

Department of Fair Employment and Housing:

**Its Complaint Processing Needs
More Effective Management**

January 1997
96034

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January 16, 1997

96034

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As required by the Budget Act of 1996, the Bureau of State Audits presents its audit report concerning the effectiveness of the Department of Fair Employment and Housing's (department) management of discrimination complaints and the adequacy of its information systems.

This report concludes that the department does not promptly resolve complaints of discrimination. Specifically, the department does not have a sufficiently expedited process for investigating and closing complaints and does not enforce some of its current policies that promote prompt processing of complaints. In addition, the department does not fully use its current computer capabilities and needs more automation to process complaints efficiently.

Respectfully submitted,



KURT R. STOBERG
State Auditor

Enclosure

Department of Fair Employment and Housing:

**Its Complaint Processing Needs
More Effective Management**

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Summary




Audit Highlights...

The department has significant problems with timely processing of complaints. Specifically, it does not:

- Meet the statutory 365 day deadline for 30 percent of the complaints it investigates.*
- Have a sufficiently expedited process for investigating and closing complaints.*
- Consistently enforce some of its current policies that promote prompt processing.*
- Effectively use automation to manage its workload.*

Consequently, the department cannot effectively serve the public's need for protection against discriminatory acts.



Results in Brief

The California Department of Fair Employment and Housing (department) is responsible for enforcing the laws that promote equal opportunity in employment and that protect the public from discrimination related to housing and civil rights. The department's primary activity is investigating complaints of discrimination to determine whether they can be substantiated; closing complaints it cannot substantiate; attempting to resolve, through mediation and negotiated settlements, differences between those filing complaints (complainants) and those accused of discrimination (respondents); and representing complainants in administrative hearings or in civil court when their complaints are not resolved.

Our review of its investigation and resolution of complaints disclosed that, although it has recently made changes to improve the quality of work and efficiency of operations, the department has significant problems with the timely processing of complaints. The changes the department has made include introducing specialization among its staff and establishing a central communication center to handle initial contacts from complainants. However, for 30 percent of its investigations, the department does not meet the 365-day statutory deadline for either closing the complaint or issuing an accusation against the respondent. As a result, it loses jurisdiction to enforce actions against responsible parties and to enforce the cooperation of respondents for these complaints.

To prevent more investigations from exceeding the statutory deadline, the department instructs its consultants to concentrate on those complaints that are within 90 days of the deadline. This policy, though understandable, causes delays in processing other complaints. Because discrimination complaints frequently involve working or living conditions, delays in the investigation and resolution of these issues can affect complainants' ability to support themselves or their living situations. Additionally, it may cause legal and financial problems for businesses and individuals accused of discrimination.

We noted the following specific conditions that contribute to the delays in investigating and closing complaints:

- The department does not have a sufficiently expedited process for investigating and closing complaints. For example, it does not conduct abbreviated investigations early in the process. These investigations would allow the department to do preliminary assessments of the complexity of the complaints and assign workload accordingly.
- The department does not consistently enforce some of its current policies that promote prompt processing of complaints. For example, it does not always require consultants to attempt to negotiate no-fault settlements between the complainant and respondent early in the process. It also does not vigorously pursue replies from respondents when they fail to meet the deadline for replying to the complaint.
- The department does not use its current automated capabilities fully, and it needs more automated capabilities to process complaints efficiently.
- The department does not require its consultants to track time spent on each complaint, information that would provide the basis for measuring productivity, distributing workload among consultants, and documenting staffing needs.

When the department does not manage its workload or process complaints promptly, it cannot effectively serve the public's need for protection against discriminatory acts.

Recommendations

To improve its current complaint processing and to investigate and resolve complaints of discrimination efficiently and effectively, the department should take the following steps:

- Further expedite the process for investigating and closing complaints by conducting abbreviated investigations early in the process, while the department awaits replies from respondents, and categorizing complaints according to their potential for substantiation and their level of difficulty.
- Enforce current department policies and statutory laws that require consultants to attempt to negotiate predetermination settlements, require respondents to reply to complaints

within 21 days, and require consultants to transfer to the legal division recommendations for accusations at least 60 days before the statutory time limit. The department also should promptly notify respondents of complaints and inform complainants of their right to pursue complaints in court, as required by statute. Further, it should resolve complaints within statutory time limits.

- Improve the effectiveness of its current automated capabilities. The department could obtain additional computer capabilities, such as a local area network; consider a time-tracking software package; and provide appropriate training that enables all staff to use the current and new automation capabilities.
- Implement a system for tracking the time consultants spend on each complaint to provide the department with a better foundation for productivity measures, budget and staffing projections, and appropriate workload distribution.
- Eliminate its current inventory of complaints that exceed or will soon exceed the 365-day statutory time limit for open complaints by authorizing overtime for current employees, obtaining additional limited-term staff, and developing a team approach for resolving these complaints.

In addition, the Legislature should appropriate funds for the department to implement procedures to eliminate its current inventory of expired or expiring complaints. The Legislature should also appropriate funds for the department to install a local area network once it has an approved computing policy.

Agency Comments

The Department of Fair Employment and Housing (department) agrees with our observation that it needs funding for additional staff and computer capabilities. However, it takes issue with our recommendation that the staff be limited-term until it can adequately demonstrate its permanent staffing needs. The department also agrees that it should use its current automation more effectively, track the time consultants spend on investigations of complaints, assign more difficult complaints to experienced consultants, and equalize the workload distribution among consultants. However, the department vigorously disagrees with several observations and recommendations in the report. The department believes that the audit report fails to recognize the key factors responsible for caseload management challenges, including escalated caseloads, limited investigative

staff, reduced supervisory staff, and expanded statutory responsibilities. The department also believes that the report misstates its complaint processing expectations and contains errors in reporting its noncompliance with these expectations and with legal requirements. Our rebuttal to the department's assertions is provided at the end of the report.

Introduction

Background

The California Fair Employment and Housing Act (FEHA), Statutes of 1980, established the Department of Fair Employment and Housing (department) within the State and Consumer Services Agency. Administered by a director, the department is responsible for enforcing the laws that promote equal opportunity in housing and employment and protect civil rights. The same statutes also established the Fair Employment and Housing Commission (commission) to develop overall policies for implementing antidiscrimination laws. The commission is independent of the department and renders decisions on cases filed by the department.

The department's budget for fiscal year 1995-96 was approximately \$16.8 million, \$12.7 million of which was state General Fund moneys and \$4.1 million of which came from federal moneys. It currently employs approximately 260 employees at its headquarters, 11 employment district offices, and 2 housing district offices.

The department has three divisions: the enforcement division, the legal division, and the administrative services division. The largest of the three, the enforcement division, receives and investigates complaints of discrimination in employment, housing, and civil rights. The legal division presents complaints before the commission and superior courts, files and prosecutes lawsuits, prepares briefs, and provides legal opinions. Finally, the administrative services division provides business, accounting, budgeting, contracting, and fiscal management services to facilitate the intake of complaints, investigation, negotiation, and litigation functions mandated by law.

The Nature of Complaints of Discrimination

Of all the complaints it receives each year, the department schedules interviews for approximately 35,000 and accepts or files approximately 18,000. About 9,000 of these are requests for right-to-sue letters that require minimal processing and no investigations. Those filing complaints (complainants) are

required to have right-to-sue letters from the department before they can sue those accused of discrimination (respondents) in superior court. Once it issues a right-to-sue letter in response to a complaint, the department has no further obligation to investigate that complaint. The department investigates the remaining 9,000 complaints that it believes warrant further inquiry.

Table 1 indicates the number of complaints the department investigated during fiscal years 1991-92 through 1995-96 involving charges of discrimination in employment, housing, or civil rights violations. Within these broad categories, the most common bases for complaints were charges of discrimination because of sexual, racial, and physical disability. In addition, according to the department's records, the number of complaints filed increased from 13,173 in fiscal year 1991-92 to 18,101 in fiscal year 1995-96. However, the number of complaints closed that do not require investigation increased from 2,027 in fiscal year 1991-92 to 8,609 in fiscal year 1995-96. These include complaints closed when the department lacked jurisdiction or when complainants requested only right-to-sue letters.

Table 1

***Complaints by Type Investigated
and Closed by the Department of
Fair Employment and Housing***

	Fiscal Years					Totals	Percentage of Totals
	1991-92	1992-93	1993-94	1994-95	1995-96		
Employment	8,675	9,110	8,531	7,734	8,242	42,292	91%
Housing	704	495	456	713	747	3,115	7
Civil rights	156	136	118	145	160	715	2
Totals	9,535	9,741	9,105	8,592	9,149	46,122	100%

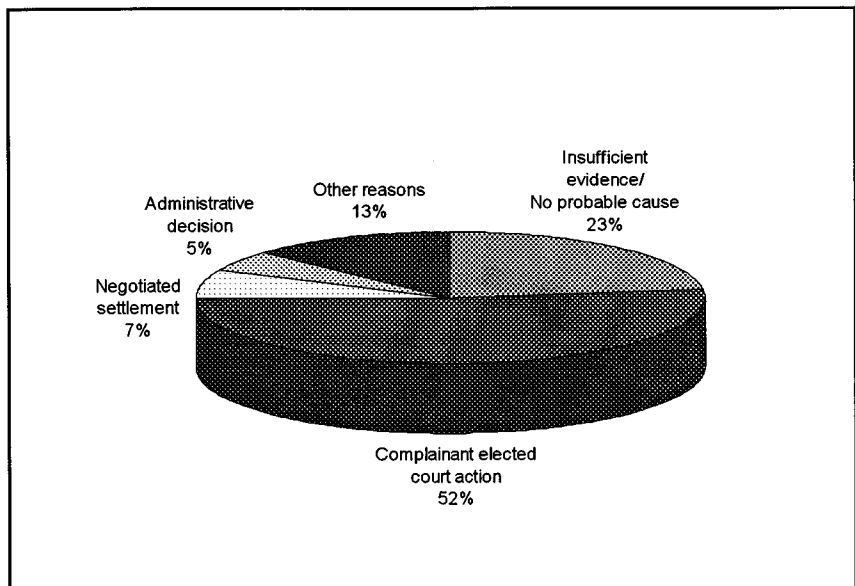
Note: Information is based on the department's case management information system (CMIS) records.

The department offers several potential resolutions to complainants. It can issue the right-to-sue letters discussed above, negotiate a settlement at any time during the investigation, and represent the complainant in legal proceedings. Of the complaints that it accepted for investigation in fiscal year 1995-96, the department transferred

128 to its attorneys for legal representation. For complaints that it determines to be nonmeritorious, the department closes the complaint without remedy. However, it will issue the complainant a right-to-sue letter.

Figure 1 summarizes the disposition of approximately 34,500 total complaints, including right-to-sue closures, during fiscal years 1994-95 and 1995-96. For more than half the closures during these years, complainants chose to pursue court action immediately or later in the process.

Figure 1
Types of Complaint Closures
Fiscal Years 1994-95 and 1995-96



Note: Information in this figure is based on the department's CMIS system.

The Department's Process for Investigating Complaints

The department has a standard set of procedures for processing complaints. Law mandates some of these procedures, and departmental policy governs others. Individuals who want to file a complaint of discrimination contact the department's centralized communication center for civil rights or employment complaints, or a separate toll-free number for housing complaints. In this initial contact, the department screens out inquiries that are beyond its jurisdiction and schedules appointments with the remaining complainants.

On the day of the appointment, each complainant completes a questionnaire and discusses his or her concerns with a consultant. If the consultant believes the complaint has merit, the department files a formal complaint of discrimination. It then sends the complaint and a request for information to the respondent. The procedures described above relate to employment and civil rights complaints. Housing complaints follow similar procedures.

When the respondent returns the information, the complainant has the opportunity to address the comments. Before investigating the discrimination charges, the consultant attempts to settle the complaint through a predetermination settlement. This process provides an opportunity for the complainant and respondent to settle their differences with no determination of fault, usually through cash payments to the complainant or agreement on changes in the respondent's policies or practices. If the parties do not reach a settlement, the consultant prepares an investigative plan and conducts the investigation that can include interviewing witnesses and reviewing records at the respondent's place of business.

