OFFICE OF CITY AUDITOR

Review of City of Seattle's Civil Rights Enforcement and Outreach

November 20, 2013

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City of Seattle
Office of City Auditor

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City of Seattle
Office of City Auditor

David G. Jones, City Auditor

November 20, 2013

City Council President Sally J. Clark
City Councilmember Bruce Harrell, Chair, Public Safety, Civil Rights, and Technology Committee
City Councilmember Mike O'Brien, Vice Chair, Public Safety, Civil Rights, and Technology Committee

Dear Councilmembers:

Attached is our report that responds to the 2013-2014 City Council Statement of Legislative Intent in which you requested a review of the Seattle Office for Civil Rights' enforcement and outreach efforts. This report reviews the adequacy of the Seattle Office for Civil Rights' investigation and enforcement functions and provides information about its technical assistance to businesses.

The Seattle Office for Civil Rights and the Seattle Human Rights Commission reviewed and provided feedback on drafts of this report. We have attached their formal written responses to this report in Appendix III. Based on a comment we received from the Seattle Office for Civil Rights, we revised recommendation 18 to state that the Office's outreach staff, rather than its entire staff, should establish partnerships with the business community.

We would like to thank the Seattle Office for Civil Rights and the Seattle Human Rights Commission for their cooperation during the review process.

If you have any questions regarding this audit, please contact Virginia Garcia at (206) 684-8367, virginia.garcia@seattle.gov or me at (206) 233-1095, davidg.jones@seattle.gov.

Sincerely,

David G. Jones
City Auditor

Attachment

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INTRODUCTION

During the 2013-2014 Seattle City Council budget review process, the City Council adopted a Statement of Legislative Intent (SLI) (see Appendix I), sponsored by Councilmembers Clark, Harrell, and O'Brien, requesting our office to review the adequacy of the Seattle Office for Civil Rights' (SOCR) investigation and enforcement functions and provide information about its technical assistance to businesses. The SLI specified that the review include an assessment of the adequacy of SOCR's allocation of staff for civil rights enforcement. The SLI also requested that our office examine other jurisdictions' enforcement models and present recommendations regarding:

- Delivering objective investigation and enforcement of civil rights laws,
- Streamlining the processing of civil rights complaints without compromising complainants' rights, and
- Providing businesses and landlords the information, resources, and skills to understand civil rights laws and avoid charges of discrimination.

This report addresses the issues raised in the SLI regarding SOCR's enforcement, outreach, and technical assistance functions and assesses the adequacy of SOCR's staffing.

SUMMARY OF RESULTS

We concluded that the Seattle Office for Civil Rights' (SOCR) staffing levels are adequate to meet legal requirements[1] for reaching settlements within the timeline goals specified by the federal agencies who contract with SOCR for enforcement services. We also learned that SOCR is respected locally and nationally as a human rights[2] enforcement agency. Two federal agencies, the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Housing and Urban Development (HUD), have contracted with SOCR for many years to conduct investigations on their behalf, and agency staff attested to SOCR's competence in human rights enforcement matters.

While we believe SOCR is adequately staffed to meet current demand levels, we make 19 recommendations to: 1) improve the perception of SOCR's objectivity and impartiality, 2) streamline its enforcement process with increased use of automation and process and rule changes, and 3) modify SOCR's outreach strategy to increase its emphasis on prevention and inclusive outreach. Specifically:

[1] These legal requirements consist of SOCR's contractual obligations to federal agencies for enforcement services.

[2] In this report, we refer to agencies that enforce a jurisdiction's civil rights laws as "human rights" agencies. We refer to the laws they enforce as "civil rights" laws.

- SOCR could improve the perception of its objectivity and impartiality by:
  - Maintaining separation between SOCR's policy and enforcement sections. Enforcement staff members who conduct investigations should not develop and advocate for policy because they may eventually have to investigate alleged violations of that policy.
  - Considering changes to the appeals process to address perceptions of its impartiality.
  - Considering having only the Hearing Examiner adjudicate City Attorney complaints of discrimination.
  - Improving SOCR policy staffs' understanding of business regulations and practices. When its staff are developing and recommending a policy that may have a significant effect on businesses, and are establishing rules for implementing that policy, the staff should understand the impact of the policy and rules on businesses. In such instances, SOCR's business liaison should involve businesses at the earliest point possible in policy development and rule making.
  - Increasing its use of automation to help further standardize its investigation process and increase the appearance of objectivity.
  - Proposing a change to the City's civil rights laws and rules[3] to state that all respondents (i.e., the person or entity against whom the complaint was lodged) will receive a copy of SOCR's proposed findings and determination and be offered another opportunity to settle a case before SOCR issues a final determination of Reasonable Cause (as it currently provides to City departments that are respondents).
  - Developing performance measures that avoid the perception of inappropriate self-interest. Because SOCR gets paid by EEOC and HUD for charges investigated and cases closed, it could appear that SOCR has a financial incentive to investigate as many cases as possible so as to maximize the revenue it receives from its EEOC and HUD contracts; this could lead to the perception that SOCR is conducting unwarranted investigations. In addition, SOCR should gather information about its performance by requesting complainants and respondents to complete a customer satisfaction survey on their experiences with the enforcement process.

- SOCR could streamline its enforcement process by:
  - Automating its intake screening process to standardize the method for determining whether cases meet prima facie[4] evidence standards;
  - Increasing the use of automation in its case-processing systems to address inconsistencies we found in SOCR's case files;
  - Considering modifications to the appeals process, such as modifying rules, increasing the continuity of the membership of the Human Rights Commission Appeals Panel

[3] Seattle Municipal Code Title 14 Human Rights and Seattle Human Rights Rules Chapters 40 and 46.
[4] The case contains a set of legal elements imposed by statute and/or by case law.

and the amount of training its members receive, and creating a process for reconsideration by the SOCR Director of a No Cause decision. In the latter case, the complainant could still appeal the Director's decision to the Seattle Human Rights Commission.

- SOCR's mission statement should be revised to mention the involvement of stakeholders in the prevention of discrimination. Also, its outreach efforts should be expanded to include potential respondents and be geared toward prevention.

BACKGROUND

The Seattle Office for Civil Rights (SOCR) enforces City of Seattle (City), state, and federal anti-discrimination and equity laws[5] within Seattle's city limits covering employment, housing, public accommodations, and contracting, including the enforcement of the City's new Paid Sick and Safe Time (PSST) Ordinance and the Use of Criminal History in Employment Decisions Ordinance. SOCR also administers the Title VI program of the 1964 Civil Rights Act, which relates to access to governmental programs and activities, and Title II of the Americans with Disabilities Act. SOCR's enforcement responsibilities include performing intake services for individuals alleging discrimination or violations of equity laws, assisting them in drafting charges of discrimination, and investigating the charges.

During an investigation SOCR may bring parties together to settle the case through a facilitated resolution process. SOCR has a contractual relationship with two federal enforcement agencies, the U.S. Department of Housing and Urban Development (HUD) and the U.S. Equal Employment Opportunity Commission (EEOC), to investigate charges of discrimination concerning housing and employment. In addition to its enforcement duties, SOCR conducts outreach and public engagement about civil rights issues, proposes policy solutions for equity in the community, and administers the City's Race and Social Justice Initiative (RSJI).

SOCR's Organization and Resources

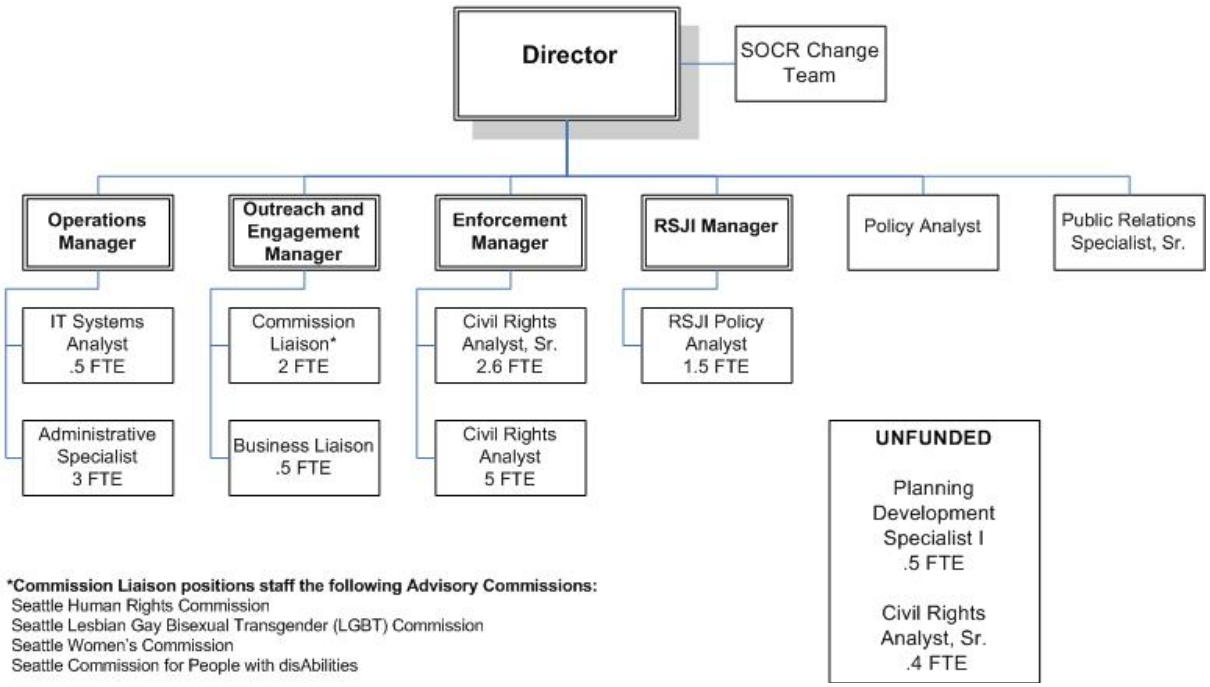
SOCR is a City department whose director is appointed by the Mayor and confirmed by the City Council. SOCR has 22.5 full time equivalent employees (FTEs) and an annual budget of $2.6 million. SOCR has four divisions, each headed by a manager: Operations, Outreach and Engagement, Enforcement, and RSJI. SOCR staff functions include policy, investigation/enforcement, public relations, administrative work, and providing assistance to four advisory commissions[6].

See Figure 1 for an organization chart of SOCR.

[5] Equity laws include the City's Paid Sick and Safe Time Ordinance and the Use of Criminal History in Employment Decisions Ordinance.

[6] The four commissions are: the Seattle Human Rights Commission; Seattle Lesbian, Gay, Bisexual, Transgender (LGBT) Commission; Seattle Women's Commission; and Seattle Commission for People with disAbilities.

Figure 1 Seattle Office for Civil Rights (SOCR) 2013 Organization Chart



Source: SOCR

SOCR receives funding from the City's General Fund and also from EEOC and HUD for contract enforcement work. SOCR enforces federal civil rights employment laws as a Federal Employment Program Agency (FEPA) for the EEOC and enforces fair housing laws as a Federal Housing Assistance Program (FHAP) agency for HUD.

Overview of Enforcement Process

SOCR's process for investigating allegations of discrimination is guided by Seattle Human Rights Rules Chapter 40. Seattle's enforcement process is generally similar to those of the other jurisdictions we contacted. SOCR adheres to strict processes and procedures approved by HUD and EEOC as substantially equivalent to federal enforcement practices, which is a contract requirement for SOCR to conduct investigations for these federal agencies. Figure 2 displays an overview of SOCR's enforcement process.

Figure 2. Overview of SOCR's Anti-Discrimination Enforcement Process

The process consists of:

- Intake: Individuals contact SOCR to discuss an alleged discrimination complaint.

