Office Community Justice & Civil Rights workgroup, which brings together attorneys whose work furthers civil rights and livability in Portland. The workgroup has launched a project to 1) create a proposal for a City-wide training on ethical obligations, public meetings and records laws for volunteer Boards and Commissions, 2) draft a Code of Conduct and bylaw templates, and 3) bring a package to Council for its approval.

Office of the City Attorney

Performance Measures

Performance Measure	Type	FY 2013-14 Year-End Actuals	FY 2014-15 Year-End Actuals	FY 2015-16 Adopted Budget	FY 2015-16 Year-End Actuals	FY 2016-17 Adopted Budget
AT_0001 - Number of litigation cases	WORKLOAD	1,167	1,259	1,338	1,624	1,850
AT_0004 - Number of contracts reviewed and approved	WORKLOAD	8,491	8,892	8,840	8,983	8,500
AT_0006 - Number of training hours provided by City Attorney staff to other City staff	KPM	254	388	450	451	420
AT_0007 - Annual costs of outside counsel	KPM	\$595,525	\$331,624	\$626,839	\$316,443	\$460,000
AT_0008 - Cost of service per attorney hour	KPM	\$133	\$133	\$142	\$138	\$146
AT_0010 - Percentage of cases favorably resolved	KPM	0%	89%	0%	95%	85%

Performance Measure Variance Descriptions

Litigation Cases: The number of litigation cases handled has increased primarily due to an increase in business license collection matters and civil forfeitures cases, resulting in additional revenue for the City.

Training Hours Provided: The number of training hours provided to City staff was on target. The office continues to make legal training a priority which lowers risk and cost to the City. Legal training for City employees on topics such as ADA compliance, the discipline process, HRAR 2.02, election laws, civil forfeitures and legal records management, for example, are important to reaching all four of the office's primary goals; providing excellent customer service and legal advice, providing effective advocacy, achieving equity, and ensuring good stewardship of public resources. As the office progresses on the legal records management project that was initially funded in FY14-15, more training is being provided on legal holds and legal records management. Additionally, due to funding provided in the FY15-16 budget for an additional attorney position for civil rights work, the office will have more capacity for training in this area as well.

Outside Counsel Costs: Outside counsel costs were lower than expected and have been decreasing for the last five years. Because in-house rates are significantly lower than rates for outside counsel, and because the office attorneys have greater expertise in municipal matters, a goal of the City Attorney's Office is to minimize the number of occasions when outside counsel is hired. Some outside counsel costs are unavoidable; however, having sufficient in-house staff has reduced costs while providing consistent and high quality legal services. The City Attorney's Office will continue to strive for low outside counsel costs.

Cost of Service per Attorney Hour: The actual attorney hourly rate was slightly lower than anticipated due to expenses coming in under budget. The attorney hourly rate remains less than half the rate of outside counsel and is a clear indicator that the City Attorney's Office minimizes the City's overall legal costs. Providing cost-effective legal services relates directly to all four of the office's primary goals and, in particular, demonstrates that the office continues to be an effective steward of public resources by providing excellent, easily accessible legal services to the City, at a very affordable rate.

Percent of Cases Favorably Resolved: The City Attorney's Office handles cases in state and federal courts and in other proceedings to protect the City's interests. Cases can be resolved in many different ways including early alternative dispute resolution, the strategic use of offers of judgment to minimize the risk of adverse outcomes in cases taken to trial, and the vigorous defense or prosecution of cases through pretrial motions, trial and on appeal. This effectiveness measure, implemented this year, measures the results, either favorable or unfavorable, of litigation cases. The office set a high target for the first year of 85% of cases resolved in favor of the City. The office exceeded this target and reached 95% of cases favorably resolved. Not only are these excellent results, but they were achieved at a very low cost to the City by using in-house counsel rather than more-expensive outside counsel. The office will continue to strive for excellent results when advocating for the City's interests.