In determining whether a violation of the FEHA has occurred, the consultant must address the four following concerns during the investigation and in the resulting report:

- The department must have jurisdiction over the complaint. For example, it lacks jurisdiction for complaints based on events that took place more than one year before they are filed unless certain circumstances are met. It also lacks jurisdiction for complaints against specific types of employers, such as those with fewer than five employees or those that are religious nonprofit organizations.
- An act of discrimination must have occurred.
- The respondent must not have had a valid reason for his or her actions.
- A remedy, such as financial compensation, must exist for the complainant.

If the complaint meets these criteria, the department considers that probable cause exists for the complaint.

For probable cause complaints, the department sets up a conciliation meeting in which the consultant attempts to resolve differences between the complainant and the respondent. If

the parties do not reach a settlement, the consultant refers the complaint to the legal division, which reviews the file and prepares an accusation. A department attorney presents the complaint in a public hearing held before an administrative law judge, who proposes a decision that goes to the commission. The commission consists of seven members who are appointed to a four-year term by the governor with the approval of the Senate. A quorum of at least four members from the commission reviews the proposed decision made by the administrative law judges and decides whether or not to adopt it. The commission renders the final decision on each prosecuted complaint.

At any stage of the investigation, the complainant can request a right-to-sue letter and pursue the matter independently in the courts.

The Appendix on page 37, depicts the department's procedures for processing complaints of discrimination.

Federal Funding

The federal Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Housing and Urban Development (HUD) reimburse the department for work on certain complaints. These agencies establish work-share agreements with the department to avoid duplicating efforts in processing "dual-filed" complaints of discrimination when both state and federal agencies have jurisdiction. The work-share agreements reimburse the department for the dual-filed complaints that it closes. For fiscal years 1994-95 and 1995-96, the EEOC's work-share agreements reimbursed the department \$500 per complaint up to the agreement limit of 5,256 complaints per year. HUD's agreement reimbursed the department \$1,300 per complaint in 1994-95 and \$1,700 in 1995-96 up to the agreement limit of 700 and 514 complaints, respectively.

Recent Changes in the Law That Have Affected the Department

During 1992 and 1993, new laws expanded or clarified the types of discrimination under the department's jurisdiction. For example, one law revised housing discrimination laws to comply with changes in federal law and specifically increased the time to file a complaint from 60 days to 365 days after the alleged violation. Other changes affected the eligibility of

complainants and respondents for electing to transfer complaints to the judicial system instead of remaining in the department's administrative process. Finally, some laws required that employers display the department's poster on sexual harassment or provide for the education of the public about discriminatory practices.

Scope and Methodology

The 1996 Budget Act required that the Bureau of State Audits perform a comprehensive fiscal and performance audit of the Department of Fair Employment and Housing. Because the department has had problems completing investigations within the statutory time limits, the purpose of the audit was to develop recommendations for improving administrative operations and management of complaints related to housing and employment discrimination. In addition, we were to suggest ways to investigate complaints more effectively. The review required that we assess the following areas within the department:

- Organizational effectiveness;
- Caseload management practices for housing and employment discrimination;
- Development of workload standards for complaints related to housing and employment discrimination; and
- Adequacy of information systems.

To understand the department's responsibilities, we reviewed the laws, rules, and regulations relevant to it and to the audit mandate. We also interviewed selected administrators and staff to determine their responsibilities and their manner of meeting those responsibilities. We reviewed the caseload training manual and operational directives to determine whether the department has established policies and procedures to comply with applicable laws and regulations. We determined that the department established appropriate procedures to comply with legal requirements. We also determined the sources of the department's revenues, the nature of its expenditures, and the status of its budget requests.

To assess whether workload standards for employment and housing discrimination complaints are reasonable, we analyzed data the department provided on complaints completed by each district office during fiscal years 1992-93 through 1995-96. In addition, for four district offices, we analyzed data the

department provided on the distribution of workload among consultants and determined the number that exceeded the statutory time period. We also reviewed the way the department measured the performance of consultants who investigate complaints.

To determine whether the department appropriately handles and documents its accepting, processing, resolving, and closing of complaints, we randomly selected for review the district offices in Sacramento, San Diego, Ventura, and Oakland, as well as a sample of complaints closed during fiscal years 1994-95 and 1995-96 at each of the four offices. We categorized these complaints by type and evaluated whether the consultants followed proper procedures, handled and processed complaints within the statutory time limit, and closed them appropriately. The department could not locate 2 of 249 complaint files we requested. We also reviewed selected complaints transferred to the legal division to determine the amount of time legal staff had to prepare accusations.

To assess the adequacy of its computer capabilities and use, we reviewed the department's automated reports and interviewed and observed selected staff who use the computers. Finally, an independent contractor assisted us in drawing statistical conclusions on the results of our work.

Chapter 1

The Department Does Not Manage Its Workload Effectively

Chapter Summary

To be fair and responsive to the needs of both those filing complaints (complainants) and those accused of discrimination (respondents) in discrimination cases, complaint investigation and resolution by the Department of Fair Employment and Housing (department) must be prompt. However, the department does not resolve complaints of discrimination promptly. Because it closes approximately 30 percent of investigated complaints after the 365-day statutory time limit, the department loses its authority to enforce respondents' compliance with its requirements for these complaints. As a result, complainants and respondents may have to incur the expense of settling these complaints through litigation. In addition, the department's consultants investigate many complaints during the last quarter, just before the statutory time limit expires. This results in complainants and respondents waiting many months for complaint resolution.

Many factors contribute to the department's delays in processing complaints of discrimination, including its failure to comply with its own policies requiring that consultants attempt to negotiate no-fault settlements between the complainant and respondent early in the process and require that respondents reply to the complaint in a timely manner. The department also has not sufficiently expedited its process for closing complaints early. In addition, because it does not track the time required to process complaints, the department is unable to demonstrate the propriety of its productivity measures for consultants, its workload distribution, or its requests for additional staff. Not only does the department fail to use its current computer capabilities fully, but the computer system is inadequate for its needs.

Further, when substantiated complaints that the department cannot resolve are excessively delayed, its legal division does not always have enough time to prepare them for accusation. Finally, the department does not always comply with legal requirements for processing complaints. The department is aware of all of these problems and has taken some steps to address them, but more changes are needed.

Prompt Processing of Complaints Is Necessary

*Delays in investigating
complaints can cause
serious consequences
for all parties involved.*

When the department does not investigate and resolve complaints of discrimination promptly, the delay can have serious consequences for the complainants and respondents. Complaints of discrimination frequently involve concerns about current working or living conditions. When the department does not address those concerns quickly, complainants may lose their means of supporting themselves or their residences, or they may be obliged to continue working or living under difficult conditions. Likewise, respondents accused of discrimination need prompt resolution because accusations against a business or individual can create uncertainty about legal and financial liabilities and can disrupt the normal flow of business activity.

The promptness with which it addresses each complaint also affects the department's ability to investigate and resolve the complaint. The government code requires that it either resolve complaints or issue a legal accusation against the respondent within one year of filing. When it does not meet these statutory requirements, the department loses its jurisdiction to enforce actions against responsible parties and to enforce the cooperation of respondents. As a result of delays in complaint processing, both the complainant and the respondent may then bear the cost and risk of private litigation. In limited circumstances, the department waives the complaint to the Equal Employment Opportunity Commission (EEOC). If it consistently fails to take prompt action on complaints, the department risks losing the public's confidence in its ability to protect individuals from discriminatory actions.

The Department Does Not Resolve Many Investigations Within the Statutory Time Limit

Despite the potentially serious consequences of its delays in investigating and resolving complaints of discrimination, the department often fails to meet its statutory obligation to resolve complaints or issue a legal accusation against the respondent within 365 days. For fiscal years 1994-95 and 1995-96, the department investigated and closed 17,741 complaints, 5,374 (30 percent) of which were closed after the 365-day statutory time limit. In our detailed review of 242 complaint investigations, the consultants closed 61 complaints, or 25 percent, after the 365-day limit.

***The Department Concentrates on
Complaints at the End of Their
Statutory Time Limit***

◆
*Because of the focus on
expiring complaints,
newer complaints are
neglected for long
periods of time.*

◆



Because it does not manage its workload adequately, the department gives priority to complaints nearing the 365-day expiration date. Specifically, the department's current practice encourages consultants to complete work first on complaints that are within 90 days of reaching their statutory time limits; despite this practice, 30 percent of all complaints exceed the 365-day limit. We recognize the department's responsibility to deal with complaints nearing expiration, but to do this consultants must often neglect newer complaints. In fact, our review indicates that many of the department's newer cases remain inactive for long periods of time.

In its effort to monitor and control the number of expiring complaints, the department uses reports that its automated case management information system (CMIS) generates. These reports indicate how long complaints have been open and allow the department to identify those within 90 days of their one-year anniversary date. Using the information provided, district administrators advise consultants to first close the complaints that are approaching the statutory deadline.

Because the department's consultants focus on complaints approaching expiration, they must delay investigation of newer complaints. For 96 (40 percent) of 242 complaint investigations reviewed, we found periods of inactivity of 151 days or more. Of these 96 investigations, 28 (12 percent) were inactive for 251 days or more. The periods of inactivity consistently occurred after the department received the respondent's reply to the complaint of discrimination. Thus, complaints that are not promptly resolved become the older complaints. With the department concentrating on those complaints closest to the 365-day mark, it effectively perpetuates "crisis mode management" resulting in many more complaints approaching the last 90 days of the statutory time limit.

Delays in investigating complaints create the potential for loss of key evidence. The longer the department waits to contact witnesses, the greater the chance that the witnesses' memories will fade or that the witnesses or complainants will be difficult to contact. For example, for one complaint we reviewed, the consultant did not attempt to contact the complainant's witnesses until 295 days after the complaint was filed and could not locate one of the witnesses. The consultant closed the complaint for insufficient evidence.

In another case, the consultant did not work on the complaint for 307 days. During the inactive period, the complainant inquired about the status of the complaint. The department notified the complainant that it had received the respondent's answer, but the investigation would not begin for another five to six months. When the consultant attempted to contact the complainant six months later the telephone was disconnected. The consultant sent a certified letter requesting a response, but the letter was returned because the complainant had moved. Although the complainant eventually contacted the department before the complaint closed, the consultant lost critical time for resolution. This complaint was ultimately closed for insufficient evidence.


Working complaints approaching expiration may pressure consultants to make inappropriate determinations.


When consultants devote much of their time to complaints approaching expiration, they are under pressure to complete the investigations and may have insufficient time to analyze the complaint. The time pressure increases the likelihood of their making inappropriate determinations about the complaint.

For example, in one complaint we reviewed, the consultant did not work on the complaint for 297 days. The consultant finally sent the complainant a certified letter requesting the submission of any additional information within 30 days or the complaint would be closed. Only one week later, the consultant sent notification of proposed closure due to insufficient evidence and advised the complainant to respond with additional information within 14 days. The following day, the consultant sent the complainant a notice that the department had closed the complaint 2 days earlier. In other words, the department closed the complaint one day before it sent the letter giving the complainant 14 days to respond. The department failed to give the complainant the required 14 days to provide additional information before it closed the complaint.

Processing Delays Affect Almost All Closure Categories

The department takes a long time to close discrimination complaints of any type. Table 2 summarizes the average number of days between acceptance and resolution of complaints by type of closure. The table covers fiscal years 1994-95 and 1995-96 for the four district offices we reviewed. The 10,948 total complaints includes those investigated by the consultants and those for which complainants only requested right-to-sue notices. Complaints were open the longest when they went to public hearing or were transferred to the court, where a pre-trial settlement occurred. These two categories

Table 2***Average Number of Days Nonhousing Complaints
Were Open by Closure Category¹***

	Description	Number of Complaints	Days Open
Open 0-90 days:	Complainant elected court action (right-to-sue only)	4801	1
	An administrative decision (no merit to proceed)	485	5
Open 91-150 days:	Processing waived to another agency	198	95
Open 151-250 days:	Complainant elected court action	1409	179
	Remedy refused by complainant	1	184
	Resolved by both parties	201	204
	No jurisdiction	75	215
	Complaint withdrawn	118	217
	Negotiated settlement/field resolution	720	229
Open 251-364 days:	No remedy available	11	265
	Complainant not available or failed to cooperate	122	302
	Specific complaint not sustained; other inequities remedied	168	325
	Insufficient evidence to prove a violation of statute	2590	337
Open 365 or more days:	Successful conciliation	12	374
	Respondent bankrupt or unavailable	22	432
	No determination possible within one year	5	600
	Public hearing held	3	1388
	Transferred to court; pre-trial settlement	7	1920

¹This table is based on data provided by the department for fiscal years 1994-95 and 1995-96. It represents data for the four districts that we reviewed. They include the following: (1) Oakland, (2) Sacramento, (3) San Diego, and (4) Ventura. We have excluded clearly erroneous data, including negative numbers and extremely high number of days open.