- Charges Filed: If SOCR finds the allegation of discrimination is a prima facie case of discrimination and meets jurisdictional requirements (e.g., location was within Seattle's city limits, statute of limitations had not expired, and a protected class was involved) then SOCR drafts charges that the complainant signs. The complainant then becomes "the charging party." At this point the person or entity against whom the complaint was lodged becomes "the respondent." SOCR's Director also has the discretion to file a Director's charge if the Director believes there has been a violation of anti-discrimination or equity laws.
- Early Resolution/Settlement: Throughout the investigation SOCR encourages settlement of the charge through mediation and settlement conferences.
- Investigation: A complainant's signature on a charge authorizes SOCR to start the investigation, which includes interviewing complainants, respondents, and witnesses, and obtaining evidence.
- Findings and Conclusions: If no settlement has been reached by the time the investigation is completed, the SOCR Director issues a determination on the charges that specifies the jurisdictional elements of the charge, the contentions of the parties, findings of fact, and conclusions of law. SOCR issues either a No Cause determination or a Reasonable Cause determination:
    - No Cause: A No Cause determination means that SOCR did not find enough evidence to meet the legal elements of discrimination under federal, state or local law.
    - Reasonable Cause: A Reasonable Cause determination means that SOCR found a preponderance of evidence that the alleged discrimination occurred.
- Conciliation: When SOCR issues a Reasonable Cause determination, the parties (i.e., the charging party and respondent) are invited to resolve the complaint voluntarily through a conciliation process.

Appeals Process and Public Hearing Process

There are separate processes for charging parties and respondents who wish to challenge an unfavorable SOCR ruling[7].

Charging party: If SOCR issues a No Cause determination, the charging party may appeal that determination to the Seattle Human Rights Commission.

Respondent: Respondents have no process to appeal SOCR's Reasonable Cause determinations. However, if a respondent disagrees with SOCR's Reasonable Cause determination, they may decide not to settle the charge. In such cases, SOCR refers the charge to the City Attorney's Office, who then attempts conciliation. Conciliation entails SOCR working with the City Attorney to seek a remedy for the charging party that both makes the charging party whole and remedies the public interest in eradicating discriminatory practices. If the City Attorney is not successful in

[7] SHRR Chapter 46, Seattle Human Rights Commission Appeals Rules.

conciliating the case, the City Attorney files a legal complaint with the Hearing Examiner. SOCR staff, the charging party, and respondent provide testimony at Hearing Examiner hearings.

The Roles of the Seattle Human Rights Commission and City Attorney in the Appeals Process
When SOCR issues a No Cause determination, the charging party may file an appeal to the Seattle Human Rights Commission (SHRC). Appeals are heard by a SHRC subcommittee called the Appeals Panel. The SHRC Appeals Panel considers all appeals filed to determine whether SOCR investigations were adequate and whether a preponderance of the evidence supported SOCR's No Cause determination. The SHRC Appeals Panel can decide to affirm the No Cause determination or remand the case to SOCR with instructions to conduct further investigation. SHRC remands cases if it finds either the investigation was inadequate or a preponderance of the evidence did not support SOCR's findings. As part of this process SHRC can also hold hearings to receive testimony from claimants, respondents, witnesses and SOCR investigators. According to data we received from SOCR, SHRC has held one hearing since 2008.

The City Attorney's Office advises SHRC on its decisions and drafts SHRC's written appeal decisions.

FINDINGS AND RECOMMENDATIONS

SOCR's Staffing is Adequate to Meet Legal Requirements and Reach Settlements within Timeline Goals; However, SOCR Could Increase the Perception of its Objectivity, SOCR's Enforcement Processes Could Be Streamlined, and Its Outreach Efforts Could Be Enhanced
To address the Statement of Legislative Intent, Chapter 1 addresses the adequacy of SOCR's staffing to meet legal requirements for settling and resolving complaints within timeline goals. Chapter 2 addresses how SOCR can increase the perception of its objectivity and impartiality. Chapter 3 addresses how its enforcement process could be streamlined and improved by employing certain practices from other jurisdictions. Chapter 4 addresses making SOCR's mission statement more inclusive and how SOCR's outreach efforts could be enhanced.

Chapter 1: SOCR's Staffing is Adequate to Meet Legal Requirements and Reach Settlements within Timeline Goals

Legal Requirements and Reaching Settlements

The Seattle City Council's Statement of Legislative Intent requested that we review SOCR's Enforcement Division staffing levels to determine if SOCR was meeting its legal requirements for investigating and reaching settlements to resolve discrimination charges. We concluded that SOCR is adequately staffed to meet legal requirements with the current demand for its enforcement services, but that its productivity was affected in 2012 by staff reductions that occurred the previous year. Specifically, we found:

- EEOC and HUD have been satisfied with SOCR's handling of discrimination investigations and therefore renewed their contracts with SOCR. HUD has renewed its five year contracts with SOCR since 1997 and anticipates renewing the contract again in 2014. EEOC has renewed its SOCR contracts since approximately 1981.
- SOCR met HUD's 2011 performance standards.
- In the last 10 years, SOCR has not reversed its determinations based on additional investigative work it conducted in response to a Seattle Human Rights Commission appeal remand.
- SOCR has a policy to encourage settlements and attempts settlements for cases that it determines warrant investigation.
- SOCR staff reductions in 2011 corresponded with a 2012 increase in the number of days to close cases beyond SOCR's 180 day goal.

Closed Case Processing Times

The Statement of Legislative Intent requested that we evaluate whether SOCR's staffing levels were adequate to meet goals for turnaround times for each step in the enforcement process. We found that SOCR met its case closure performance goal from 2008 to 2011, but a decrease in its staffing level in 2011 was followed by a drop in SOCR's timeliness in processing cases in 2012. Specifically, we found:

- As shown in Figure 3, due to a 2011 budget reduction, SOCR lost 1 FTE, a Paralegal. In 2012 a Civil Rights Analyst was added for the Paid Sick and Safe Time (PSST) Ordinance; therefore, SOCR continues to operate with the same number of Enforcement Division staff while taking on the additional responsibilities of the PSST Ordinance.

Figure 3. SOCR 2008-2013 Staff Levels

	2008	2009	2010	2011	2012*	2013
SOCR Enforcement Division Staff	**9**	**8.6**	**8.6**	**7.6**	**8.6**	**8.6**

Source: SOCR

*Staff includes Enforcement Division management and the Civil Rights Analyst position for Paid Sick and Safe Time and excludes administrative support.

- From 2008 to 2011 SOCR met its turnaround time performance goal to close cases on average within 180 days, but did not meet its goal in 2012. Figure 4 below shows the annual average number of days to close cases from 2008-2012.

Figure 4. SOCR 2008-2012 Average Days to Close Cases					
	2008	**2009**	**2010**	**2011**	**2012**
Average Days to Close Cases	**153**	**136**	**122**	**139**	**234**

Source: SOCR

- SOCR had fewer active cases to file in 2012 than in the previous four years.

Figure 5. SOCR 2008-2012 Cases Filed Per Year 2008-2012					
	2008	**2009**	**2010**	**2011**	**2012**
SOCR Cases Filed	179	229	226	209	161

Source: SOCR

- SOCR closed fewer cases in 2012 than it had in the previous four years.

Figure 6. SOCR 2008-2012 Cases Closed Per Year 2008-2012					
	2008	**2009**	**2010**	**2011**	**2012**
SOCR Cases Closed	205	217	211	188	156

Source: SOCR

According to an SOCR official, SOCR's low 2012 closed-case count was due to:

- Department budget reductions in 2011 when the enforcement team lost a paralegal position that supported the investigators,
- SOCR staff's involvement in fair housing investigation testing, which was conducted in 2011 and reported in 2012,[8] and
- The 2012 implementation of the Paid Sick and Safe Time Ordinance (PSST), which led to a .6 FTE Senior Civil Rights Analyst position being devoted to drafting the enforcement rules for the ordinance and conducting community stakeholder meetings about PSST. Since July 2012, this position has been devoted to providing PSST technical assistance to employers and employees rather than investigating cases in response to potential violations of PSST.

SOCR Investigated and Closed Fewer Cases per FTE in 2012 than Four of Five Other Jurisdictions We Examined

As Figure 7 shows, in 2012, on average, each SOCR enforcement staff member investigated 23 cases and closed 22 cases, slightly below their five year closed-case average of 24 cases. Four of five other jurisdictions we reviewed investigated and closed between 32 and 56 cases per

[8] See City of Seattle 2011 Fair Housing Testing results, dated April 25, 2012.

enforcement staff. In order to make a valid comparison of SOCR's cases-closed annually per staff with other jurisdictions, we excluded administrative and management staff from all jurisdictions in the following table.

Figure 7. 2012 Human Rights[9] Agencies Jurisdictional Comparison

Jurisdiction	Cases Investigated	Cases Closed	Enforcement Staff*	Cases Investigated/ Staff	Cases Closed/ Staff	Pop.
Seattle* (SOCR)	161	156	7	23	22	635,000
Austin, TX	280	280	6.75	41	41	843,000
Montgomery, Co., MD	217	225	4	54	56	1,005,000
San Francisco, CA **	95	66	3	32	22	826,000
Tacoma, WA	85	100	2.5	34	40	202,000
Washington State Human Rights Commission***	488	466	17	29	27	6,467,000

*Excludes management, administrative staff, and .6 Paid Sick and Safe Time Civil Rights Analyst position.
**San Francisco's Human Rights Commission is not a FHAP or FEPA agency and does not have the enforcement authority to impose remedies.
***The State population is an estimate and does not include Seattle's and Tacoma's population.

An SOCR official stated that the reasons why SOCR closed-case rates were lower than those of other jurisdictions included:

- SOCR investigations and findings are more thorough than other jurisdictions.
- Seattle's ordinances provide the option for an independent review of SOCR No Cause determinations by the Seattle Human Rights Commission. Most other jurisdictions' appeals are reviewed either by the agency director or an internal agency review panel. As a result, SOCR investigators spend more time preparing appeal briefs and conducting remand investigations[10] compared to other jurisdictions (See Figure 14 on page 21 and the text following Figure 14 that discusses Tacoma and Montgomery County, Maryland).
- SOCR has a high settlement rate. Resolving complaints through a negotiated settlement takes more time and staff resources. SOCR also provides parties with an option to settle cases through private mediation by referring cases to the City of Seattle's Alternative Dispute Resolution (ADR) Program. The ADR Program staff is responsible for scheduling and coordinating mediation between the parties involved. Historically, SOCR closed about 20 percent of all charges filed through negotiated settlements.

[9] The other jurisdictions we refer to in this report as "human rights" agencies perform the same basic functions as Seattle's Office for Civil Rights.
[10] Remands are when SHRC directs SOCR to conduct additional investigation as a result of SHRC's review of the appeal.

- SOCR investigators conduct non-discrimination trainings and staff outreach events for the public throughout the year. Investigators conduct at least ten non-discrimination trainings each year and participate in community and citywide outreach programming. Most human rights agencies do not have investigator staff conducting training and outreach on non-discrimination laws.

SOCR Met the Closed-Case Processing Time Standards Specified in its EEOC and HUD Contracts, But Could Have Been Paid Higher Amounts if It Had Closed More HUD Cases within 100 Days or Less

HUD's payment data per case shows that although SOCR is meeting contract requirements for payment, it is not receiving the maximum contract payment possible because of the time it takes SOCR to close HUD housing cases. Figure 8 below shows that HUD pays SOCR more for cases that are closed in 100 days or less through settlement or conciliation than for cases that take more than 100 days to close.

Figure 8. HUD Contract Payment Structure

No. of Days	Closed-Case Payment Amount*
1. 100 or less	$2600
2. 101 to 150	$2340
3. 151 to 200	$2080
4. 201 to 250	$1820
5. Over 250	$0 to $1794

*HUD pays an additional $1,000 per case for Reasonable Cause Determinations

HUD concluded in its 2011 Performance Assessment of SOCR's federal housing cases, which covered calendar year 2011, that SOCR closed over 50 percent of the cases in less than 100 days.