—◆—
The department took an average of 337 days to close complaints for insufficient evidence.
—◆—

represent those complaints that consultants have already investigated and for which the department has issued an accusation. Complaints closed for insufficient evidence averaged 337 days to close, nearly one year. The table presents averages of each category. However, some categories include complaints open more than one year even though the category average was less than one year.

The Department Has Not Documented the Propriety of Its Acceptance Guidelines

For fiscal years 1994-95 and 1995-96, all district offices closed for insufficient evidence approximately 7,965 (45 percent) of the total 17,741 complaints investigated. One reason for this high percentage is the law requires the filing of any complaint alleging facts sufficient to constitute a violation of the Fair Employment and Housing Act. The department provides informal guidance to consultants to accept for investigation 50 to 65 percent of complaints reviewed. The department stated that it based this guideline on long-term observation of consultants' complaint acceptance and rejection rates and on its review of the quality of consultants' decisions. However, the department could not provide documentation that this guidance is suitable, and the guidance may inappropriately influence consultants to accept or reject complaints to satisfy the department's expectations.



The Department Does Not Have a Sufficiently Expedited Process for Investigating and Closing Complaints

Although it has introduced some efficiencies in complaint processing, the department can do more to expedite investigating and closing such complaints. For some nonhousing complaints closed for insufficient evidence within 270 days of filing, the department has an expedited closing process that does not require a formal written report. When consultants use this process, they save time and effort that can be spent on other complaints. However, the department does not have a formal policy to prioritize workload by level of difficulty early in the complaint investigation process. For example, it does not rate potential validity or complexity of the complaint before or immediately after receiving the reply from the respondent. This could allow the department to assign work to appropriate staff, with more complex complaints investigated by more experienced staff, and to balance workload among consultants.

—◆—
Complaints could be more quickly resolved if they were initially prioritized and assigned by level of difficulty.
—◆—

Consultants Do Not Always Attempt Predetermination Settlements on Time

The department does not always enforce its policy on the timing of attempts to negotiate no-fault settlements, known as predetermination settlements (PDS). The department's procedures require that consultants attempt a PDS within two weeks to one month after formally filing and notifying the respondent of the discrimination complaint. Once the respondent receives the complaint, the consultant calls to provide background regarding the complaint process and to answer questions. At this point, the consultant informs the respondent of the PDS settlement option and inquires if he or she is interested in settling the complaint. The PDS provides an important opportunity to resolve the complaint quickly and grants both parties the option of a no-fault settlement agreement. A settlement can save money, quickly correct a discriminatory situation, or help define the positions of the complainant and respondent.


By pursuing no-fault settlements, the department could resolve more complaints earlier in the process.


During our review of 242 complaint investigations, we found 50 (21 percent) for which the consultants did not attempt to negotiate a PDS or did not adequately document their attempts. We also found 39 complaints (16 percent) for which the PDS attempt was late. Extrapolating on these results, we conclude the department did not document an attempt to negotiate a PDS for approximately 3,700 complaints closed during fiscal years 1994-95 and 1995-96, and it attempted approximately 2,900 negotiations late. As a result, the department missed opportunities to resolve and close complaints early in the process. In addition, the department unnecessarily increased its volume of old complaints.


The Department Does Not Make Certain That Respondents Reply Promptly

Departmental policy allows the respondent 21 days to submit a written response to a complaint of discrimination. However, consultants do not always ensure that they receive a timely reply from the respondent. We reviewed 242 complaints to determine if the response came within 30 days, allowing 9 extra days. For 86 complaints (36 percent), the department did not receive the response within 30 days. We found instances in which the consultant allowed the respondent excessive time to reply to the complaint. For example, in one complaint alleging discrimination in employment, the consultant allowed the


respondent 217 days to submit a response. This delay contributed to the complaint's closing in 387 days, beyond the statutory limit.

According to the department, it routinely grants extensions to obtain voluntary cooperation from respondents. Nevertheless, it does not consistently enforce compliance with the extensions or original deadlines. The department has the authority to subpoena documents and issue interrogatories and has a policy requiring consultants to initiate formal discovery procedures if they do not receive responses within 60 days. However, it uses this legal action as a last resort because it is time-consuming and tends to make respondents less cooperative than if given an extension. However, by failing to send notices requiring prompt responses and to use a subpoena when necessary, the department allows unnecessary delays in the investigation.

An Inadequate Time-Reporting System Contributes to Processing Problems


The department lacks crucial information to efficiently manage its work.

Because it does not require its staff to record time spent on individual complaints, the department does not have crucial information for efficient processing. Without data on the average time spent on each type of complaint and the phases of each investigation, the department cannot demonstrate the propriety of its productivity measures, its workload distribution, or its requests for additional staff, problems we discuss in the following sections.


According to the department, it used to require staff to record time spent on each complaint. The department claims that it discontinued the practice in 1991 because the process was burdensome, did not capture all activity, and did not accurately reflect total time spent on complaints. In addition, the department was preparing for budget reductions that resulted in the loss of positions. It established a new time tracking system beginning December 9, 1996. The department's staff is now required to track time spent on specific tasks.

The Department Uses Questionable Productivity Measures

When it assesses the productivity of consultants in complaint closures, the department uses measures that it has not documented as reasonable. For example, it expects nonprobationary consultants to close an average of eight complaints a month. It also estimates that it needs an average

of 20 hours to close each complaint not related to discrimination in housing and 40 hours for each housing complaint. Because the department does not have a timekeeping system to document staff productivity, we question the reliability of these productivity measures.

◆

The benchmark established for the time needed to close complaints does not track with actual experience.

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In assessing whether 20 hours provides sufficient time to close each complaint, we used departmental data for fiscal years 1992-93 through 1995-96 on total hours worked and on total nonhousing complaints closed at 11 district offices. The average hours spent on complaints varied widely. As Table 3 indicates, the time ranged from a low of 9.66 hours in the Santa Ana district office in fiscal year 1992-93 to a high of 24.36 hours in the San Francisco district office in fiscal year 1995-96. Even within fiscal years, the averages varied greatly. For example, in fiscal year 1995-96, the San Jose district office averaged 13.61 hours per closure, and the San Francisco district office averaged 24.36. The variances raise questions about efficiencies or quality of work from one district office to another. In addition, these averages do not take into account time spent on complaints transferred between district offices because the department does not track time spent on processing these complaints.

Table 3

Average Hours per Nonhousing Complaint

District	Fiscal Years			
	1992-93	1993-94	1994-95	1995-96
Bakersfield	15.50	14.85	16.22	15.24
Fresno	11.13	10.55	12.51	17.84
Los Angeles	13.76	15.32	17.71	20.36
Oakland	11.49	17.55	19.45	18.48
Sacramento	16.27	14.50	16.92	21.27
San Bernardino	12.05	19.09	17.01	20.57
San Diego	11.23	19.80	17.75	13.94
San Francisco	13.06	12.54	18.22	24.36
San Jose	17.61	14.75	12.40	13.61
Santa Ana	9.66	14.18	20.31	19.94
Ventura	17.82	11.61	16.28	19.90

The reasonableness of expecting consultants to close eight complaints per month is also doubtful. The department established the productivity measure in 1981 and has continued to use it since then, despite changes in complaint processing. Although age alone may not indicate a problem, the

department's failure to change the measure after it introduced some efficiencies in complaint processing raises questions about the productivity measure's reliability. According to the department, it based this measure on consultants' actual productivity over a period of time. The department also stated that actual productivity showed that most consultants close eight complaints per month in addition to performing intake and other complaint-processing duties.

The department is in the process of modifying its productivity measures in district offices with specialized intake and investigative functions. The department anticipates expecting intake specialists, who do all intake work for the department, to close an average of four nonhousing complaints a month and investigative specialists an average of 12 a month. The department now also considers the complexity of the complaints and the nature of the closures. Again, it has not documented the reasonableness of these productivity measures, nor has it quantified the effect of a complaint's complexity on a consultant's time. Without data to support their reliability, the department's current productivity measures may encourage consultants to meet goals by closing complaints improperly or working on those they can close easily.

The Department Does Not Maintain an Appropriate Workload Balance

Lack of a time-reporting system also impairs the department's ability to establish an appropriate workload balance among consultants. For complaints accepted for investigation, the department initially distributes complaints equally among the consultants within each district office. In addition, it considers each consultant's open complaint workload and the number of complaints within 90 days of expiration. However, we noted no formal process that considers the complexity of complaints or the estimated time to process complaints when district administrators distribute workload within their district offices. In addition, during our review of four district offices, we found that consultants' open complaint workloads ranged from 65 to 94 and the number of complaints within 90 days of expiration ranged from 6 to 15. Information from a time-reporting system could provide the department with a basis for distributing the workload equitably and result in better complaint management.

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At the four district offices visited, consultant workloads varied widely.





The Department Has Difficulty Justifying Its Requests for More Staff

Without a time-reporting system that quantifies the average amount of time consultants spend on complaints, the department has had difficulty defending its requests for additional staff, which it considers necessary to handle its current workload. For example, for fiscal year 1995-96, the department requested 41 additional staff to bring its total staff to 268. However, for fiscal year 1996-97, the Legislative Analyst's office objected to continued funding for the 41 positions because the department did not provide current information to support its need. The Legislature reduced the department's 41 positions to 30 limited-term positions for fiscal year 1996-97. If the average time spent on a complaint were documented, the department would have a basis for its staffing requests.

Processing Delays Leave Inadequate Time for Legal Staff To Prepare Accusations


When the department's legal division receives complaints for which it must prepare accusations, the number of days remaining before the complaints' expiration dates is often minimal. The department's goal is to transfer complaints that are fully investigated to the legal division at least 60 days before the expiration of the 365-day statutory deadline. Department records for fiscal years 1994-95 and 1995-96 indicate that approximately 80 percent of complaints consultants sent to the legal division had less than 31 days remaining before their one-year anniversary dates, leaving the legal staff little time to prepare and issue accusations.


Files sent to the legal staff do not always adequately document work completed.


In addition, when the department transfers complaints to the legal division, the files do not always adequately document work completed. The legal division then must perform work consultants should have completed and documented before the transfer. For example, the legal division received a complaint with only five days remaining before the one-year anniversary date. The legal staff documented that the consultant's file had insufficient evidence to issue an accusation. However, they felt that certain employment practices by the respondent seemed questionable. Therefore, the department issued an accusation anticipating that enough evidence would be obtained through discovery to proceed with the case to an administrative hearing.

The Department Does Not Fully Use Automation To Expedite Complaint Processing

Because the department has limited automation and does not fully use its current computer capabilities, complaint processing is unnecessarily slow. Although the department has developed some automated efficiencies, not all consultants use existing technology. Specifically, some consultants still handwrite certain reports. We also observed consultants who do not use computer templates designed by the department's information technology unit to expedite complaint processing and make uniform the recording of data.


The department's complaint processing is hampered by:

- ✓ Continued reliance on manual methods;
- ✓ Errors in its database;
- ✓ Limited access to the database; and
- ✓ A lack of an automated complaint tracking system.

In addition, the department's automated database, its case management information system (CMIS), contains errors. Designed to help the department process complaints promptly, the CMIS contains information about complainants, respondents, filing dates, types of discrimination, and closing dates. The department uses the CMIS to monitor due dates for service letters to complainants and to prepare statistical reports for management. Proper maintenance of CMIS data is critical because the department destroys paper documents after three years. However, the department had already closed 14 (61 percent) of the 23 complaints we selected to review from a CMIS report of open complaints in four district offices. Some of these complaints were filed as early as 1982. One cause of these errors is that each district office must record the complaint closure on the CMIS. If a district office transfers a complaint to another district office or to the legal division and does not monitor its status to ensure return of the file for closure, the complaint remains open on the CMIS.

Because the CMIS contains errors, the department may prepare inaccurate statistical reports that result in erroneous workload projections. The department did not discover the errors we noted because it does not have a periodic reconciliation process. In December 1996, it began a project to reconcile the open complaints between district office records, legal division records, and the CMIS database.

Further, the department does not have a local area network (LAN) to expedite complaint processing. Currently, most staff we observed have personal computers, but the department has just one computer per district office with access to the CMIS. A study conducted in March 1995 by data processing personnel concluded that the department would realize increased productivity with the implementation of a LAN that would allow consultants to type and electronically transmit complaints to

clerical staff and to retrieve important complaint data from the CMIS. As of September 24, 1996, the department was awaiting approval of a computing policy by the Department of Information Technology before it could proceed with plans to implement a LAN.

The department also does not have an automated method of tracking complaint status. While the CMIS indicates how long a complaint has been on file, it does not provide information about the status of the complaint. For example, the data does not indicate whether the consultant attempted settlement or received a reply from the respondent. Managers use such information to ensure that consultants process complaints on time. Currently, staff must review the department's physical files to obtain such information.



The Department Fails To Comply With All Legal and Administrative Requirements

Government code and departmental policy establish specific requirements for consultants to follow when processing complaints of discrimination. However, in our review of 242 complaints closed in fiscal years 1994-95 and 1995-96, we determined that the department did not always comply with requirements. Table 4 summarizes these instances of the department's noncompliance. It also summarizes other instances of noncompliance we discuss earlier in the report.

The code requires that the department notify the respondents for employment and civil rights complaints within 45 days of complaint filing. For housing complaints, the code requires that the department notify the respondent within 10 days of complaint filing. The department requests that the respondent answer specific allegations. As shown in Table 4, for 12 of 242 cases we reviewed, the department did not notify the respondent of the alleged discrimination on time. For one employment complaint we reviewed, the department did not notify the respondent of the alleged discrimination until 114 days after the filing date. This delay contributed to the department's failure to close this complaint within the required one-year time limit. The department eventually closed this complaint 589 days after the filing date.

Table 4***The Department's Noncompliance With Laws and Rules***

Violation of California Government Code	Number of Employment and Civil Rights Exceptions	Number of Housing Exceptions	Total Exceptions	Total Reviewed	Percentage of Exceptions
Complaint closed after 365 days.	60	1	61	242	25%
Respondent notified late.	8	4	12	242	5
Problems with notification to complainant of his or her right to request civil court action.	102	N/A	102	198	52
Problems with notification to complainant that case will not close within 100 days.	N/A	6	6	44	14
Problems with right-to-sue notification after one year.	14	N/A	14	198	7
Consultant review of compliance with settlement agreements not documented or performed.	6	4	10	15	67
Legal staff review of compliance with settlement agreements not documented or performed	5	0	5	5	100
Departmental Procedures Not Followed					
Predetermination settlement not attempted on time, documented, or performed.	82	7	89	242	37%


In 52 percent of the complaints, the department failed to notify complainants of their right to elect court action, as required.


Further, the code requires that the department formally notify complainants at two dates during the process of their right to elect civil court action. Specifically, for employment and civil rights complaints, Section 12965(b) requires that if it does not decide whether a violation occurred within 150 days after the filing of the complaint, the department must notify the complainant that he or she may request the right to elect civil court action. The department did not comply with this requirement for 102 (52 percent) of 198 complaints reviewed. Based on this sample, we conclude that the department did not comply with this requirement for approximately 8,400 complaints in these two fiscal years. For housing complaints, Section 12980(h) requires that the department notify complainants no later than 130 days after filing. The department must explain the status when it cannot resolve a complaint within 100 days and the reasons for the delay. As Table 4 shows, the department did not comply with either of these requirements for 6 (14 percent) of 44 complaints. Based on this sample, we concluded that the department did not comply with these requirements for approximately 200 complaints closed during fiscal years 1994-95 and 1995-96. For one employment complaint, the department did not notify the complainant of his right to elect court action until 290 days after the complaint filing date. For other complaints, the department did not notify the complainants until their complaints had closed.

The department must also notify complainants that they have the right to elect civil court action after one year if their complaints have not been resolved. As shown in Table 4, for 14 of the 198 complaints we reviewed, the department notified the complainant late or did not document that it notified complainants in writing of their right to elect civil court action.

The code also requires that the department review whether respondents comply with written settlement agreements within one year of the effective date. We found that, for 10 of 15 complaints we examined that consultants resolved through a negotiated settlement that required additional monitoring, the department did not comply with its policies to document this step. In addition, for 5 legal complaints reviewed, the department did not review respondents' compliance.

Because consultants did not always adequately document or comply with statutory and department requirements, the department cannot ensure that it resolves all complaints within the statutory limits and properly notifies complainants of their rights.

***The Department Has Addressed
Some Inefficiencies***

The department's problems with meeting deadlines for processing complaints are not new. As shown in Table 5, for at least the last five fiscal years it has exceeded its statutory time limit for investigating and closing complaints of discrimination.

***Table 5
Investigated and Closed Complaints
That Were Open More Than 365 Days***

Fiscal Year	Number of Complaints Open More Than 365 Days	Total Complaints Investigated and Closed	Percentage of Complaints Open More Than 365 Days
1995-96	2,727	9,149	30%
1994-95	2,647	8,592	31%
1993-94	3,569	9,105	39%
1992-93	2,968	9,741	31%
1991-92	2,066	9,535	22%

Based on the CMIS, total complaints open over 365 days does not include those for which an accusation was issued. Using departmental records, we deducted the actual number of complaints sent to the legal division for accusation for 1994-95 and 1995-96 and used estimates of complaints sent to the legal division for the remaining years.

In 1993, the department established a central communication center to expedite the intake of complaints.


The department has taken some steps to address processing problems. In 1993, it revised its intake process for employment and civil rights complaints. To improve its initial communication with complainants, the department established a central communication center (center) for all employment district offices. By calling a toll-free number, complainants throughout the State can contact the center, which screens out complaints over which the department has no jurisdiction and schedules interviews between complainants and consultants. According to the department, the implementation of the center decreased the complainants' waiting time for an initial interview. The records the department provided to us indicated that, as of December 2, 1996, the statewide average wait for an interview was approximately 10 days.

In addition, the department developed a process in which staff at the center assist complainants who immediately want to pursue their complaints through court action. Upon request, the center mails the complainant a right-to-sue package with instructions to complete the forms and mail them to a specified


district office. Clerical staff at the district offices file the complaints, notify the respondents, and send the complainants their right-to-sue letters. This reduces the need for scheduling appointments, lessens clerical work during group intake days, and provides a convenient process to pursue complaints through the judicial system.

According to the department, the group intake process, initiated in 1993, permits it to interview complainants efficiently. At the start of this process, the department presents to the group of complainants a video and an oral discussion that explain the complaint process and the rights of complainants. Thus, before a complainant has an interview, the complainant has important information that the consultant may not have to repeat in the interview.

In April 1995, the department also implemented a pilot project in two district offices to improve its complaint processing. It assigned consultants to either intake or investigative work (specialization). Previously, all consultants completed both intake and investigative work. For the pilot project, the intake consultants processed complaints for up to 90 days and performed the initial interviews, attempted predetermination settlements, and obtained replies from respondents. Once the department received the replies, the investigative specialists completed work on the complaint. The department claims that the pilot project was successful, and, as a result, the other district offices with eight or more consultants planned to implement specialization by June 1996. According to the department, as of January 2, 1997, six of these seven district offices with eight or more consultants have implemented specialization. The remaining office has had staffing problems and has been unable to implement specialization.



The department also established a specialized unit to investigate housing complaints.




In fiscal year 1994-95, the department also created a specialized unit for processing housing complaints. By establishing this unit, the department allowed its consultants to focus on a smaller portion of applicable laws, either housing or employment, instead of both.

Recently, the department also addressed other inefficiencies in its procedures for complaint investigation and closure. It began working with the Department of Information Technology to provide greater automation of its complaint processing and tracking, introduced expedited procedures for processing complaints with insufficient evidence, and requested additional staff to deal with the increased workload. We discuss each of these efforts in more detail elsewhere in the report.


Further, the department took steps to improve its quality control reviews of the decisions consultants make during complaint intake and closure. Each district administrator is responsible for reviewing selected complaints for the propriety of the consultants' decisions during complaint investigations. In addition, since August 1995, district administrators have been responsible for reviewing the propriety of complaint closures. As part of their review, they must contact witnesses and complainants to confirm the accuracy of the information contained in selected complaint files.

To further identify areas for improvement, the department also conducted extensive internal evaluations of the operations of district offices. It issued reports on five of these between March and September 1996. Based on interviews and reviews of complaint files, these internal evaluations addressed clerical and complaint processing systems. Each report included recommendations for training and for changes in policy or practices.

According to the department, during the last three years, it provided its consultant and legal staff with training in a variety of discrimination areas such as housing, the California Family Rights Act, pregnancy, and disability training. In addition, the department provided formal intake training, training for new consultants, and supervisory training for district administrators. The department's legal staff attempt to provide training to consultants six times annually, and the district administrators provide on-the-job training.



Despite the department's attempt to improve complaint processing, delays continue.



Despite the department's attempts to improve complaint processing, delays continue to occur. The department believes it must have additional staff before it can fully address complaint processing delays. We discuss the department's staffing needs in Chapter 2.

Conclusion

The department does not promptly resolve complaints of discrimination, closing 30 percent of these after the 365-day statutory deadline and many others within 90 days of the deadline. These delays arise because the department does not have a sufficiently expedited method for processing complaints. It also does not enforce its policies requiring early attempts to negotiate no-fault settlements and prompt replies from respondents. In addition, the department does not track time

spent on individual complaints, an activity that would provide a basis for establishing appropriate staffing levels and measures of staff productivity. The department has recognized these problems and has taken some steps to address them, but more changes are needed.

Chapter 2

The Department's Approach To Managing Its Complaint Workload Needs Changes

Chapter Summary

The Department of Fair Employment and Housing (department) must do more to use its current staff efficiently and effectively and to improve its complaint processing. This includes effective use of mail communications, enforcing current policies on time limits, and expediting investigation and closure processes with maximum use of computerization and with an effective time-tracking system.


The Department Should Improve Its Intake Procedures

Although it recently made some changes to the intake process, the department should implement an additional change that would further improve efficiency. It should mail complainants questionnaires to complete prior to the scheduled interview with a consultant. If complainants completed, or even received, the questionnaire early, the intake process would require less time than it does now because complainants would be better prepared for the interview. Currently, the department sends information about the types of questions that the complainants must answer, but does not send the actual questionnaire.

The Department Must Implement an Expedited Process for Investigating and Closing Complaints



In addition to expediting its intake process, the department should introduce efficiencies in the investigation and closing of complaints. In particular, it should conduct abbreviated investigations of complaints early in the process, while consultants await replies from respondents. This early investigation should include interviews with witnesses or other attempts to verify the particulars of the complaints. Currently, the department expects consultants to attempt predetermination settlements (PDS) while awaiting responses. Consultants do not interview witnesses to determine whether they will corroborate

the complainant's story, do not interview respondents to assess the type of information the respondent will provide, and do not examine other elements of the complaint. According to the department, it does not believe that interviewing witnesses before receiving a reply from the respondent would enhance the quality or timeliness of complaint processing. The department objects to preresponse interviews for the following reasons:


Interviewing witnesses before receiving a respondent's formal reply could expedite the complaint process.

- The department would have only the complainant's side of the story, resulting in the need for a second interview with the same witnesses when the respondent's point of view is available. However, we believe the department could require consultants to solicit the respondent's perspective before receiving the formal reply.
- The department often bases its assessment of the validity of a complaint on information other than interviews that the complainant suggests, such as records the respondent supplies and interviews the respondent suggests. We agree that other information is often important to the consultant's assessments, but we do not believe that early interviewing of witnesses precludes the department from using the other information when it is available. Instead, it ensures that more information is available sooner.
- Complainants cannot always supply information about how to contact witnesses. This information is often available only from respondents. However, in our opinion, the department could request this information before, as well as after, receiving the formal reply from the respondent.