The data in Figure 9 below shows for the pay period July 1, 2011 to June 30, 2012, 43 percent of the cases HUD paid to SOCR were at the maximum 100 percent payment level and 57 percent were paid at the 90 percent or lower level due to the number of days it took SOCR to close the cases.

Figure 9. July 1, 2011 to June 30, 2012 SOCR % of Cases Closed by No. of Days

# of Days	# of Cases	% of Cases
0-100	26	43%
101 to 150	15	25%
151 to 200	7	11%
201 to 250	5	8%
Over 250	8	13%

While we believe SOCR is adequately staffed to meet current demand levels, in the following chapters we make several recommendations that could improve the efficiency and perceived objectivity of SOCR's enforcement and outreach functions.

Chapter 2: SOCR Could Take Steps to Improve the Perception of its Objectivity and Impartiality

As requested in the Statement of Legislative Intent, in this chapter we address issues concerning SOCR's objectivity in the investigation and enforcement of civil rights laws for both complainants and respondents. According to a 2013-2014 City Council Budget Issue Identification paper, City Councilmembers have heard from business owners who see a conflict between SOCR's enforcement responsibilities and its advocacy role, and who believe that the latter affects SOCR's ability to conduct impartial investigations and enforcement actions.[11] In addition, we present options to address the perception of the objectivity and impartiality of the appeals process.

SOCR Should Use Outcome Rather than Output Performance Measures to Avoid the Perception that It Investigates as Many Cases as Possible to Maximize Its Revenues

Because SOCR gets paid by EEOC and HUD for charges investigated and cases closed it could appear that SOCR has a financial incentive to investigate as many cases as possible so as to maximize the revenue it receives from its EEOC and HUD contracts; this could lead to the perception that SOCR is conducting unwarranted investigations.

The Mayor and SOCR have a performance goal that SOCR file and close an average of 18 charges per month. According to an SOCR official, the goal of 18 charges per month was established several years ago and is based on the number of charges SOCR is required to close by its EEOC contract and the projected closures of HUD cases. The money from the EEOC and HUD contracts goes to the City's General Fund and the City expects to receive about $200,000 from these contracts in 2013. According to a Rental Housing Association representative, there is an impression in the business community that SOCR needs to conduct a certain number of investigations, even if they have no merit, to meet its EEOC and HUD targets. The performance measure used by SOCR could be contributing to this perception.

In discussing enforcement process performance measures with other jurisdictions, we found that the ones used by the Montgomery County, Maryland Office of Civil Rights did not conflict with their agency's desire to be objective. Their out-come based performance measures include:

- Completing 95 percent of the charges filed within a 24 month period.
- Of the cases that go to mediation, 50 percent are mediated successfully.
- For 95 percent of the charges that are issued with a Cause or No Cause determination letter, the letter will be sent within 30 days of the investigation being completed.
- All housing providers tested should be found compliant with fair housing laws.

[11] Overview and Initial Issues Identification, Seattle Office for Civil Rights, Rebecca Herzfeld, Council Central Staff, October 22, 2012.

- Providing a customer satisfaction form, which is under development, to complainants and respondents to evaluate their experience with the enforcement process based on a 5-point scale with the goal of achieving an average score of 3.5.[12]

Recommendation 1: To reduce the appearance of a conflict of interest, SOCR should not use "closing charges per month" as a performance measure. Instead, SOCR should establish and report outcome–based performance measures that are viewed as objective and beneficial to complainants and respondents, such as those used by the Montgomery County Office of Civil Rights. In addition, SOCR should gather information about its performance by requesting complainants and respondents to complete a customer satisfaction survey on their experiences with the enforcement process.

Changes to SOCR's Roles Could Improve the Perceptions of Its Objectivity and Impartiality
SOCR has multiple roles including:

1) Recommending policies to the Mayor and City Council on civil rights matters, and establishing administrative rules for those policies, such as for the Paid Sick and Safe Time Ordinance;
2) Educating and advocating for civil rights and working to eliminate institutionalized racism and discrimination through its administration of the Race and Social Justice Initiative; and
3) Enforcing the City's civil rights laws by conducting investigations of allegations of illegal discrimination. In its investigative capacity, as in the other jurisdictions we reviewed, SOCR is a fact-finding body and does not advocate for individuals who file charges with SOCR. However, after its investigation is complete, SOCR's role changes. After it issues a Reasonable Cause determination of discrimination, SOCR assumes the role of being an advocate for the charging party to seek a remedy from the respondent.

A business representative from the Seattle Metropolitan Chamber of Commerce[13], expressed concern to us about an apparent conflict between SOCR's roles in rule making and enforcement, and its role in advocacy and policy development. The business representative believes SOCR's advocacy role limits its ability to develop civil rights policies and rules that fairly reflect business interests, conduct impartial investigations, and create fair remedies.

To help address these concerns, we make recommendations, which are described below, concerning SOCR's policy, investigation and enforcement roles.

[12]SOCR does not have a central repository for customer feedback; therefore, it could not provide us with comprehensive information on respondents' experiences with SOCR's enforcement process.
[13] The Seattle Metropolitan Chamber of Commerce is the largest business association in the Puget Sound region representing approximately 1,500 companies located in Seattle. Eighty percent of their members are small businesses with fewer than 100 employees. Source: http://www.seattlechamber.com.

SOCR Policy Development and Rule Making Role: SOCR enforcement staff members' involvement in the policy development stages of an ordinance affecting businesses raises the question of the staff's impartiality if they later investigate charges of violation of that ordinance. For example, SOCR enforcement staff was involved in the policy development stages of the City's Paid Sick and Safe Time Ordinance, which requires businesses to provide paid time off to employees, by responding to City Council inquiries. SOCR enforcement staff provided policy advice to decision makers in support of the ordinance and developed the rules for its implementation. Representatives of two business community groups (the Seattle Metropolitan Chamber of Commerce and the Rental Housing Association) expressed concern that SOCR did not take into account the impacts of the ordinance on the business community, and perceived that SOCR staff did not have the business background to provide the business perspective. However, both organizations participated in stakeholder meetings for rule development.

To help address the perception of compromised objectivity in its policy development role, SOCR could use its business liaison position to establish partnerships and improve communications with the business community so that the community is involved as soon as possible in developing policy that affects businesses and establishing the rules to implement the policy. SOCR reported that they hired a business liaison in mid-July 2013 who reports to SOCR's Outreach and Engagement Division, which is separate from the Enforcement Division.

Recommendation 2: When SOCR staff are developing and recommending policy that may have a significant effect on businesses, and are establishing rules for implementing that policy, the staff should understand the impact of the policy and rules on businesses. In such instances, SOCR's business liaison should involve businesses at the earliest point possible in policy development and rule making. The liaison should also have knowledge of and experience with the issues faced by small to medium size businesses that may rely on SOCR for technical advice more than larger businesses.

Recommendation 3: SOCR should maintain separation between its policy and enforcement sections. Enforcement staff members who conduct investigations should not develop and advocate for policy because they may eventually have to investigate alleged violations of that policy.

Investigation and Enforcement Role: During our review of SOCR case files, we observed inconsistencies in the way cases were documented. For example, some files did not contain the dates of SOCR's contacts with involved parties or lacked supervisory and management review signatures. SOCR officials explained that the only reason a signature would be missing is because the individual was out of the office when the file was closed. For example, if the Enforcement Manager was out of the office, the Senior Civil Rights Analyst was authorized to sign on his/her behalf. Finally, some of the files we reviewed did not contain a checklist or an investigation plan for an investigator to follow. Such inconsistencies can detract from the perception of SOCR as an objective, impartial agency.

To help ensure impartial investigations, the Fairfax County, Virginia Office of Human Rights (Fairfax) uses software that promotes uniformity in their investigation process; the software requires that every investigator follow the same process. A Fairfax County, Virginia official stated that having an automated system that requires everyone to follow the same process helps alleviate some concerns about objectivity. The City of San Francisco has automated its process to determine whether prima facie elements of discrimination exist in a complaint. The software used by San Francisco's investigators forces them to answer a standard list of questions concerning which type of discrimination (employment, housing, reasonable accommodation) applies to their case. Based on the answers to those questions asked during the complaint intake process, the system, not the investigator, determines whether prima facie elements of discrimination exist. Having an automated system that helps determine if a case contains prima facie elements of discrimination during the intake process could address the concern of the Rental Housing Association representative that SOCR investigates cases to meet contract goals so as to earn more revenue.

Recommendation 4: SOCR's enforcement unit should increase its use of automation to help further standardize its investigative process and increase its appearance of objectivity.

Before SOCR Issues a Final Determination of Reasonable Cause It Should Provide All Respondents Its Proposed Findings and the Opportunity to Settle the Case

In a case in which a City department is a respondent, after SOCR completes its investigation and is about to issue a Reasonable Cause determination, the findings and determination are first issued as proposed findings and determination. Unlike non-City respondents, the City department is then given the opportunity to settle the charge, with the knowledge of what the proposed finding(s) against it will be. Of the organizations we contacted, SOCR was the only one that has a different process for City departments than for other respondents. In contrast, Montgomery County, Maryland, allows all respondents to see proposed findings, and have a final chance to settle, before a Reasonable Cause determination is issued.

According to officials from SOCR and the Office of the Seattle City Attorney, the rules governing the process for City departments as respondents may have been written to address the concern that SOCR and the respondent department both report to the Mayor. SOCR does not have the authority to direct another department's actions. The process gives SOCR and the respondent department an opportunity, as peers, to review the proposed findings with the intent of settling the case rather than having SOCR issue the department a determination of discrimination. As a result, SOCR has never issued a Reasonable Cause determination of discrimination against the City. Having a separate process for City department respondents may be viewed as unfair and call into question SOCR's impartiality as an enforcement agency.

Recommendation 5: SOCR should document the procedure in SOCR's enforcement rules that all respondents will be provided with proposed findings and another opportunity to settle the case before SOCR issues a final determination of Reasonable Cause.

Consider Changes to Seattle's Appeals Process to Increase the Perception of Its Objectivity and Impartiality

A Brief History of the Seattle Human Rights Commission: The Seattle Human Rights Commission (SHRC) was created in 1963 (Ordinance 92121) at the height of the U.S. Civil Rights Movement to promote human and civil rights in Seattle. One of SHRC's responsibilities is to "study and investigate problems arising in the City which may result in tensions or discrimination because of race, color, religion or national origin…To report periodically to the Mayor and City Council on such studies and investigations and to make recommendations for appropriate remedial action when indicated…" The legislation that created SHRC provided it with no enforcement authority. In 1969, the City created the Human Rights Department (HRD) (currently the Seattle Office for Civil Rights) (Ordinance 97971), repealed the ordinance creating SHRC, gave HRD the authority to enforce civil rights laws and investigate discrimination complaints, and established SHRC as an advisory body to the Mayor, City Council, HRD and other City departments on civil and human rights. SHRC's current duties (Seattle Municipal Code Section 3.14.931) include advising the Mayor and City Council on civil rights and human rights policy issues, hearing appeals from claimants whose charges resulted in a SOCR No Cause determination, and, jointly with the Seattle Hearing Examiner, hearing contested Reasonable Cause determination cases. SHRC also recommends to the Mayor and City Council who should serve on the SHRC. SHRC receives staffing support from SOCR, but there is no reporting relationship between the two organizations.

The Seattle Human Rights Commission's (SHRC's) status as a volunteer, advisory organization may create an appearance of a conflict with its role as an appeal panel (i.e., an impartial body) for SOCR's No Cause determinations on discrimination complaints that have been appealed. The Mayor and City Council could consider changing the appeals function in ways that would increase the perception of its impartiality.

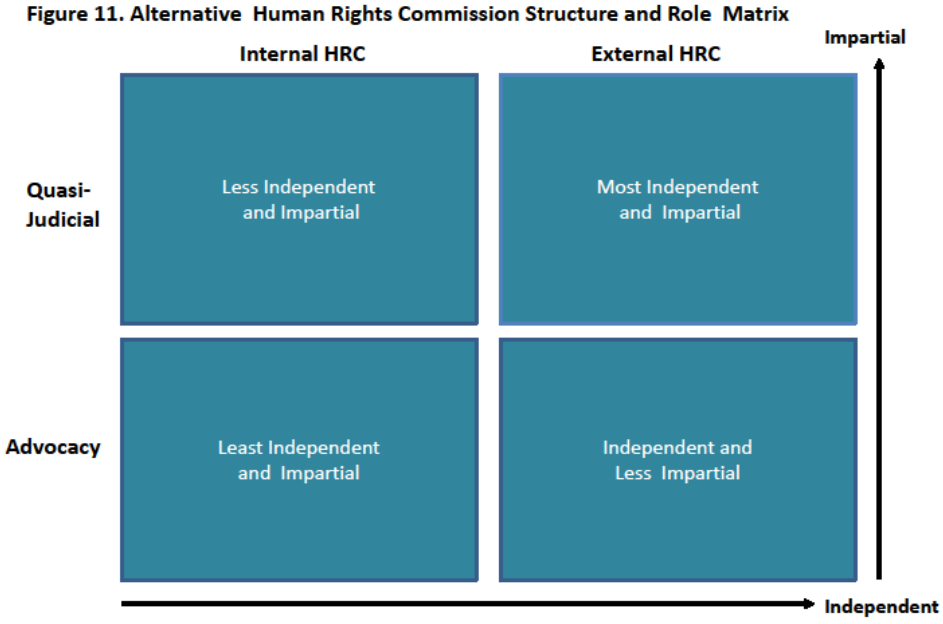
Enforcement Function and Appeals Panel Models from Other Jurisdictions: The human rights enforcement agencies we researched varied in their reporting relationships with their human rights commissions. Most enforcement agencies we contacted had what is known as an "external" relationship with a volunteer, appointed human rights commission. This model is the type followed in Seattle. Figure 10 shows that four (Austin, TX; Fairfax County, VA; Montgomery County, MD; and Tacoma, WA) of the six enforcement agencies we reviewed had such a reporting relationship to their human rights commission. These agencies' directors report to the jurisdiction's executive, and the human rights commission is an independent entity that receives administrative support from the enforcement agency (i.e., has an "external" relationship to the commission). Two enforcement agencies we reviewed had directors who reported to the human rights commissions (i.e., Washington State Human Rights Commission [WSHRC] and San Francisco Human Rights Commission [SFHRC]). We call this an "internal" relationship to their human rights commissions.

Figure 10. Human Rights Organizations' Reporting Relationships to Human Rights Commissions		
Organization	**Internal HRC**	**External HRC**
SOCR		X
WSHRC	X	
SFHRC	X	
Montgomery County, MD		X
Fairfax County, VA		X
Tacoma, WA		X
Austin, TX		X

Human rights enforcement agencies whose human rights commissions are external to the enforcement agency, such as in Seattle, can rule on cases independently, whereas enforcement agencies that report to a human rights commission may experience pressure to consider their commission's perceived agenda, making this structure less independent. Therefore, jurisdictions with human rights commissions that are external to the enforcement agency may be viewed as more independent than an agency that reports directly to the human rights commission.

Figure 11 shows four models of the reporting relationship of a human rights enforcement agency to a human rights commission, the role of the human rights commission (HRC), and the relative independence and impartiality of each.

Figure 11. Alternative Human Rights Commission Structure and Role Matrix



An appeals structure, in which a human rights commission acts as an advocate for civil rights and also as an appeals panel, such as in Seattle, may also be perceived as lacking objectivity. Although SOCR does not report to the Seattle Human Rights Commission, the Commission may

be perceived as an advocacy group, which could cause some to question its ability to serve as an impartial appeals panel.

The reporting relationship that provides the appearance of the most impartiality and independence is one in which the enforcement agency is independent from the human rights commission, and the human rights commissioner acts as a quasi-judicial body when hearing appeals. As a quasi-judicial body, commissioners resemble judges because they must follow certain procedures and refrain from ex-parte contacts and communications. In addition, these commissioners would not advocate for or develop human rights policy during their participation on the appeals panel.

One human rights agency we reviewed, the Tacoma Human Rights Office, structures their appeals panel to ensure representation of specific constituencies of the community. According to a Tacoma Human Rights Office official, Tacoma's civil rights ordinance specifies that members of the human rights commission will represent the City's varied constituencies, and specifically calls for a youth representative to be included on the commission. Although there have been varied constituencies represented on the SHRC, such as youth and (currently) a private sector business employee, these constituencies are not specified in Seattle Municipal Code 3.14.920.

Recommendation 6: As directed by the Statement of Legislative Intent, and based on our review of other jurisdictions, we have identified policy options the City of Seattle should consider to increase the perception of independence and impartiality in the City's appeals process for discrimination charges:

Option 1: Change the membership requirements of the SHRC and/or the Appeals Panel specified in the Seattle Municipal Code to ensure a broader array of community constituents are always represented, such as the business community.

Option 2: Require that the SHRC commissioners who serve on the Appeals Panel[14] serve as a quasi-judicial body and refrain from advocacy activities.

Option 3: Create a quasi-judicial appeals panel separate from the Seattle Human Rights Commission.

Consider Having Only the Hearing Examiner Adjudicate Charges of Discrimination against Respondents

The Seattle Human Rights Commission's (SHRC's) participation in Hearing Examiner adjudications of charges against respondents could be perceived to conflict with its status as a volunteer, advisory human rights organization. The City could consider changing this adjudication process in ways that would increase the perception of its impartiality.

[14] The Appeals Panel is a subset of the SHRC. According to Seattle Municipal Code 3.14.920, SHRC is to be composed of fifteen (15) members who … shall include representatives of minority communities, other protected classes, and persons with a demonstrated concern and background in human rights.

After SOCR issues a Reasonable Cause determination, it invites the affected parties to conciliate the charge. If the parties are unable to conciliate, or the respondent is unwilling to conciliate, SOCR refers the charge to the City Attorney's Office, which prepares a complaint against the respondent and files it with the City's Hearing Examiner on behalf of the charging party and SOCR.

If the City Attorney pursues the complaint with the Hearing Examiner, the Hearing Examiner conducts a de novo[15] public hearing of the City Attorney's complaint. The Hearing Examiner presides over the hearing, which may include up to two members from SHRC[16]. As the Chair of the panel, the Hearing Examiner directs the hearing and rules on objections. The participation of SHRC is optional, and SHRC has not always participated in the hearings. According to the Hearing Examiner, few cases get to this stage. From 2008 to 2012 the Hearing Examiner heard only one discrimination case, and no SHRC members participated.

The Hearing Examiner, and SHRC panel members who choose to participate, consider the evidence and then issues findings of fact and conclusions of law based on the evidence. If they find the complaint has merit, the written decision details the relief deemed appropriate.

In Seattle, impartiality appears to be enhanced because the Hearing Examiner and Human Rights Commissioners have no prior information about the case before it arrives before them. According to the Hearing Examiner, the Hearing Examiner and Human Rights Commissioner(s) discuss the evidence about a case and usually are able to reach a consensus.

However, because one of the roles of SHRC is to advocate for human rights, its participation on the Hearing Examiner panel may reduce the perception of the impartiality of the process for respondents. According to a 2013 City Council budget issue paper, "It may be that changing the process so that the Hearing Examiner alone hears cases in which the respondent disagrees, rather than including Human Rights Commissioners on the Hearing Examiner panel, would address some business concerns."

In the two other agencies (Tacoma and Montgomery, County, MD) we reviewed that have a hearing examiner conduct hearings on discrimination complaints, human rights commissioners do not participate in the hearing.

Recommendation 7: If the City wishes to increase the Hearing Examiner process's appearance of impartiality, the City should consider eliminating SHRC's participation in the Hearing Examiner's public hearings of discrimination charges filed by the City Attorney for the following reasons:

[15] The Hearing Examiner reviews the case without consideration of prior rulings.
[16] SHRC Commissioners may participate in Hearing Examiner hearings only if they have not previously been involved with the charge.

- The Seattle Human Rights Commission's participation in the Hearing Examiner hearings is optional;
- SHRC has not always opted to participate in those hearings;
- There are very few cases that go the Hearing Examiner (one in the last five years);
- The Hearing Examiner is trained to adjudicate cases (i.e., apply the law to individuals and potentially impose penalties) whereas the commissioners are volunteers and are not required to have these qualifications.

Chapter 3. SOCR's Enforcement Process Could be Streamlined and Improved by Employing Certain Practices from Other Jurisdictions

The City Council's Statement of Legislative Intent requested that we examine models from other jurisdictions around the country, review SOCR's existing practices, and present recommendations for streamlining the processing of civil rights complaints without compromising the rights of complainants, including a review of the roles of SOCR, the Seattle Human Rights Commission, the Law Department, and Hearing Examiner. In this chapter we present policy options for consideration by the Mayor and Council that could streamline the City's civil rights enforcement process based on practices we found in use by other jurisdictions we examined.

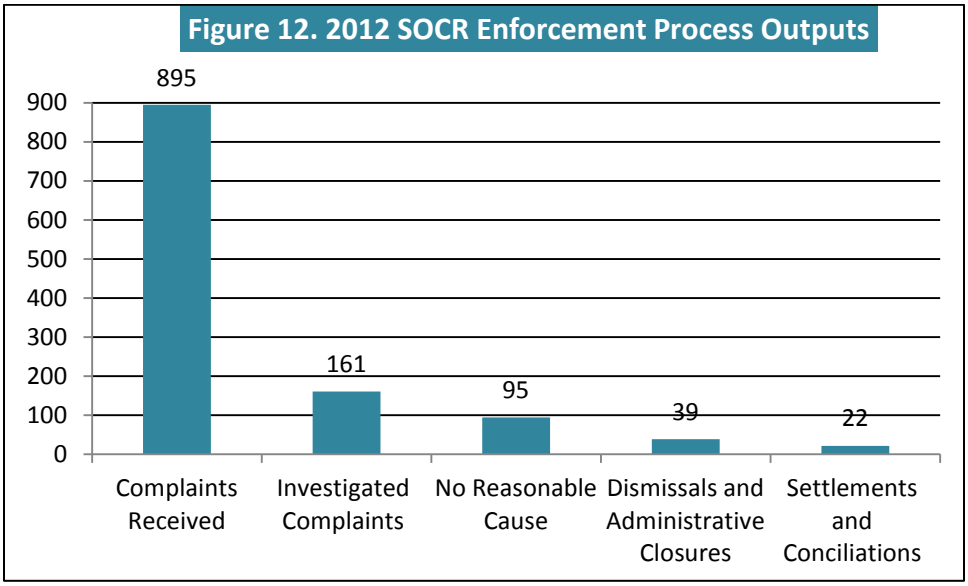
SOCR Could Automate Its Process to Establish Whether Complaints Meet Prima Facie Evidence Standards and to Increase the Consistency of Documentation in Its Case Files

***Improve Screening of Complaints**:* Certain segments of Seattle's business community have expressed concern that charges are unnecessarily being investigated by SOCR because most investigations result in No Cause determinations. Businesses sometimes have to incur the expense of hiring attorneys to handle these cases. SOCR could automate its process to more effectively establish whether cases meet prima facie standards and warrant investigations.

Only a very small number of the complaints SOCR receives are found to have merit and result in a settlement or conciliation. Twenty two (14%) of the 156 cases closed by SOCR in 2012 resulted in settlements (i.e., before SOCR issued a determination) or conciliations (i.e., when SOCR issued a Reasonable Cause determination), which was only 2.5 percent of the 895 complaints received in 2012.

Figure 12 shows the number of discrimination complaints received, investigated and resolved by SOCR in 2012:

Figure 12. 2012 SOCR Enforcement Process Outputs



San Francisco's Human Rights Commission reports that the automated system they use increases the efficiency and effectiveness of their intake process (e.g., 21 percent of 2012 charges filed resulted in settlements), the development of their investigative plan, and issuance of a determination of Cause and No Cause, thereby streamlining the entire process.