Contacting witnesses early in the process helps preserve potential evidence and reduces the likelihood that witnesses will become unavailable or forget details of their observations through the passage of time. In some instances, this process of assessing information before a formal response is received would also allow the department to determine the complexity of complaints and to assess which complaints have less merit and can be closed quickly with only minimal additional investigation. When the department is unable to make such assessments before receiving the formal response, it should make them soon after.


Early assessment of a complaint's potential for substantiation and its complexity would allow for better case management.


The department should also categorize complaints according to their potential for substantiation. For example, it should assign a complaint a low, medium, or high rank depending on the potential for substantiation. The department should ensure that consultants spend no more effort than necessary to close complaints that have the lowest potential for merit and are likely to close for insufficient evidence. Further, the department should develop a process that categorizes remaining complaints according to level of difficulty so it can assign easier complaints to less experienced consultants and difficult complaints to the most experienced consultants. Finally, the department should monitor the complaint workload among district offices and consultants to ensure that the number and complexity of complaints per consultant is as equitable as possible.

***The Department Must Comply
With Its Current Policies
and Legal Requirements***


The department currently has policies that require consultants to attempt to negotiate a PDS while waiting for replies from respondents and that require respondents to reply to complaints within 21 days. In addition, the department's goal is to transfer complaints with recommendations for accusations to the legal division with at least 60 days remaining of the 365-day statutory time limit. These are reasonable policies that help the department resolve complaints on time, but they are not always being followed. To process complaints efficiently and effectively, the department must enforce these current policies.

In addition, the department should ensure that consultants comply with legal requirements for promptly notifying respondents of the complaints, notifying complainants of their right to use the courts, resolving complaints within statutory time requirements, and reviewing respondents for compliance with settlement agreements.


***Efficiency Can Be Improved
by Using and Expanding
Its Computer Capabilities***

The department must make better use of its current computer system, but it also needs additional capabilities. To ensure the accuracy of the case management information system (CMIS), the department should continue implementing a process that reconciles CMIS reports to district office data and require

that district offices compare their data to headquarters data periodically. The department should also train staff in the use of its current computer efficiencies, such as its automated templates for complaint intake, and require their use.



The department could benefit from additional information technology such as a local area network and automated complaint tracking.



Additionally, the department could benefit from additional information technology such as a local area network (LAN) and an automated method of tracking complaint status. The department can improve the efficiency of complaint processing by continuing its efforts to establish a LAN for its consultants and clerical staff. With a LAN in place, the department may also increase efficiency by implementing an automated method of tracking complaint status. The department should consider a time-tracking software package to be used in conjunction with an automated case diary format. The primary function of the LAN should be to allow staff to enter complaint information once, with any additional applications done automatically. The department should also provide appropriate training that enables all department staff to use any new automation. Finally, the department should require that staff use the new automated system.

Once the department has an approved computing policy, the Legislature should appropriate sufficient funds for a LAN.

Further, the department must continue to implement a system of tracking the time spent on complaint processing. By formally tracking time spent on complaints, the department could better support its productivity measures, accurately project its staffing needs for budgetary purposes, and appropriately distribute workload among consultants. In addition, tracking time spent on complaints would allow the department to refocus its formal productivity measures from the number of closed complaints to the timely processing of specified phases of the complaint. By focusing productivity measures on the timeliness of the consultants' completion of each phase in the process, the department would establish appropriate priorities for consultants.

The Department Must Take Short-Term Actions To Close Old Complaints

*A variety of alternatives
exist to clear the
significant backlog
of complaints.*

The department should also give priority to eliminating its inventory of complaints that are approaching the 365-day statutory time limit (expiring) and those complaints that have exceeded the time limit (expired). It should consider one or more of the following alternatives: authorizing overtime for current employees to process and complete expired and expiring complaints; hiring retired annuitants or additional limited-term staff to work on easier complaints, thus allowing permanent staff to work on more difficult ones; developing a team approach to resolving expired and expiring complaints that includes reevaluation of complaints and decisions about the most appropriate method for resolution.

In addition, the Legislature should appropriate moneys to allow the department to implement one or more of the above strategies to eliminate its current inventory of expired and expiring complaints.

Recommendations

The department can make changes to improve the efficiency and timeliness of its complaint processing. To implement some of our recommendations, it will need additional funds appropriated. To improve initial contacts with complainants, the department should mail a precomplaint questionnaire before the interview with a consultant. To implement an expedited process for investigating and closing complaints, the department should take the following steps:

- Conduct abbreviated investigations of complaints early in the process, while consultants await replies from respondents.
- Categorize complaints according to their potential for substantiation and their level of difficulty.
- Monitor complaint workload among district offices and consultants to ensure that it is as equitable as possible.

To make certain that it processes complaints efficiently and effectively, the department should do the following:

- Enforce policies requiring consultants to attempt to negotiate PDS, requiring respondents to reply to complaints within 21 days, and requiring the enforcement division to transfer to the legal division complaints with recommendations for accusations with at least 60 days remaining before the statutory time limit.
- Enforce legal requirements to promptly notify respondents of complaints, notify complainants of their right to pursue the complaints in court, resolve complaints within statutory time limits, and review respondents for compliance with settlement agreements.

To use automation more effectively, the department should take these steps:

- Continue the process that reconciles CMIS reports to district office data and require that district offices compare their data to headquarters data periodically to ensure the accuracy of the CMIS.
- Continue its efforts to establish a LAN of computers for the use of its consultants and clerical staff.
- Consider installing a time-tracking software package that staff could use in conjunction with an automated case diary format.
- Provide appropriate training that enables all department staff to use any new automation to increase efficiency of complaint processing.
- Require staff to use the automated system.

To provide a better foundation for supporting its productivity measures, accurately projecting its staffing needs for budgetary purposes, and assisting the department in appropriately distributing workload, the department must continue to implement a system of tracking the time consultants spend on complaint processing.

To eliminate its current inventory of complaints approaching the 365-day statutory time limit and those complaints that have exceeded that time limit, the department should consider one or more of the following alternatives:

- Authorize overtime for current employees.

- Hire additional limited-term staff or retired annuitants to work on relatively easy complaints and assign permanent staff to more difficult complaints.
- Develop a team approach to closing expired and expiring complaints that includes re-evaluation of complaints and decisions about the most appropriate method for resolution.

Finally, the Legislature should appropriate sufficient funds to allow the department to do the following:

- Install a LAN once the department has an approved computing policy.
- Authorize overtime or hire additional limited-term staff or retired annuitants to eliminate the inventory of expired and expiring complaints.

We conducted this review under the authority vested in the state auditor by Section 8543 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope of this report.

Respectfully submitted,



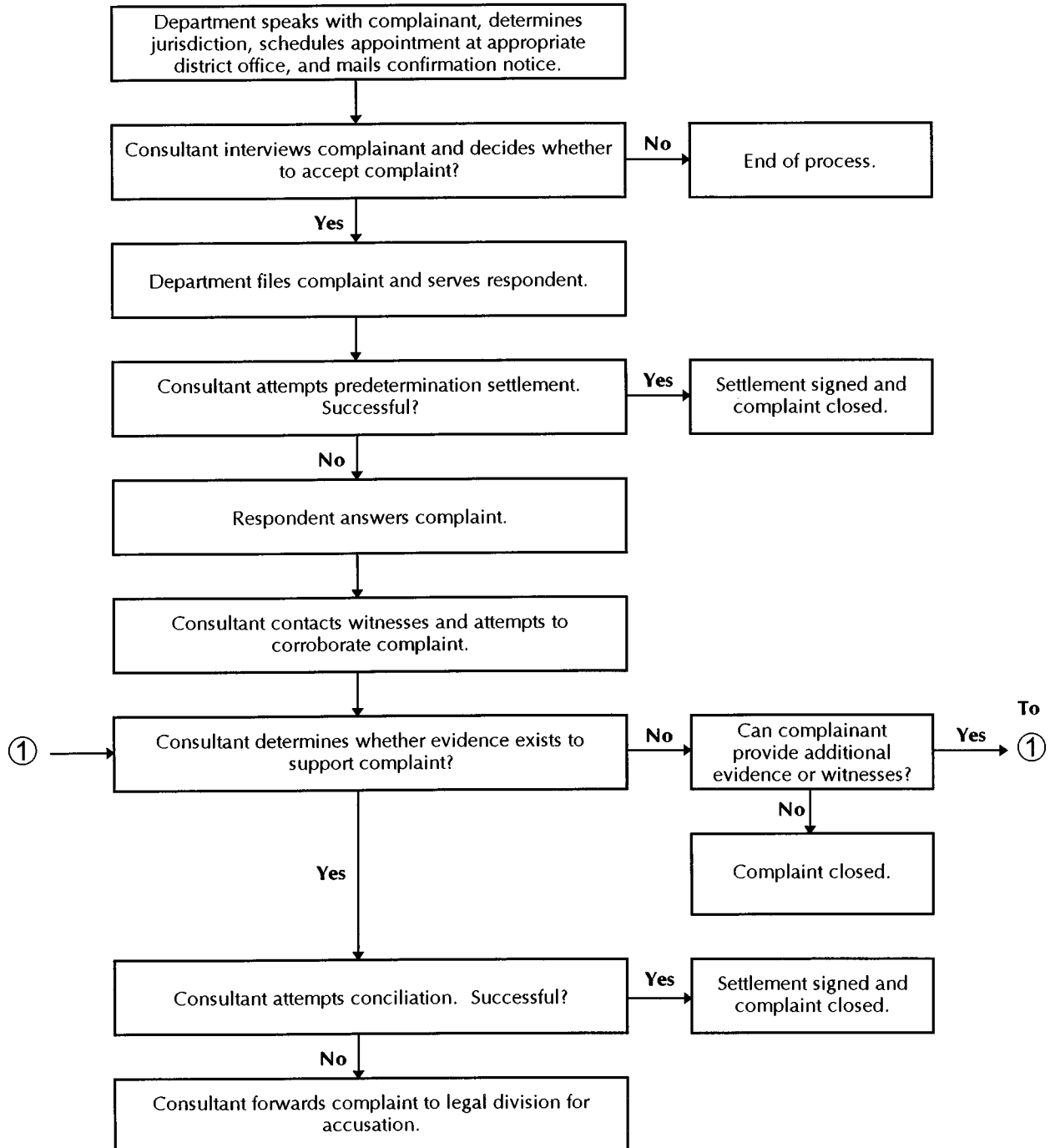
KURT R. SJOBORG
State Auditor

Date: January 16, 1997

Staff: Lois Benson, CPA, Acting Audit Principal
Tammy Bowles, CPA
Scott Denny
Brian Lewis, CPA
Dawn Tomita

Appendix

Flowchart of the Department's Complaint Processing





State and Consumer Services Agency

OFFICE OF THE SECRETARY
915 CAPITOL MALL, SUITE 200
SACRAMENTO, CA 95814

African American Museum
Building Standards Commission
Consumer Affairs
Fair Employment & Housing
Fair Employment & Housing Commission
Franchise Tax Board
General Services
Insurance Advisor
Museum of Science & Industry
Personnel Board
Public Employees' Retirement System
Teachers' Retirement System

January 9, 1997

Kurt R. Sjoberg, State Auditor
Bureau of State Audits
660 J Street, Suite 300
Sacramento, California 95814

Dear Mr. Sjoberg:

After extensive review, the attached has been prepared to respond to Bureau of State Audits report, entitled "Department of Fair Employment and Housing: Its Complaint Processing Needs More Effective Management."

The purpose of this audit was to provide a comprehensive program assessment of the Department's organizational effectiveness; caseload management practices for investigating housing and employment discrimination cases; workload standards for housing and employment cases; and, an evaluation of the adequacy of the Department's information system.

In our view, the audit report does not fully recognize the Department's dilemma. The Department of Fair Employment and Housing has grappled with managing additional jurisdictional responsibilities, workload and meeting required statutory timeframes in an environment in which the volume of cases has increased, while resources have declined.