San Francisco Human Rights Commission 2012 Annual Report: Benefits of an Automated Discrimination Complaints System

The cloud-based system is used to record all data for HRC discrimination complaints throughout the entire case progression, from the initial point of contact through case closure. The user-experience is interactive and guides staff through the interview of HRC Complainants, prompting HRC staff to gather information conditionally based on data input. For example, depending on the theory of discrimination that HRC Investigators select and apply to a case, various questions will populate in the database in order to obtain the most relevant information and evidence needed. The database enhances the HRC focus on legal theories of discrimination and the evidence needed to prove or disprove every claim of discrimination. Each issue raised in an investigation is addressed with the most comprehensive and thorough approach possible through the intake interview, development of an investigative plan, and issuance of a determination in the case.

The improved capacity to track, monitor, and report information related to claims of discrimination enables the City and County of San Francisco to better analyze activity in employment, housing, and public accommodations. In turn, the HRC can effectively identify patterns and trends in these areas, and collaborate with employers, housing providers, city contractors, and other businesses to address any problematic findings. Additionally, with the implementation of this technology, the HRC reduces the consumption of resources for each case file by becoming as "paperless" as possible. Documentation can be uploaded and directly stored in the database, and HRC correspondence can be generated directly from the application.

Recommendation 8: SOCR should consider automating its intake screening process to determine which complaints meet prima facie standards.

***Increased Use of Automation Could Address Inconsistencies Found in SOCR Case Files*:** During our audit we reviewed the files for 14 SOCR enforcement cases that were closed in 2012. This sample of cases covered all of the possible case-closure outcomes, such as settlements, dismissals, Reasonable Cause determinations, and No Cause determinations. While the files contained large amounts of evidence to document SOCR's findings, we found inconsistencies in the files' organization and documentation that could be addressed through increased automation. Although SOCR has its own web-based software (Martin) that helps track the status of SOCR's cases, we found the following inconsistencies during our review of 14 SOCR cases files:

- One file that did not indicate an SOCR initial date of contact after the complainant made an inquiry. SOCR's contact letter to the complainant was undated; therefore, we could not determine how long it took for SOCR to respond to the inquiry.
- Six files' "Findings and Closure Transition" forms contained pencil annotations. Pencil annotation could fade over time or be erased.
- One file lacked a review sign-off.
- Two files contained manual case logs that were used to track the status of cases rather than Martin's automated version of the log.
- Two files contained no case log (manual or automated); therefore, it was difficult to understand the cases' history.
- Three files contained loose, unattached original versions of evidence, such as a receipt. The receipt in one file contained no case reference number. Documents, especially evidence, should be scanned with a case reference number. If original evidence is

required to be kept it should include a reference number and be securely attached to the file.

- Inconsistent file organization and lack of tabs to help the reader find evidence or SOCR-generated documents, such as letters to the respondent.

A 2007 consultant's study[17] noted that SOCR had disorganized investigative files, and recommended additional support staff to help ensure that the files were kept more organized. Two jurisdictions (San Francisco and Fairfax County, VA) we contacted described how, instead of relying on support staff, they used near paperless systems that:

- Reference and date-scan original documents;
- Document and date communications between investigators and the parties involved; and
- Document changes made to charging documents and determinations of findings that result from additional evidence, fact finding conferences, settlements, and supervisory review.

Recommendation 9: SOCR should conduct further research on automated case processing systems used by other jurisdictions and consider increasing its use of automated systems to address inconsistencies in file documentation.

To Reduce the Number of SOCR Appeals and Remands, Consider Modifying Appeals Process Rules, Increasing SHRC Appeals Panel Membership Continuity, and Providing SHRC Appeals Panel Members with More Training

Annually since 2009, between 8 and 14 percent of closed cases in which SOCR issued a No Cause determination were appealed to SHRC. Of these appeals, approximately one-third were remanded by SHRC to SOCR for reconsideration. During this period, the appeal and remand processes resulted in no changes to SOCR's determinations. The appeal process may provide procedural satisfaction to the charging party; however, as is the case with any type of appeals process, it can also add to the time and costs incurred by SOCR and the respondent, and in some cases raise unrealistic expectations for the charging party. The City could consider some structural changes to the appeals process that might reduce appeals that have little to no likelihood of reversing SOCR's No Cause determination and speed the processing time.

[17] Barbara J. Standal, "Review and Assessment of Seattle Office for Civil Rights Enforcement Function, 21 September 2007."

Figure 14 shows the number of SOCR appeals and remands from 2008 to 2012.

Figure 14. 2008-2012 SOCR Appeals and Remands					
Action	**2008**	**2009**	**2010**	**2011**	**2012**
# of cases closed	205	217	216	189	156
# of cases appealed	18	18	25	27	13
% of cases appealed	8.78%	8.29%	11.57%	14.29%	8.33%
# of cases remanded	0	6	9	8	5
% of appealed cases remanded	0.00%	33.33%	36.00%	29.63%	38.46%

We reviewed the role of the Seattle Human Rights Commission in the appeals process and found that it differed in certain respects compared to other jurisdictions. Unlike Seattle, most enforcement agencies we spoke with about their human rights commissions stated that cases rarely get appealed and remanded back to the human rights enforcement staff for further investigation. For example, in 2012, Tacoma received four requests for appeals out of 40 closed cases, of which only one appeal was heard by their human rights commission and did not result in a remand. In Montgomery County, Maryland, in 2012 approximately 10 percent of their cases were appealed and only one of those cases resulted in a remand. Officials from all of the jurisdictions we contacted, including Seattle, stated that when cases get remanded for further investigation, the additional work rarely results in the overturning of the enforcement agency's original No Cause determination. According to SOCR, from 2003 to 2012, there have been no cases remanded by SHRC that resulted in a change in determination from No Cause to Reasonable Cause.

When SOCR issues a No Cause determination, meaning that the preponderance of the evidence did not establish discrimination, the charging party is notified of SOCR's finding and told that it may appeal the No Cause determination to the Seattle Human Rights Commission (SHRC). The charging party's appeal must allege that the investigation was inadequate or that the No Cause determination was not supported by a preponderance of the evidence. If an appeal is made, SOCR schedules a three-member SHRC Appeals Panel to review the case file and/or hold a hearing to decide whether to remand the case to SOCR for further investigation or to affirm the No Cause determination. SHRC does not have the authority to overturn a No Cause determination and impose a Reasonable Cause determination.

If the SHRC Appeals Panel affirms SOCR's decision, the case is closed and the charging party may pursue the matter in the court of proper jurisdiction. If the SHRC Appeals Panel remands the decision, the case is reopened and SOCR conducts additional interviews or collects new evidence to reconsider whether the evidence supports a different finding and conclusion. While the decision to remand or not is ultimately made by the Appeals Panel, SHRC receives advice from the City's Attorney's Office when they are considering an appeal of an SOCR decision on whether the investigation was adequate or whether a preponderance of the evidence supports SOCR's findings. The City Attorney also drafts SHRC's decision regarding the remand.

According to an SOCR official, appeals and remands add months to the enforcement process. SOCR data indicates that between 2007 and 2012 the annual average time to investigate and respond to remands ranged from 135 to 368 days. While appeals and remands could add 30 to 40 hours of work for SOCR staff to conduct additional interviews and write an appeals brief, according to the SOCR official, appeals add another five months or longer to the process because the SHRC Appeals Panel only meets monthly. After SOCR receives the appeal and passes it to the Appeals Panel, it takes one or two months for the Panel to review the appeal and another month for it to make a decision.

We were informed by an SHRC official that SHRC and SOCR recently agreed to create a workgroup to address ways to eliminate remands that are requested by SHRC solely because of a lack of clarity about what the SOCR investigator did or information that is missing from the investigation file. In addition, the SHRC official stated that SHRC is willing to hear appeals more frequently to expedite the appeals process.

What follows are different practices from other jurisdictions that have lower numbers of appeals and remands than Seattle. These jurisdictions implement one or a combination of the following practices.

Consider Establishing a Reconsideration Process within SOCR to Streamline the Appeals Process: In Seattle, all appeals that meet filing deadlines are heard by the Seattle Human Rights Commission. Other than establishing whether the appeal meets the filing deadline, SOCR takes no action on the appeal. We identified two human rights agencies from other jurisdictions (the Washington State Human Rights Commission and Fairfax County, Virginia) that provided the option for the agency to reconsider a No Cause determination after an appeal had been filed, but before the appeal is referred to their agencies' human rights commission, if the charging party presents new evidence or a new witness becomes available. An additional agency, Tacoma, notifies charging parties of imminent No Cause determinations and asks if there is new evidence the agency should consider before issuing its No Cause determination. If the charging party presents new evidence, the agency considers the new evidence before issuing its final determination. If the agency sustains its previous No Cause determination, the charging party can proceed with an appeal to the commission. A consultant report on SOCR's enforcement process requested by the City of Seattle in 2007 recommended that SOCR adopt a reconsideration process on appeals before referring them to SHRC.

Recommendation 10: The City should consider allowing the SOCR Director to reconsider cases by reopening No Cause determination cases that have been appealed to allow the submission and consideration of new evidence. If a No Cause determination remains, the claimant could appeal the Director's determination to the Seattle Human Rights Commission.

***Changes to How the Seattle Human Rights Commission Decides which Cases to Review, Who Makes that Decision, and the Extent of the Commission's Reviews May Reduce Appeals and Remands in Seattle**:* One reason SOCR may resolve fewer complaints per investigator than the other jurisdictions we reviewed could be the number of appeals and remands SOCR experiences. Appeals and remands require additional time for investigators to respond to each appeal and to re-investigate cases which are remanded. Another consequence of appeals, as happened in two cases in Seattle, is that if cases the City is investigating on behalf of HUD take a long time to resolve, HUD can take back the case, while the cases are still in the City's appeal process, and not pay Seattle for the investigative work it completed. Both appeals and remands lengthen the time cases remain open.

We reviewed other jurisdictions' human rights commissions' appeals processes and found that two agencies, the Washington State Human Rights Commission (WSHRC) and the Tacoma Human Rights Office have higher standards than Seattle for accepting No Cause cases to review. SHRC reviews all timely filed No Cause discrimination appeals. In contrast, a WSHRC official stated that their human rights commission only considers appeals of cases in which the law was not applied correctly or facts were not considered that would possibly result in a different outcome. A Tacoma Human Rights Office official stated that their human rights commission only allows appeals when new evidence is provided or the charging party can demonstrate that the commission's conclusion does not logically follow from the facts they reported.

Another way to streamline Seattle's appeals process is to have the Chair of the SHRC and the SOCR Director jointly decide whether the appeal merits consideration by the Appeals Panel. According to a Tacoma Human Rights Office official, the chair of Tacoma's human rights commission decides whether the commission will consider the appeal based on the stated grounds for the appeal. We are concerned with Tacoma's approach of having one person making a decision about whether an appeal will be heard by the Appeals Panel. We believe the SOCR's Director and the SHRC Chair may make better decisions jointly about the validity of the appeal, and whether the SHRC Appeals Panel should address it. If they disagree, then the appeal would go to the SHRC Appeals Panel.

Recommendation 11: The City should consider modifying the appeals rules that specify which cases the SHRC Appeals Panel will address by clarifying that the grounds for an appeal based on the adequacy of the investigation means that new evidence or evidence not considered in the investigation would call into question a SOCR No Cause determination. The current grounds for an appeal due to "the findings were not supported by a preponderance of the evidence" would remain in the SHRC Appeals Rules.

Recommendation 12: The City should consider having the Chair of SHRC and SOCR's Director jointly decide whether appeals should be heard by the Appeals Panel. If there is disagreement, then the SHRC Chair's decision would prevail and the appeal would be heard by the Appeals Panel.