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The management of the Department has prioritized its workload to meet the challenge of a growing caseload, and to meet existing statutory requirements. In the last two years, the Administration has attempted, in part, to address these needs with additional resources. We believe the resources that were authorized in 1995-96, along with the resources proposed in the 1997-98 Governor's Budget, will place the Department in a far better position to meet its responsibility for the public policy of protecting and safeguarding the civil rights of all persons in employment, housing, public accommodations and protecting all persons against hate violence in the State of California.

Director Gutierrez and I appreciate the importance of this report, as well as the opportunity to respond.

Sincerely,


Joanne C. Kozberg
Secretary

*The California State Auditor's comments on this response start on page 67.

**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING:**

Response to January 1997 Report
of the Bureau of State Audits

January, 1997

SUMMARY

Response In Brief:

- The Department concurs with the audit's recommendation that the Legislature authorize additional DFEH staff and increased funding. However, the Department takes exception to the recommendation that additional staff are needed only on a temporary basis. The need for journey-level investigative expertise, increasing caseloads, and expanded statutory responsibilities warrant additional permanent staff.
- The audit report failed to recognize the key factors responsible for caseload management challenges: escalating caseloads, limited investigative staff, reduced supervisory staff and expanded statutory responsibilities. The audit report's failure to even minimally acknowledge these challenges has resulted in a misunderstanding and ultimately a misrepresentation of the causes of the problems facing the Department.
- Since the audit report inaccurately attributed DFEH's caseload management problems to erroneous causative factors, many of its recommendations are inappropriate. (2)
- The audit failed to recognize the significant contributions that the DFEH has made to eliminating discrimination in California. The DFEH is charged with the responsibility of enforcing California's public policy of protecting and safeguarding the civil rights of all persons to be free from discrimination in employment, housing, and public accommodations, and to be free from hate violence. Despite long-standing budgetary, staffing, and caseload challenges, DFEH has made significant contributions to the development of case law in the area of civil rights. The Department's investigations and resulting litigation has significantly improved the employment and housing conditions of many Californians. (3)

RESPONSE

I. The Department Concurs With the Audit's Recommendation that the Legislature Authorize Additional DFEH Staff and Increased Funding:

A. Staff Augmentation:

The audit report (pp.S-3, 2-5, and 2-7) accurately identifies the need for additional DFEH staff. Staff are needed to address the current inventory of expiring cases (pg. 2-7) as well as the permanent challenge of expediting case processing to ultimately prevent the accumulation of expired cases. (2)

As the audit report accurately describes, the DFEH has grappled with a large number of expired cases for the last five fiscal years (Table 5, pg. 1-18). This is not a temporary phenomenon and is not one that can be addressed solely through the addition of inexperienced limited-term staff, authorized overtime, or the addition of another "expedited" investigative innovation. As section III below indicates, escalating caseloads, the need for journey-level investigative expertise and expanded statutory responsibilities warrant additional permanent staff. A permanent staff augmentation is critical to enabling the Department to efficiently handle cases and fulfill the non-discrimination mandate of the Fair Employment and Housing Act (FEHA).

B. Increased Funding:

The audit report accurately identifies the need for the Legislature to "...appropriate sufficient funds..." to expand the Department's computer capabilities and install a LAN in all of its District Offices (pg.2-7). In the Department's view, this enhanced computer capability also requires the addition of computer professionals to ensure the proper installation, operation and use of the new technology.

II. The Audit Report Accurately Recognized DFEH's Progress Toward Enhanced Efficiency and Quality Control:

The Department concurs with the audit report's description of the significant steps the Department has taken during the last three (3) years to improve caseload management, quality control and enforcement of the FEHA. Additional efforts are summarized in Attachment A.

III. **The Audit Failed to Recognize the Key Factors Responsible for Caseload Management Challenges: Escalating Caseloads, Limited Investigative Staff, Reduced Supervisory Staff and Expanded Statutory Responsibilities:**

In recent years, the Department's ability to meet its statutory mandate has been severely impacted. DFEH effectiveness has been challenged by an increased volume of discrimination complaints, escalating caseloads, budget cuts, staff reductions, and expanded jurisdiction. All of these factors have affected the Department's ability to complete many cases within the 365-day statutory limit and to expedite the processing of complaints. Indeed, these are the factors the Department has repeatedly brought to the Legislature's attention to justify the need for increased funding and staff.

Despite the Department's repeated requests to the auditors to consider DFEH performance in light of the challenges identified above, none of these factors are reflected in the audit report's assessment of the Department's performance. This oversight deprives the audit report of the context and factual background that is necessary to understand the primary causes of the Department's caseload management challenges. For example:

- The number of complaints filed with the DFEH have more than **doubled** since the Bureau of State Audit's predecessor, the Office of the Auditor General, performed the last audit of the DFEH in 1986. Complaints have increased from **7,972¹** in FY 85-86 to **18,101** in FY 95-96². During the period of FY 88/89 to FY 95/96, the number of complaints filed with the DFEH has continued to increase (refer to Attachment B: "Complaints Filed With DFEH").

¹ Report by the Auditor General of California; A Review of the Department of Fair Employment and Housing, October 1986, pg. 21 (hereinafter: 1986 Audit Report).

² 1997 audit report by the Bureau of State Audits: Department of Fair Employment and Housing: Its Complaint Processing Needs More Effective Management, January, 1997, pg. Int-2 (hereinafter: Audit Report).

- The average caseload of the DFEH investigator has increased by more than 60% since the 1986 audit report. In 1986, the average caseload totaled 46 cases³; the current average caseload is 74 cases. In fact, as the 1997 audit report indicates, a survey of four (4) District Offices indicated that some consultants' caseloads total as many as 94 cases (pg. 1-12). (4)
- Despite the increased demand for DFEH services, the Department's budget was reduced in FY 91/92 by \$2.1 million, the equivalent of 38 positions. Although a FY 95/96 budget augmentation helped address DFEH needs by adding forty-one (41) positions, it only temporarily increased staff to pre-1991 levels. The FY 96/97 budget reduced DFEH funding by almost \$600,000, eliminated eleven (11) of the forty-one (41) new positions and converted the remaining thirty (30) positions to limited term. The fluctuating DFEH budget and the conversion of permanent positions to limited term has impeded the Department from retaining experienced staff, a prerequisite to the effective enforcement of the law. (5)
- The FY 91/92 budget cut resulted in the elimination of all District Office middle level supervisors. This dramatically reduced the Department's ability to train employees, monitor case processing requirements, and provide a team approach to completing expiring cases. Currently, each District Office has only one on-site supervisor (District Administrator). In some of the District Offices, this individual is responsible for the supervision of 10 consultants, five clerical staff, the oversight of approximately 700 open cases a month, as well as the oversight of the intake of approximately 75 new cases a month. Additionally, the District Administrator is responsible for all office operations, monthly and quarterly reports to the Regional Administrators, responding to complaints from the public, oversight of the District Office Case Management Information System (CMIS), and all personnel matters.

The DFEH knows of no other state agency in which its first-line supervisors are expected to carry responsibilities of this

³ 1986 Audit Report, pg. 19.

magnitude. Despite these facts, the audit report criticizes the DFEH for failing to consistently monitor staff (pg. 1-8). The audit report fails to place this alleged deficiency in the context of the myriad tasks required of District Administrators. It completely omits mention of the large supervision span and the broad range of responsibilities assigned to the District Offices' on-site managers.

- Although the audit report references "recent changes in the law that have affected the Department," (pg. Int-6), the report's brief narrative fails to ascribe any significance to the fact that the Department's statutory responsibilities have dramatically increased in the last four (4) years. In the Department's view, these extensive legislative amendments to the FEHA have **increased its workload, reinforced the need for permanent investigative expertise, and justified a budget augmentation.** A description of the extensive changes is contained in Attachment C.

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In summary, this performance audit cannot accurately evaluate the effectiveness of DFEH's caseload management practices because it did not assess the impact of the significant challenges identified above. The audit report's failure to even minimally acknowledge these challenges has resulted in a misunderstanding and ultimately a misrepresentation of the factors responsible for the problems facing the Department.

IV. Since the Audit Inaccurately Attributed DFEH's Caseload Management Problems to Questionable Causative Factors, Many of Its Recommendations Are Inappropriate:

Many of the concerns described in the audit report have been previously identified and addressed by the Department. Paramount among these are the inability to process many cases within the 365-day statutory accusation deadline, the inability to identify more litigation-worthy and non-meritorious cases earlier in the process, and the inability to investigate many cases without having large "time lags" between receipt of the response and the ninety-day period before the case expiration date.

Despite the Department's agreement with some of the key problems identified by the audit report, the Department takes great exception to the audit's analysis of the causes of these problems. The overarching

impression left by the audit report is that DFEH has problems because it has not learned how to manage its cases. As indicated above, no mention is made of the increased demands made on the Department, the high caseloads carried by the Department's investigators, or the broad span of supervision or scope of responsibilities required of District Administrators. Rather, the audit report implicitly asserts that some of the Department's policies are misguided, that Department staff is lax about following internal policies and the Department's managers do not enforce case processing expectations. (2)

The auditors interviewed a number of the Department's investigators and managers, received comprehensive explanations of the Department's processes, and observed staff workload demands, staff work ethic, expertise, professionalism, long hours, and dedication to the mission of the Department. Despite these personal observations, it is most disconcerting that the audit report offers an inaccurate analysis of DFEH challenges. Given that the auditors were fully aware of all of these factors, the Department strongly objects to the audit report's conclusions regarding causation. These conclusions are addressed in detail below.

A. The Focus on Older Cases Is a Statutory Necessity, Not a Result of the Department's Failure to Manage Its Workload Effectively:

The FEHA charges the Department with meeting several critical responsibilities simultaneously: filing complaints within one year of the last act of discrimination, effectively resolving and investigating complaints, and **ensuring that litigation-worthy cases are completed within 365-days of filing.** While the DFEH attempts to meet all of these requirements in a prompt and expeditious fashion, the dictates of the law and the reality of high caseloads and limited staff make prioritizing case processing absolutely imperative.

The audit report suggests that the Department arbitrarily and irresponsibly chooses to neglect newly filed cases in favor of those nearing the statutory time limit (pg. 1-3,4). In fact, the audit report states that the DFEH policy of prioritizing older potentially litigation-worthy cases is due to the fact that the Department "... does not manage its workload adequately" (pg. 1-3). The audit fundamentally misunderstands the dictates of the law. Even if DFEH staff were augmented such that each (7)

case would receive attention every day, DFEH would still maintain a policy that prioritized the cases of complainants in danger of losing their rights to administrative redress. In the Department's view, any other policy would abdicate management's duty to address the most pressing case concerns first.

The fact that the Department continues to adhere to its policy of prioritizing aging cases is not intended to suggest that the Department does not agree with the auditors that it would be desirable to devote greater attention to newly filed complaints. As subsection B., below, indicates, the Department has several systems in place to expedite the processing of cases. The Department maintains, however, that in order for any of these systems to be fully successful, caseloads must be lowered to permit staff to devote greater time to each case in their caseloads. Additionally, the Department maintains that any new systems designed to expedite cases should conserve resources, maintain the Department's neutrality, and foster cooperation with the parties and witnesses. Unfortunately, the expedited process proposed by the audit report, and discussed in detail in subsection B., below, meets none of these criteria.

B. The Specific Expedited Investigative Process Proposed by the Audit Disadvantages Respondents, Is Time-Consuming, and Would Result in Unnecessary Expenditure of Resources:

The Department has long recognized the importance of providing prompt and reliable service to the public. Understanding this, the Department's long-standing practice has

been to implement as many expedited investigative and closure systems as practicable.⁴

The Audit Report does not criticize any of these approaches, but rather suggests another expedited procedure. The audit proposes that the DFEH interview the complainant's witnesses before receiving a response from the respondent. Although the audit report summarized some of the reasons that the Department found this recommendation to be without merit (pg. 2-2, 2-3), it neglected to include the Department's most important objections:

- 1) Respondents have the right to respond to complaints in writing after making a careful evaluation of the facts alleged in the complaint. Asking the respondent to provide the DFEH with a verbal "off the cuff" response immediately after receiving the complaint disadvantages the respondent in a process that is designed to be neutral and objective. Given that respondents face great liability for violations of the law, denying them the opportunity to commit their defenses in writing before the Department begins to investigate the case would be a great disservice.
- 2) Most respondents choose not to present their positions verbally before submitting a written response. In some instances, receipt of the DFEH complaint is the respondent's first awareness that the complainant

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⁴ Existing expedited processing procedures include:

1) the immediate withdrawal and right-to-sue process that permits complainants to pursue their cases without extensive processing by the Department; 2) the "05 closure" approach: the expedited investigative and closure of cases in which the complainant can provide no rebuttal to the respondent's position. Consultants are permitted to close these cases without an in-depth investigation or the preparation of an investigative report; 3) specialized intake units that focus on "front-end" processing and the closure of cases that can be identified for early closure; 4) the Pre-Determination Settlement (PDS) process; and 5) use of a complainant contact letter (the "30-day letter") that results in immediate case closure if the complainant fails to respond with relevant information.

objected to the treatment he or she received. Prior to receiving the respondent's response, the DFEH only has "one side of the story." In the great majority of cases, the respondent's version differs from the complainant's. Relevant investigative information can only be formulated by knowing both parties' versions of what transpired. If interviews were conducted relying only on that information gathered from the complainant during the intake interview, DFEH would have to re-interview the same witnesses after receiving the respondent's response. It is **costly and duplicative**. It is an **inefficient use of time and resources** as it would require, in many cases, two interviews with every witness. It would **increase DFEH investigative time**. Additionally, it may impede a full investigation because many witnesses do not want to be bothered with a second interview. Relevant investigative information, therefore, would be more difficult to obtain.

8

Despite the Department's objection to the specific "expedited" process recommended by the audit, the Department concurs with the audit's recommendation that cases be investigated earlier, without facing long periods of inactivity. The Department's experience has shown, however, that expedited systems have their greatest impact when sufficient staff is dedicated to "front-end" processing. Currently, high caseloads, limited staff, and large numbers of expiring cases limit the Department's ability to devote more resources to "front-end" processing.

C. Since the Audit Report Fundamentally Misunderstands the Department's Case Processing Expectations, it Misrepresents Compliance Inadequacies and the Quality of Case Processing:

9

The Department's case processing expectations regarding pre-determination settlement attempts, submission of responses, and case "lag times" are guidelines to be followed in the context of making the best use of available time and resources. This approach appears to have been misunderstood by the audit report.

The Department requires that its internal guidelines be used with discretion and judgment. For example, even though the Department asks employers to submit responses to complaints within twenty-one (21) days of service, Department policy also permits consultants to grant extensions of up to sixty (60) days without conducting formal discovery. Despite this policy, the audit report noted as noncompliance any instance in which the response was submitted later than 30 days from service (even if an extension had been given to the respondent pursuant to DFEH policy).

9

The rationale for the Department's flexible application of its response submission policy is illustrated by the following example:

Shortly after a complaint is served, the assigned consultant consents to the respondent's request to submit the response forty (40) days from receipt of the complaint. The employer states that he requires additional time to conduct an internal investigation. It would be inappropriate for a consultant to refuse to give the employer a response extension and instead invest the time in propounding interrogatories when the respondent could not realistically meet the twenty-one (21) day expectation. This is because most employers require additional time to prepare a response and the DFEH investigation benefits from the presentation of a comprehensive response. More importantly, it would be inappropriate to invest time in coercing an immediate response when the cost of that action, in some instances, is the neglect of other priority cases.

The audit report would have presented a more accurate perspective of Department compliance with case processing guidelines if its review of cases considered all aspects of internal policy (as in the 60-day response period referenced above). Additionally, the audit report's presentation would have been more accurate if it was placed in the context of particular office circumstances, staffing issues, intake demand, the experience levels of consultants, and the breadth of the District Administrators' responsibilities.

Rather than assessing compliance with internal guidelines in proper context, the audit report concluded that non-compliance

occurred whenever the cases did not meet the parameters deemed appropriate by the auditors. Although the Department has concluded that this questionable audit approach resulted from a lack of understanding rather than deliberate misrepresentation, the effect is to present an inaccurate picture of the handling of cases that unjustifiably reflects poorly on Department staff.

9

The auditors visited five (5) District Offices (4 employment and one housing office) and reviewed 242 cases. On December 20, 1996, the auditors submitted a list of exceptions noting the Department's alleged non-compliance with its own procedures. The managers of the five District Offices then reviewed every case in light of the auditors' comments. All took exception to many of the auditors' findings and provided explanations for the alleged "errors." For example, the audit report's assertions regarding the following activities were inaccurate as follows: 1) late or missing 150-day letter: inaccurate by 13%; 2) late responses: inaccurate by 17%; 3) late Pre-Determination Settlement (PDS) attempts: inaccurate by 8%; and 4) no PDS attempt or undocumented attempt: inaccurate by 6%.

10

The Department reviewed the alleged "errors" according to the parameters set by the auditors. It should be noted, however, that the failure to dispute an "error" does not reflect the Department's agreement that the categories selected by the auditors are a valid representation of the quality or lack of quality of case processing. The Department measures quality and compliance with internal procedures in the context of ongoing departmental challenges. This includes staffing considerations, size of caseloads, intake demands, and expiring cases. The audit report's recommendation that the Department comply with its current policies (pg. 2-3) would be more meaningful if placed in this context.

Finally, the Department takes great exception to statements that extrapolate Department-wide performance results from the audit's actual sample of 242 cases. For example, the audit report states that "Using the results of our testing [the 242 cases], we conclude that the department did not document an attempt to negotiate a PDS for approximately 4,300 complaints..." (pg. 1-8). This simplistic extrapolation is not a valid research method. A linear extrapolation is only reliable if

all 4,300 cases are handled in an almost identical manner. Given the great variation in the types and complexity of DFEH cases and the varying expertise levels and caseloads of Department consultants, this type of extrapolation is not justified or accurate.

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D. Since the Audit Identified No Deficiencies In the Department's Intake Procedures, the Recommendation to Mail Intake Pre-Complaint Questionnaires to Complainants Is Unfounded and Would Result In Inefficiency:

12

The audit report recommends that the Department mail complainants pre-complaint questionnaires (PCQs) for completion prior to their appearance for the intake interview (pg. 2-1). Although the audit report identified no deficiencies in the intake process, it asserts that the proposed PCQ change "...would further improve efficiency" (pg. 2-1).

The Department objects to this recommendation for the following reasons:

- Currently, complainants fill out the PCQ at the District Offices, with the benefit of guidance from an intake consultant and a group video. Completing the PCQ without this guidance, as is implicit in the audit report's recommendation, would result in less reliable information, inefficiency, and would lengthen the interview.
- Past experience with mailing PCQs in advance of telephone interviews indicates that many are not returned, requiring the Department to bear the cost of providing the PCQ twice. This is an unnecessary expenditure of resources that the Department cannot afford.
- Approximately 40-50% of the complainants scheduled for intake appointments fail to keep their appointments. Clearly, mailing PCQs to individuals who fail to keep their appointments results in an inefficient use of resources.

V. DFEH Concurs With the Audit Report's Recommendations to Use Automation More Effectively, to Track Use of Investigators' Time, to Assign More Difficult Cases to Experienced Consultants and to Equalize the Distribution of Cases:

DFEH concurs with many of the audit report's recommendations, many of which the Department is already in the process of implementing. Specifically, the Department concurs with the following:

- All of the audit report's recommendations regarding automation contained on pages 2-4, 2-6 and 2-7.
- Attempting to categorize cases according to their litigation-worthy potential and their level of difficulty (pg. 2-6). In the Department's view, successfully implementing this process requires that sufficient staff be dedicated to analyzing responses and conducting partial investigations on newly filed cases.
- Achieving an equal workload among and within District Offices (pg. 2-6). This coincides with the Department's long-standing practice to allocate staff geographically according to intake and caseload demands. The Department also routinely transfers cases within the District Offices and to other offices as necessary.
- Exploring additional methods (including augmented staff) to meet the FEHA's legal requirements in every case (pg. 2-6).
- The need to continue time-tracking system and consider software options to tracking case activity (pg. 2-7).

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VI. The Audit Failed to Recognize the Significant Contributions that the DFEH Has Made to Eliminating Discrimination in California:

The DFEH is charged with the responsibility of carrying out the public policy in the State of California of protecting and safeguarding the civil rights of all persons in employment, housing, public accommodations and protecting all persons against hate violence. Despite the long-standing budgetary, staffing and caseload challenges referenced above, the DFEH has made significant contributions to the development of case law in the area of civil rights. The Department's litigation has had a far more sweeping effect on preventing discrimination than the remedies the Department has obtained for individual complainants.. These significant achievements have only been possible

through the dedication and diligence of the investigative staff who, despite tremendous constraints, continue to uncover evidence of discriminatory practices and prove and refer meritorious cases to the Legal Division for initiation of litigation.

FEHC precedential decisions and published court cases inform both potential complainants and respondents of their respective rights and obligations under the law. Educating employers and housing providers of their obligations under the law helps prevent future violations of the law and promotes the protection of civil rights. Enumerated below is a sampling of the more significant points of law developed by the Department over the years:

- ▶ The United States Supreme Court upheld the FEHA's pregnancy leave and reinstatement provisions. (*California Federal Savings and Loan Assn. v. Guerra, Director, Department of Fair Employment and Housing* (1987) 479 U.S. 272.)
- ▶ The California Supreme Court ruled that the Fair Employment and Housing Act clarified that a housing provider's religious beliefs could not be used as a basis to discriminate against potential tenants. (*Smith v. FEHC* (1996) 12 Cal.4th 1143.)
- ▶ The California Supreme Court clarified the definition of "physical handicap." (*American National Insurance Company v. FEHC* (1982) 32 Cal.3d 603.)
- ▶ A California Court of Appeal decision defined the affirmative defenses available to an employer in a physical disability discrimination case. (*Sterling Transit Co. v. FEPC* (1981) 121 Cal.App.3d 791.)
- ▶ A California Court of Appeal decision clarified that AIDS is a physical handicap under the Fair Employment and Housing Act. (*Raytheon v. FEHC* (1989) 212 Cal.App.3d 1242.)
- ▶ A California Court of Appeal decision clarified that a "fetal protection" program cannot be used by an employer as a basis for refusing to hire women of childbearing age. (*Johnson Controls, Inc. v. FEHC* (1990) 218 Cal.App.3d 517.)
- ▶ A California Court of Appeal decision clarified the Department's jurisdiction over an employer with part-time employees on staff. (*J.E. Robinson v. FEHC* (1990) 225 Cal.App.3d 1235.)

- ▶ A California Court of Appeal case defined the legal standard for the male BFOQ defense based on security and personal privacy concerns. (*Alameda County v. FEHC* (1984) 153 Cal. App.3d 499.)
- ▶ An FEHC decision clarified jurisdiction, remedial authority and legal standard applicable to the Ralph Act. (*DFEH v. Ralph Chester Miller, et al.* (1992) FEHC Dec. No. 92-09.)
- ▶ An FEHC decision clarified a housing provider's duties and obligations with respect to co-tenant harassment under the FEHA. (*DFEH v. Wanda Franks* (1993) FEHC Dec. No. 93-09.)
- ▶ An FEHC decision expanded the protections of the Unruh Act to the academic setting. (*DFEH v. UC Berkeley* (1993) FEHC Dec No. 93-08.)
- ▶ An FEHC decision clarified the remedial authority of the FEHC in housing cases. (*DFEH v. Kokado* (1995) FEHC Dec. No 95-05.)
- ▶ An FEHC decision clarified that an unlawful detainer action in a housing case does not preclude a subsequent action alleging a FEHA violation. (*DFEH v. McWay Family Trust* (1996) FEHC Dec No. 96-07.)

VII. The Audit Report Contains Numerous Errors and Omissions That Warrant Correction:

A. The Audit Report's Presentation of Complaint Closure Data is Misleading:

Figure 1 of the audit report (pg. Int-3) describes the types of DFEH complaint closures completed during fiscal years 94/95 and 95/96. This pie chart is misleading because it combines the Department's investigated cases with those that are filed for the sole purpose of obtaining an immediate right to sue letter.