Remand Cases Only When SOCR's No Cause Determinations are Not Supported by a Preponderance of the Evidence*:* The enforcement agencies we spoke with regarding the actions of their human rights commissions stated that cases rarely get remanded back to the human rights enforcement staff for further investigation. Furthermore, representatives from all of the jurisdictions we contacted, including Seattle, stated that when cases get remanded for further investigation, the additional work rarely results in the overturning of the enforcement agency's original No Cause determination. As indicated in Figure 14 above, approximately one-third of SOCR's No Cause determinations are remanded on appeal. According to SOCR, from 2003 to 2012, there have been no cases remanded by SHRC that resulted in a change in determination from No Cause to Reasonable Cause.

According to an SHRC Commissioner, when SHRC gets an appeal, they review the entire case file to assess the adequacy of the investigation and to determine whether SOCR's determination is supported by a preponderance of the evidence; they do not limit their review to those parts of the investigation that relate to the specific reason given for the appeal. SHRC reviews the entire case for adequacy because sometimes SHRC concludes that the claimant has not clearly articulated their reason for the appeal and therefore SHRC must interpret the claimant's intent.

According to SOCR, most of the appeals that are remanded are remanded because SHRC found the investigation was inadequate, not because SHRC found that the determination was not supported by a preponderance of the evidence. According to an SOCR official, sometimes SHRC's remand order to SOCR staff is to interview one more person or ask one more question. Between 2003 and 2012, remands did not change the outcome of the case, because SOCR bases its findings and determination on many interviews and the preponderance of the evidence. Officials from two other jurisdictions' agencies indicated that in their appeals processes, the standard of review is limited to new evidence not previously presented or assertions that the findings and conclusions were not supported by the evidence.

According to SHRC officials, the goal of SHRC's remands is not to affect the final outcome, but to ensure the claimant has a right to a thorough consideration and that their complaint received a full investigation. The City Attorney and SHRC interpret Seattle's standard of an adequate investigation to mean every named witness must be interviewed. However, for example, it may not be necessary to remand a case when SOCR consciously decided not to conduct one interview, as SOCR bases its findings on the preponderance of the evidence and not on a single piece of evidence.

The decision on whether to change the standard for appeals and remands is a policy decision. A change to the standard for appeal would require changes to the Seattle Human Rights Rules Chapter 46: Seattle Human Rights Commission Appeals Rules. Changing the standard for appeals and remands so that investigations are defined as inadequate only to the extent that the findings are not supported by a preponderance of the evidence may reduce the number of appeals and remands and be a more efficient way to close the case. However, this change may leave the claimant with the feeling that their appeal did not receive due process.

Recommendation 13: If the City wants to streamline the appeals process, it should consider whether the Appeals Panel should remand cases only when SOCR's No Cause Determinations are not supported by a preponderance of the evidence, or when relevant material facts were not considered that would possibly result in a different outcome (i.e., the investigation was not adequate).

Ensure Continuity in Membership of the Human Rights Commission Appeals Panel: Another factor that may contribute to the number of remands is the varying consistency of the SHRC Appeals Panel's membership. While the Chair of the SHRC Appeals Panel participates in every appeal throughout the year, SHRC rotates different commissioners onto the Appeal Panel on a quarterly basis, and there have been instances when the composition of the Appeal Panel varies monthly. Some jurisdictions have the same panel hearing appeals all year or develop appeals experts.

Recommendation 14: The Seattle Human Rights Commission should consider options for increasing the continuity of membership among Appeals Panel members such as limiting rotations of Appeal Panel members and extending their participation on the Appeals Panel to establish expertise in reviewing appeals.

Provide Additional Training to Human Rights Commission Appeals Panel Members: According to a Seattle Human Rights Commissioner, SHRC's commissioners attend an annual SHRC retreat during which Appeal Panel members receive training on the appeals process before serving on the appeals panel. No further training is required by law. However, Seattle Human Rights Commissioners have not attended the HUD sponsored training that SOCR staff receives on fair housing cases. According to a HUD official, HUD provides annual training in Washington D.C. to Fair Housing Agency Program agencies that SOCR enforcement staff attends and that would be useful to anyone overseeing fair housing issues, including SHRC. This includes training on HUD's best practices for determining whether fair housing laws were violated and uses evidence from real cases.

Recommendation 15: The City should consider providing SHRC Appeals Panel members with HUD and EEOC-sponsored training to ensure that they are best prepared to adequately perform their duties.

Chapter 4: SOCR's mission statement should be more inclusive, its outreach efforts should be expanded to include potential respondents, and SOCR should stress its commitment to objectivity and impartiality

SOCR's Mission Should be More Inclusive

While SOCR's mission statement is consistent with the Seattle Municipal Code and addresses its enforcement role, we found that the mission statement could be made more inclusive by mentioning stakeholders, such as the business community, who can help prevent discrimination.

> ***SOCR's Mission:***
>
> ***Applying both federal and local laws, the SOCR addresses illegal discrimination in employment, housing, public accommodations and contracting within the Seattle city limits. From filing a charge through the investigation of a case, SOCR provides a forum for resolution and remedies against discriminatory conduct. We also provide policy recommendations to City government and educate the public on civil rights issues. Through our commitment to human rights and dignity, SOCR works to eliminate the practice and vestige of racism and to achieve social justice in our city.***

A mission statement is important because it can reflect an organization's goals, approaches for accomplishing those goals, and the organization's culture and values.

We reviewed the mission statements of several municipal, county, and state civil rights organizations to see if there were concepts not contained in the City of Seattle's mission for SOCR that Seattle may want to embrace. While we didn't find a best practice regarding mission statements, several jurisdictions have adopted a more inclusive mission statement in which business and other members of the community are viewed as partners in the quest to prevent and eliminate discrimination.

We found that Montgomery County, Maryland had one of the most comprehensive mission statements of all the human rights agencies we researched and an accompanying slogan: "Montgomery County Office of Human Rights, creating a culture of service and climate of fairness and inclusion." Its mission statement is:

- Enforce Montgomery County's human rights laws in employment, public accommodation, and housing.
- Make citizens, both private and corporate, aware of their rights and obligations under the County's human rights laws.
- Provide leadership, advocacy, education, and support for fair housing practices in the County. Perform investigative testing to identify barriers to fair housing and act on findings. Mobilize effective community partnerships with residents, the real estate industry, businesses, other public agencies, and non-profit groups.

- Provide support to victims of hate/violence incidents through the Network of Neighbors and offer victim compensation through the Hate/Violence Partnership Fund.
- Promote sensitivity, support and respect for cultural diversity through such programs as Study Circles and community dialogues.
- Initiate, analyze or promote new legislation which would further the agency's mission.
- Maintain and enhance agency visibility and interaction with the community by participating in special events.

Likewise, the mission of the Minneapolis Department of Civil Rights is to, "Enforce the Minneapolis Code of Ordinances…; and to promote understanding of civil rights among residents, businesses and government."

Part of the San Francisco's Human Rights Commission mission is to "officially encourage private persons and groups to promote and provide equal opportunity for and good will toward all people."

Tacoma's Human Rights Commission Mission Statement is: "In association with other organizations and individuals, we will provide leadership and support in eliminating discrimination and prejudice through enforcement of anti-discrimination law and education programs."

While an understanding of civil rights is a key factor in eliminating discrimination, SOCR's mission statement, unlike the four mission statements from the other jurisdictions cited above, does not mention the City's civil rights stakeholders nor does it emphasize the role of education in the prevention and elimination of discrimination. The four jurisdictions' mission statements, in which members of the community such as businesses are viewed as partners in the prevention and elimination of discrimination, can serve as models that Seattle could use to develop a mission statement that promotes a more inclusive and preventive approach to civil rights enforcement.

Recommendation 16: We recommend that SOCR revise its mission statement to emphasize the importance of stakeholders' participation and education in the prevention and elimination of discrimination in Seattle. In developing this new mission statement, SOCR should receive input from stakeholders representing Seattle's diverse population including youth, representatives of Seattle's protected classes, other residents, businesses, community based organizations, City departments, and other government representatives.

Increase Outreach Efforts Geared Toward Prevention

In our review of SOCR's outreach literature and website we found an emphasis on the victim or potential claimant rather than on individuals interested in learning how to avoid charges of discrimination. SOCR's information for businesses is not concerned with how to prevent discrimination charges, but is mostly about how to navigate through SOCR's investigative

process, how a business should respond to discrimination charges, and what a business should expect if a discrimination charge is filed against it. While this information is useful it could be supplemented with additional information about prevention measures.

SOCR is developing a comprehensive outreach strategy that is planned for completion later this year. An SOCR official indicated that in its outreach efforts SOCR currently devotes approximately 70 percent of its staff time to outreach to the general public, primarily oriented to potential claimants, and 30 percent to potential respondents. SOCR does not document or produce an annual report[18] that would show every outreach event it participates in; therefore, we could not confirm SOCR's 70 percent-30 percent outreach effort. The 2013 SOCR budget includes a .5FTE position that started in July 2013 to provide outreach and engagement activities and technical assistance to help businesses learn of and meet anti-discrimination requirements.

SOCR has participated in some outreach efforts. SOCR and the Fair Housing Partners of Washington offer a free bimonthly, one-day training on preventing housing discrimination open to all local and regional housing providers including respondents whose settlements or conciliations require this training. Technical assistance and training to the broader business community has been provided mostly on a request basis. According to SOCR, it has not provided targeted outreach to new businesses on the City's civil rights laws. Furthermore, the City's web page "Business in Seattle" (http://www.seattle.gov/business/) provides no information about civil rights regulations affecting businesses.

We reviewed the outreach staffing and strategy of other jurisdictions' human rights agencies and found that due to cuts in their budgets and staff, jurisdictions have adopted a more strategic, inclusive approach to outreach that focuses on prevention, and aims to reduce claims and investigations. Part of their reasoning is that only a small percentage of complaints meet the prima facie elements, and an even smaller portion result in Reasonable Cause determinations, so their efforts may have more impact if directed towards prevention. The approaches we found in other jurisdictions include:

- Analyzing respondent information to target outreach efforts to where violations are most likely to occur, and thus where prevention efforts might have the most effect;
- Providing technical assistance and training to employers, housing providers and potential respondents to help them understand and avoid discrimination; and
- Developing partnerships within their community, including with the business community, to engage them in preventing discrimination.

Montgomery County, Maryland has done extensive outreach with the business community. According to a Montgomery County Human Rights Office official, outreach to the business

[18] SOCR issued a Community Report in 2009. Since then it has issued reports on the City of Seattle's Race and Social Justice Initiative (RSJI). The RSJI report does not contain sufficient information to verify its outreach to potential claimants and respondents.

community has included a "one-stop-shop" session for employers. According to the official, the majority of Montgomery County's employers are small businesses with fewer than 15 employees. These businesses do not invest much in human resource services so they need information about the County's employment anti-discrimination rules. The Office has an annual event targeted at small employers. They provide these sessions with the County's Department of Economic Development, and work with the local Chamber of Commerce to do outreach to local businesses.

The Montgomery County Human Rights Office also conducted a one-stop-shop session on fair housing regulations. This was set up with the State of Maryland's Human Rights Commission. Attendees received three continuing education units and a certificate. Maryland's Department of Housing and Community Development helped fund the session. Approximately 200 to 250 realtors, property managers, and regulators attended, as well as representatives from the U.S. Department of Justice and HUD. Attendees were provided updates on landlord-tenant regulations from the past year, and they identified problem areas in the implementation of those regulations. The session covered all the laws related to fair housing.

Human rights agencies in San Francisco and Fairfax County, Virginia use their automated case management systems to analyze respondent information so they can understand trends in discrimination complaints and target outreach accordingly. This year, the San Francisco Human Rights Commission has a goal to visit landlords or employers in the community at least once a month, to help prevent discrimination before it happens.

Although the Tacoma Human Rights (THR) Office does not have an outreach plan, according to a THR official, the office has worked hard to ensure it is impartial and that members of the business community, housing providers, and educational institutions know THR is a resource for them as much as it is a resource for the complaining party. THR's prevention efforts have included hosting an annual fair housing conference. Tacoma's 27th annual conference in 2013 was attended by over 350 housing providers and was held in partnership with SOCR, the King County Office of Civil Rights, the State of Washington Human Rights Commission, and the Fair Housing Center of Washington. The target audience was local housing providers, including those providing low income public housing, shelter and transitional housing, and senior housing. The goal and focus of the conference was prevention and promoting fair housing. According to the THR official, much of their community-based outreach has been on the prevention side.

According to the Tacoma official, THR has always focused on prevention because that has always been one of their goals – to work themselves out of a job. Given the number of Reasonable Cause cases in Tacoma, the officials concluded that investigating and closing cases is not really advancing the goals of equal employment opportunity or access to fair housing. Because so few cases close with a Reasonable Cause determination, the official said they believe that advancing those goals comes from prevention and education.

Recommendation 17: SOCR's Business Liaison position should be used to increase SOCR's advocacy and outreach efforts geared towards prevention.

Recommendation 18: SOCR's outreach plan should include strategies for its outreach staff to establish partnerships with the business community, analyze respondent information to more effectively target outreach efforts, and focus on prevention through education of potential respondents.

Recommendation 19: SOCR should resume producing its annual report to demonstrate its performance in preventing discrimination, conducting outreach, educating both potential claimants and respondents, and enforcing the laws when it finds that discrimination occurred.

Business Expertise Is Not Included in the Job Description for SOCR Enforcement Investigators, But It Would Be Useful for the Enforcement Manager

One of the issues raised in the Statement of Legislative Intent requesting our audit was whether SOCR's enforcement and outreach staff had adequate knowledge of business regulations and practice. While we found that business expertise is not included in the job description for the enforcement investigators within SOCR, it would be useful for the Enforcement Manager, and necessary for those staff working in SOCR's policy and outreach services.

We reviewed the job descriptions for SOCR investigators and outreach staff and discussed their backgrounds with SOCR management. We found that having knowledge of business regulations and practices does not relate to the specific job duties in the job descriptions for the SOCR Enforcement Manager, investigators and outreach staff. However, these staff members are expected to provide technical assistance regarding civil rights laws to businesses, City departments, private employers, housing providers, organizations, commissions, and members of the public.

We found SOCR's enforcement function is highly regarded. SOCR's enforcement work is monitored and audited annually by the EEOC and HUD. EEOC and HUD officials and representatives from SOCR's agency peers characterized SOCR's work as high quality. A representative of the Seattle Metropolitan Chamber of Commerce also praised SOCR's professionalism and knowledge. The representative stated that before the passage of the Paid Sick and Safe Time Ordinance the Chamber had no issues with SOCR. The Chamber's concern was that the business community has had no mechanism for collaborating with SOCR on policy or rule development that affects the business community, such as during the development of the Paid Sick and Safe Time Ordinance.

We concluded that unless SOCR enforcement staff engages in anti-discrimination policy-development affecting the business community, their duties do not require business expertise. However, as we noted above, SOCR's policy and outreach staff should have the expertise and capacity to reach out to and respond to all members of the community, especially those directly affected by the regulations it develops and promotes.

Appendix I
2013-2014 STATEMENT OF LEGISLATIVE INTENT

2013 - 2014 Seattle City Council Statement of Legislative Intent

Ready for Notebook

Tab	Action	Option	Version
60	2	B	2

Budget Action Title: SOCR Review of Civil Rights Enforcement Process

Councilmembers: Clark; Harrell; O'Brien

Staff Analyst: Josh Fogt; Rebecca Herzfeld; Jeremy Racca

Date		Total	SB	BH	TR	RC	TB	NL	JG	SC	MO
	Yes										
	No										
	Abstain										
	Absent										

Statement of Legislative Intent:
The Council requests that Office of the City Auditor (OCA) review the investigation, enforcement and technical assistance functions of the Seattle Office for Civil Rights (SOCR) and report back to the Council.

The report should address the following issues:

1. Report on SOCR's allocation of staff resources dedicated to processing civil rights enforcement complaints and evaluate whether staffing levels are adequate to:
   - Meet legal standards for the investigation of charges of discrimination;
   - Reach settlements to resolve charges of discrimination;
   - Meet goals for turnaround times for each step in the process; and
   - Provide relevant information and technical assistance to businesses, including staff knowledgeable of business regulations and practices.
2. Examine enforcement models from other jurisdictions around the country, review SOCR existing practices, and present recommendations for:
   - Delivering objective investigation and enforcement of civil rights laws for both complainants and respondents;
   - Streamlining the processing of civil rights complaints without compromising the rights of complainants, including a review of the roles of SOCR, Seattle Human Rights Commission, the Law Department, and Hearing Examiner; and
   - Providing businesses and landlords the information, resources and skills to understand civil rights laws, avoid charges of discrimination by meeting these laws, and responding effectively if a complaint is filed.

Green Sheet 60-1-A-2 proposes to add a half-time Senior Planning and Development Specialist position in SOCR to provide additional outreach and technical support to the business community upon Council review of the report generated as a result of this Statement of Legislative Intent.

1 of 2

Appendix II
SCOPE OF WORK AND METHODOLOGY

We conducted the majority of our field work for this audit from January to August 2013. During this audit, we conducted the following work related to SOCR:

- Examined local, state, and federal civil rights laws,
- Reviewed SOCR's enforcement process policies and procedures,
- Observed Seattle City Council committee meetings and public testimony,
- Reviewed SOCR annual reports,
- Assessed a 2007 consultant's report on SOCR's enforcement process and practices,
- Analyzed 2008-2012 SOCR performance data, staffing levels and budget information,
- Interviewed:
    - SOCR management officials,
    - Three members of Seattle's Human Rights Commission (SHRC), including the Commission's Chair and the Appeals Panel Chair,
    - The City Hearing Examiner,
    - City Attorney's Office lawyers assigned to SOCR and SHRC,
    - City Council legislative assistants, and City Council Central Staff analysts,
    - Seattle Metropolitan Chamber of Commerce and the Rental Housing Association of Washington representatives,
    - EEOC and HUD program administrators who oversee their agencies' contracts with SOCR for enforcement services,
- Reviewed HUD's 2011 contract performance evaluation of SOCR's fair housing enforcement services.
- Examined 14 randomly selected SOCR 2012 discrimination closed case files for compliance with SOCR policies, and
- Reviewed SOCR employee job descriptions.

We requested that SOCR provide us with customer feedback, customer satisfaction surveys, and/or complaints from respondents regarding their experience in the enforcement process. SOCR could not provide us with this information because it does not have a central repository for respondent feedback. In addition, we conducted the following work related to human rights agencies from throughout the nation:

- Compared SOCR with human rights agencies from other jurisdictions. In selecting the agencies from other jurisdictions to compare with SOCR we took several factors into consideration. The agencies we chose had at least one of these characteristics:
    - The agency was a Federal Employment Program Agency (FEPA) providing employment enforcement services for EEOC and/or a Federal Housing Agency Program (FHAP) agency providing fair housing enforcement services for HUD on a contractual basis in the same way that SOCR provides such services to EEOC and HUD.
    - Our office had compared a City of Seattle department or program with this agency's jurisdiction in the past because of geographic proximity, population size or shared values,
    - The agency responded to an International Association of Human Rights Agencies[19] (IAOHRA) list serve inquiry about enforcement process best practices and enforcement agency models, and
    - The agency is implementing an interesting and/or innovative approach to human rights enforcement and outreach.
- Reviewed these human rights agencies' mission statements, organizational structures, and enforcement processes (including intake, investigation, mediation-settlement and appeals processes).
- Obtained their 2012 case processing performance data, staffing levels and budgets.
- Contacted the IAOHRA and through this connection we interviewed a past president of IAOHRA and representatives of other human rights agencies.
- Obtained additional comparative information by interviewing officials from 10 jurisdictions and from an extensive review of approximately 20 national, state, county and municipal human rights agencies' websites.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that 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 provides a reasonable basis for our findings and conclusions based on our audit objectives.

[19] International Association of Human Rights Agencies is the human rights organization that includes most U.S. jurisdictions as members.

Appendix III
SEATTLE OFFICE FOR CIVIL RIGHTS AUDIT RESPONSE

City of Seattle

Mike McGinn, Mayor

Seattle Office for Civil Rights

Julie Nelson, Director

Date: October 17, 2013

To: David G. Jones, City Auditor
Virginia Garcia, Auditor-In-Charge
Mary Denzel, Supervising Auditor

From: Julie Nelson, Director, SOCR

Subject: Review of City of Seattle's Civil Rights Enforcement Process, October 2013

Thank you for the opportunity to comment on the "Review of City of Seattle's Civil Rights Enforcement Process" dated October 2013. I appreciate your recognition that the Seattle Office for Civil Rights (SOCR) is "highly regarded at the national and local level by peers and community members as an effective human rights agency and role model for other agencies."

SOCR's Enforcement Division ensures that the rights of people to live, work or visit Seattle free of discrimination are protected. Your report concludes that SOCR's enforcement division staffing levels are sufficient to meet legal requirements, deliver objective investigations and meet current demand levels. I look forward to reviewing your recommendations with the Mayor and City Council.

The review's recommendations reflect four broad areas of concern; therefore I have organized this response under the following headings:

- Objectivity and impartiality;
- Streamlining the enforcement process;
- Role of the Seattle Human Rights Commission on appeals;
- Budgetary considerations.

Objectivity and impartiality

While your report notes an impression of a Rental Housing Association representative that we file charges to receive payments from HUD and EEOC, it is important to restate that those payments represent a very small percentage of our full budget; in fact we are entirely supported by the City's general fund. In 2013 we expect payment under HUD and EEOC contracts to reach approximately $150,000. This funding, which represents less than 6% of SOCR's operating budget of approximately $2,724,000, goes into the City's general fund.

Although you spoke with a few representatives of institutional business interests, respondents who have actually participated in our investigative process do not appear to have been interviewed. Entities such as the Greater Seattle Chamber of Commerce play an important role

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in representing broad business interests within our community, but it is not demonstrated that they are familiar enough with SOCR's investigative process to make an informed assessment of the department's impartiality. I appreciate the Chamber representative's praise for SOCR's professionalism and knowledge. His acknowledgement that "before the passage of the Paid Sick and Safe Time Ordinance, the Chamber had no issues with SOCR" reflects the objectivity and high quality of SOCR investigations.

SOCR enforcement and other staff are strong advocates for compliance with civil rights laws and scrupulously neutral in all matters involving enforcement. All staff receive training on the importance of acting in a neutral fashion concerning matters related to charges and investigations of specific cases.

Recommendation 1: SOCR will re-assess performance measures for 2014. We are committed to objective measures that are perceived as impartial and beneficial to complainants and respondents, and have instituted a web-based customer satisfaction survey for all parties.

Recommendation 2: We agree that the development of enforcement policies, rules and procedures should incorporate an understanding of the impact on businesses. In the last 18 months, SOCR developed Administrative Rules and procedures for the City of Seattle's Paid Sick and Safe Time Ordinance and the Job Assistance Ordinance. Both ordinances represented the first significant new enforcement mandates for the department in several decades. In each case, SOCR involved stakeholders including businesses from the beginning and throughout the rule and procedural drafting process. Extensive input from the business community was essential to developing rules, and our ongoing consultations with employers from all sectors of the economy helped establish a strong working relationship with our office.

Recommendation 3: We agree strongly that SOCR's Enforcement Division should refrain from policy advocacy activities, in order to preserve the fact and appearance of investigative impartiality. However, it is important to draw a distinction between policy development on behalf of the Mayor's Office and City Council, and administrative rule making after an ordinance has become law. Enforcement staff do not play a role in SOCR's policy development and recommendations to the Mayor or on request to City Council. Enforcement staff do play an appropriate and necessary role in drafting Administrative Rules after an ordinance has passed. Their legal expertise and understanding of the investigative process is essential to SOCR's developing clear, sensible rules and procedures that meet both legal and community standards.

Recommendation 16: We agree that SOCR's mission statement should be revised to reflect the breadth of our work, including education, prevention and stakeholder participation. We will complete a revision in 2014, with broad stakeholder participation.

Recommendation 17: We wholeheartedly agree with the addition of a part-time Business Liaison position within SOCR, and greatly appreciate the budgetary support in 2013. The position has been filled and is an invaluable addition to our staff. Prior to the creation of a dedicated Business Liaison position, a team of SOCR staff already was providing comprehensive and highly

responsive technical support to employers and property managers on the Paid Sick and Safe Time Ordinance, disability access and all other civil rights laws.

Recommendation 18: We agree that outreach strategies that establish partnerships with the business community are critical, and that it is important to broaden the participation of SOCR staff as much as possible. However, maintaining a holistic balance across all our constituencies is critical to our success. We are in strong agreement with a focus on prevention. Nevertheless, implementing strategies for all employees to establish partnerships with business would not be fiscally responsible or consistent with the breadth of our mission and goals.

Recommendation 19: We agree that SOCR should resume producing an annual report to demonstrate performance in all areas of our work, and commit to releasing a 2013 report.

Streamlining the enforcement process

We appreciate your report's recommendations on ways to streamline the enforcement process.

Recommendations 4, 8 and 9: We have already begun to implement measures to ensure greater consistency in case file documentation. We also agree that automation could help standardize the investigative process, including the intake process. We will consult with San Francisco's Human Rights Commission to learn more about the function and cost of their current intake system, and conduct further research on case processing systems used by other jurisdictions. It is important to note that 1) SOCR charges currently meet prima facie evidence standards; 2) SOCR's process is accessible, and many businesses do not incur the cost of hiring attorneys; and 3) we must consider budgetary implications prior to moving forward with purchasing and implementing new software to ensure that the benefits outweigh the costs.

Recommendation 5: In practice, SOCR currently provides all respondents with proposed findings in order to settle cases prior to our issuing a final determination of cause. Since formalizing this process would require an amendment to ordinance and a rule change, we will consult the Mayor and City Council regarding this recommendation.

Role of the Seattle Human Rights Commission on appeals

City of Seattle ordinance mandates the Seattle Human Rights Commission (SHRC) to be a strong institutional advocate for civil rights when it acts as a Commission. To become a Commissioner, a candidate must demonstrate "concern and background in human rights." Representatives from the business community and the private sector are encouraged to join SHRC and currently do serve as Commissioners. Like SOCR's Enforcement staff, the appeal panel of the Commission acts impartially when it conducts neutral reviews of appeals from charging parties who have received a no-cause finding. Appeal panel members receive training in maintaining impartiality, and do not advocate for charging parties or respondents in cases that come before them.

Recommendation 7: Regarding the optional participation of a representative from SHRC in the Hearing Examiner process, the report details the very small number of civil rights cases that go to the Hearing Examiner. We believe that Commissioners' civil rights expertise is a useful supplement to Hearing Examiner review. Although there was an instance many years ago when a Commissioner did not serve in a hearing, this is an extremely rare occurrence. We do not believe there is a reason to modify the current structure.

Recommendations 10 and 12: The report recommends modifications to the appeal process. We are concerned that these recommendations would not have the desired effect of streamlining the case closure process; rather they could have the opposite result, because they would add an extra step and increase the time it takes to close cases. We have convened a workgroup with SHRC representatives to explore other strategies to strengthen the appeal process.

Recommendations 11 and 13: We agree with both these recommendations to streamline the appeal and remand process, and will work with SHRC to clarify the rules regarding the meaning of "adequacy of the investigation" and "preponderance of the evidence" either to affirm or remand cases. We also will conduct training with all appeal panel members to ensure a grounded understanding of these concepts.

Recommendations 14 and 15: We agree that SHRC should consider options to increase the consistency of membership among appeal panel members by limiting rotations of members and extending their participation to establish expertise. We also agree that SHRC appeal panel members should receive HUD and EEOC-sponsored training to ensure they are prepared to perform their responsibilities. SOCR already sends commissioners to HUD and EEOC-sponsored training whenever funding is available.

Budgetary considerations

A number of the recommendations and suggestions contained in your review are not currently mandated; implementation would have budgetary impacts.

For example, the recommendations to expand outreach efforts to include potential respondents and be geared toward prevention would require additional staff and resources to implement. Under our current configuration, staff already conduct an impressive number of outreach events to businesses and the general community. Full-time funding of the Business Liaison position and increased support for other outreach efforts, including materials and online presence, would enhance the department's outreach efforts.

The case production statistics on page 8 of the report serve to illustrate the direct relationship between funding and enforcement productivity. The loss of an Enforcement position in 2011 led to an increase in 2012 of the average days to close a case. This trend has continued in 2013.

Our case-payment under contracts show that shorter closure times would increase payments. Additional staffing would reduce case-processing times.

As noted above in comments regarding Recommendations 4, 8 and 9, adoption of software systems to streamline the enforcement process would have direct purchase costs and indirect implementation costs. We are eager to explore solutions along these lines, but it is important to recognize that it is likely to require increased budgetary support.

Again, thank you for your work on this important topic.

City of Seattle
Mike McGinn, Mayor
Seattle Human Rights Commission

October 21, 2013

David G. Jones, City Auditor
Virginia Garcia, Auditor-In-Charge
Mary Denzel, Supervising Auditor
City of Seattle Auditor's Office
700 5th Ave, Suite 2410
Seattle, WA 98104

RE: Review of City of Seattle's Civil Rights Enforcement Process, October 2013

Dear Mr. Jones, Ms. Garcia and Ms. Denzel:

Thank you for the opportunity to comment on the Review of City of Seattle's Civil Rights Enforcement Process dated October 2013. The Human Rights Commission greatly appreciates the time your office gave us during the review process.

The Review makes a number of recommendations concerning objectivity and impartiality, efficiency, and training. We will address each recommendation in that order.

Objectivity and Impartiality: Recommendations 6 and 7

First and foremost, the Human Rights Commission is pleased the Review confirmed that the Commission is executing its appellate duties impartially and objectively. The Commission places paramount importance on its statutory obligation to serve as a neutral appellate body and takes satisfaction in the evidence that it is conducting appeals objectively and impartially.

As to the theoretical question posed by Council as to which appellate model would universally be perceived as the most impartial and objective, the Commission does not disagree that it is the quasi-judicial model. While the Commission currently follows the norms of a quasi-judicial body by prohibiting ex parte contacts and communications, requiring recusal in cases of a potential conflict of interest, and, with the advice and counsel of the City Attorney's Office, reviewing the record for legal error, it is structurally a hybrid. For some, a hybrid model, even as notably independent as the Seattle Human Rights Commission where the Commission is external to the enforcement agency and, as the Review finds, " . . . can rule on cases independently . . .", such a model is per se incapable of operating impartially and objectively. For this tiny minority, a hybrid

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structure will always be philosophically objectionable no matter the evidence that it is in fact objective and impartial.

Interestingly, none of the human rights commissions examined in the Review, commissions specifically chosen for their comparability to the Seattle Human Rights Commission, utilizes a quasi-judicial model. All of the comparable jurisdictions examined utilize a hybrid structure of an advisory, educational and appellate body. The hybrid structure of the Seattle Human Rights Commission is the norm.

Similarly, none of the comparable jurisdictions create in-house quasi-judicial bodies by segregating their appeal panel members from the advisory work of the commission. Such segregation would be counter-productive because the workload of effective commissions requires the full participation of each commissioner. Additionally, the experience of reviewing appeals informs the advisory work of human rights commissions which are tasked with advising policymakers on how to improve the laws they pass.

Regarding the makeup of the commissions, only one of the six comparable commissions - Tacoma, Washington - mandates a self-identified business representative. As the statutory mandate of the Seattle Human Rights Commission is to advise the City on the promotion of human rights and solutions to discrimination, the criteria for appointment is demonstrated experience in human rights work and Board or Commission service. Anyone with such experience, irrespective of professional identity, is welcome to serve on the Commission. The Commission does have a dedicated youth seat through the Mayor's Office Get Engaged program. Currently serving on the Commission are two small business owners (one a restaurant owner), a landlord, and a representative of a Fortune 500 company.

As pointed out in the Review, a unique feature of the appellate process in Seattle is the right of the Commission to elect in its discretion to participate in the hearing process when private actor reasonable cause cases (discrimination is found) are referred to the Hearing Examiner. (In cases involving a City department, the Commission alone hears the reasonable cause appeal.) As a result of SOCR's high settlement rate, the Hearing Examiner has heard only one such case in the past five years. For reasons currently unknown, the Commission did not participate in this hearing. It is unclear how eliminating the right of the Commission to participate in the Hearing Examiner process would address "concerns" of the Seattle Metropolitan Chamber of Commerce or the Rental Housing Association of Washington when the Commission wasn't a participant in the one hearing heard by the Hearing Examiner in the past five years.

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The value of retaining the right of the Commission to participate in Hearing Examiner cases is the opportunity to supplement the Hearing Examiner's adjudicative experience with the civil rights subject matter expertise of the Commission. The civil rights expertise of the Commission benefits both respondents and complainants. Rather than revoking the right of the Commission to participate, the municipal code might be amended to provide that one of its Co-Chairs and the Appeals Panel Chair, who is required to be an attorney, represent the Commission. This would address any concerns about the qualifications of the Commissioners to serve in such an adjudicative capacity.

Efficiency: Recommendations 10, 11, 12 and 13

The Review notes that out of the six comparable jurisdictions examined, Seattle has the highest appeal rate. This higher rate is attributed to the broader standard of appellate review in Seattle. The Review suggests that narrowing the basis of review will reduce the number of appeals. However, only two out of the six jurisdictions that have fewer appeals than Seattle have more restrictive grounds for appeal. The reason for Seattle's higher rate of appeals is unclear and not simply explained by a broader standard of appellate review.

Narrowing the basis for appellate review as suggested in the Review would compromise the rights of complainants contrary to the Statement of Legislative Intent. The majority of complainants, unlike respondents, are not represented by counsel and are not sophisticated or skilled self advocates. Restricting appeals only to cases where there is new evidence or where the evidence not considered would change the outcome requires the complainant to understand the legal standard in his or her case in order to articulate why the outcome would be different. Curtailing the right of redress in a city that is a leader in the advancement of civil and human rights on the off chance that it will reduce the number of appeals (there is no established correlation between the standard of review and the number of appeals) is an unwarranted step backwards.

As well as having the highest appeal rate out of the six comparable jurisdictions, Seattle also has the highest remand rate. Again, the Review attributes this to Seattle's broad standard of review, and again, only two out of the six comparable jurisdictions have a more restrictive appellate standard. Seattle and Maryland County share the same standard of review, but Maryland has a process in place that effectively eliminates "informational" remands – remands made solely because of questions about the investigation. The Commission is currently working with SOCR and the City Attorney's Office to implement a similar process and believes this will significantly reduce the number of remands.

The Commission is also investigating ways to ensure greater consistency in the appeals panel composition as a way of reducing remands.

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As with appeals, narrowing the basis for remands when there is no established correlation between the number of remands and the standard of review, and when alternative measures are available to address unnecessary remands, is an unwarranted step backwards.

Requiring the SOCR Director and the Commission Chair to screen appeals seems an unnecessary bureaucratic step that will only slow down the appellate process.

Training: Recommendations 14 and 15

The Commission supports the Review's training recommendations.

Thank you again for the opportunity to respond to the Review of City of Seattle's Civil Rights Enforcement Process dated October 2013.

Most sincerely,

Co-Chair Seattle Human Rights Commission

Co-Chair Seattle Human Rights Commission

Marsha Mavunkel
Chair Seattle Human Rights Commission Appeals Panel

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