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Investigated cases are those cases within staff caseloads. They are subject to pre-determination settlement attempts, response submission, witness interviews, on-site investigations, and closure reports. Immediate right-to-sue complaints undergo

none of these processing steps. Rather, they are filed and closed without any contact with a DFEH investigator and without undergoing any of the standard settlement or investigation procedures. This difference becomes significant when the two types of cases are combined in a pie chart (as in the audit report).

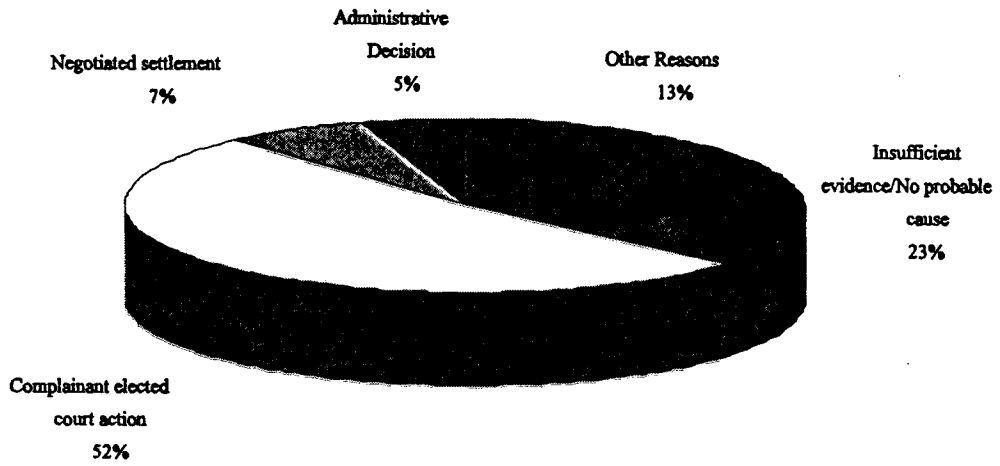
14

Combining immediate right-to-sue complaints with investigated cases distorts the closure data for investigated cases, those cases that comprise consultants' caseloads. For example:

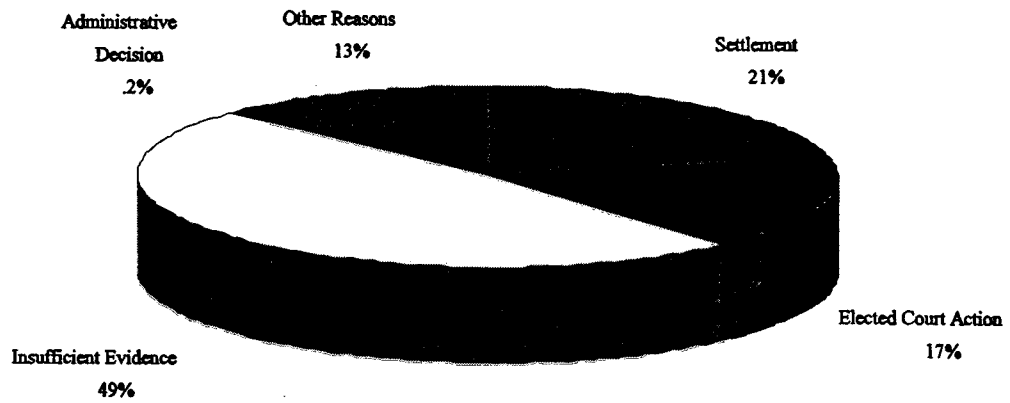
- The audit report pie chart (reproduced below as "**All Closed Cases: Types of Complaint Closures**") shows that the Department settled only 7% of the cases it closed in FY 94/95 and 95/96. The Department's pie chart (reproduced below the auditor's figure as "**DFEH Chart of Investigated Cases: Types of Complaint Closures**") shows that it settled 21% of the investigated cases closed in FY 94/95 and 95/96.
- The audit report pie chart shows that the Department closed 23% of its total cases on the basis of "Insufficient evidence /no probable cause." The Department's pie chart shows that it closed 49% of its investigated cases on the basis of insufficient evidence.
- The audit report pie chart shows that the Department closed 52% of its total cases on the basis of "Complainant elected court action." The Department's pie chart shows that it closed 17% of its investigated cases under this same closing category.

As is so aptly illustrated by a comparison of the auditor's pie chart to that of the Department's (refer to charts on page 19, below), the auditors selected a universe of data that presents a misleading picture of the investigated cases that comprise the consultants' caseloads and the Department's primary workload.

All Closed Cases: Types of Complaint Closures (Audit Report Page Int-3)



DFEH Chart of Investigated Cases: Types of Complaint Closures



B. The Audit Report Misrepresents DFEH Complaint Acceptance Criteria:

The Department takes great exception to the audit report's characterization of DFEH complaint acceptance guidelines and its suggestion that intake decisions are based on arbitrary acceptance and rejection rates (Pg. 1-7). (15)

Contrary to the audit report's representation, DFEH evaluates prospective complaints based on the legal standards contained in years of case law. That is, complaints are accepted if the complainant's protected status (e.g., age, race, disability, etc.) appears to be a motivating factor for an alleged discriminatory act. (e.g, termination). In discrimination parlance, this is known as a "prima facie" case. The federal discrimination agencies, the Equal Employment Opportunity Commission (EEOC) and the Department of Housing and Urban Development (HUD) apply this same standard. State and federal courts sanction this standard.

All intake decisions are reviewed by a District Administrator to ensure that proper legal standards are applied . The Department's consideration of intake acceptance and rejection rates must be placed in this context. To suggest otherwise, as the audit report has done, is a misrepresentation. ⁵

C. The Audit Report Erroneously Describes Probable Cause Cases as "Verified Complaints":

The audit report inaccurately portrays probable cause cases as "verified complaints" (pg. Int-5). A verified complaint is merely the document that initiates the filing process.⁶ A probable cause case is one in which the evidence gathered during an (16)

⁵ The Department takes particular exception to the audit report's characterization of its complaint acceptance guidelines because it has repeatedly explained intake guidelines to the auditors and provided documentation from its case processing manuals. Additionally, the auditors personally observed intake interviews.

⁶ The meaning of "verified complaint" in the FEHA, Gov. Code § 12960 refers to a complaint document that is dated and signed under penalty of perjury.

investigation is sufficient to establish a violation of the law. A probable cause case is not a verified complaint or the process of "verifying" a complaint as the audit report represents. The report has confused a legal complaint filing requirement with the process of gathering evidence according to established legal standards to determine whether the law has been violated.

- D. The Audit Report Inaccurately Describes the Legal Standards Used in the Department's Analysis of Discrimination Cases: The audit report erroneously represents that the legal standards used by the Department will excuse a respondent's discriminatory conduct if the respondent has a "valid reason, such as the complainant's poor performance, to discriminate" (pg. Int-5). This is inaccurate. The FEHA and case law excuse discriminatory conduct in the very limited circumstances in which a legally permissible affirmative defense exists. "Poor work performance" is not such a defense.

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An illustration of an accepted affirmative defense follows:

The complainant alleges that he was denied a position as a truck driver because of his disability, epilepsy. The respondent asserts an affirmative defense that, because of the complainant's epilepsy, driving a truck would endanger the complainant as well as the safety of others. This "danger to self and others" defense is a recognized affirmative defense contained in the FEHA (see Gov. Code § 12940 subd. (a)(1)).

Finally, contrary to the audit report's description of the "four concerns" a consultant must explore when investigating a case (pg. Int 4-5), the following presents an accurate portrayal of the four-part legal standard required by the law and followed by **DFEH consultants**: 1) the Department must have jurisdiction over the allegations; 2) the alleged act of discrimination must be motivated, at least in part, by the complainant's protected status (e.g., age, race, sex, etc.); 3) no affirmative defense is

available to excuse the discriminatory conduct ; and 4) a remedy exists for the unlawful conduct.⁷

E. The Audit Report Inaccurately Described DFEH Jurisdiction:
The audit report's description of the Department's jurisdiction warrants correction as follows:

- 1) Complaint Filing Extension:
Contrary to the audit report's representation, DFEH does not have the discretion to grant a complaint filing extension to individuals who attempt to file complaints more than one year after the last alleged discriminatory act (pg. Int-4). The FEHA, Government Code section 12960 permits complaints to be filed within one year and ninety (90) days of the last alleged discriminatory act if the complainant first obtained knowledge of the facts of discrimination after the expiration of the one year filing statute of limitations. This ninety-day "grace period" is not governed by the Department's discretion, but is a provision of the FEHA. It is significant to note that such extensions are rare. (18)
- 2) Employers With Less Than Five Employees:
Contrary to the audit report's representation, DFEH does have jurisdiction over some employers that have fewer than five (5) employees (pg. Int.-4) These employers include cities, the State, and political or civil subdivisions of the State (Gov. Code §12926 subd. (d)), as well as employers against whom harassment cases are filed (Gov. Code § 12940 subd. (h) (3) (A)). (19)
- 3) Religious Entities Are Subject to the California Family Rights Act (Gov. Code § 12945.2):
Contrary to the audit report's statement, not all religious, non-profit organizations are exempt from the FEHA (pg. Int-4). While generally exempt, religious non-profit employers are subject to the California Family Rights Act

⁷ These legal standards are repeatedly articulated in the decisions of the civil courts, the Fair Employment and Housing Commission, and explained in the Department's Case Analysis Manual and consultant training and resource materials.

(FEHA, Gov. Code §12945.2).

F. The Audit Report Inaccurately Represents the DFEH Litigation Process:

The audit report erroneously represents that the Department only prosecutes cases in administrative hearings before the Fair Employment and Housing Commission (FEHC) (pg. Int-5). This omits a critical aspect of DFEH litigation: the prosecution of cases in all of the state's civil courts.⁸

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Additionally, the audit report inaccurately states that the FEHC "...renders the final decision on each prosecuted complaint" (pg. Int-5). This is true only if neither of the parties appeal the FEHC decision to superior court or an appellate court.

G. "Right-To-Sue" Letters Do Not Constitute A Remedy Under the FEHA:

The audit report inappropriately suggests that "right to sue" letters constitute a remedy. The report states: "For complaints that it determines to be nonmeritorious, the department closes the complaint without remedy to the complainant beyond the issuance of a right-to-sue letter (pg. Int.-3).

21

To the contrary, in discrimination law, a "remedy" constitutes redress or compensation for unlawful conduct. In contrast, a right-to-sue letter is an FEHA procedural requirement relating to the right to pursue civil litigation (Gov. Code §12965 subd. (b)).

⁸ DFEH litigation occurs in civil courts when the respondent (or either party in housing cases) "opts out" of the administrative hearing forum to have the case tried in civil court. In employment cases, respondents have this option when the Department seeks emotional distress damages and administrative fines.

ATTACHMENT A

SIGNIFICANT ACTIONS UNDERTAKEN BY DFEH TO ENHANCE EFFICIENCY AND QUALITY CONTROL

Actions identified in the Audit Report include the following (page numbers reference the 1997 Audit Report):

- Centralized Communication Center (pg. 1-19);
- Right-to-Sue process (pg. 1-19);
- Group Intake process (pg. 1-19);
- Specialized intake and investigation units to allow the Department to expedite investigations and address expiring cases (pg. 1-19,20);
- Specialized Housing Discrimination Unit (pg. 1-20);
- Ongoing efforts to provide greater automation of complaint processing and tracking (pg. 1-20);
- Expedited process for closing cases with insufficient evidence (pg. 1-20);
- Formal quality control review of consultants' intake and investigative work by requiring District Administrators to contact complainants and solicit feedback on DFEH performance (pg. 1-20).
- Ongoing internal audits of District Office operations, resulting in recommendations for training and changes in policies and procedures (pg. 1-20).
- Initiation of Computer Management Information System (CMIS) reconciliation project to ensure accuracy of statistical information and complaint data (pg. 2-4);
- Initiation of a formal time-tracking system for investigating and resolving complaints (pg. 2-5).
- Initiation of a reassessment of consultants' productivity standards (pg. 1-11).

3

In addition to these actions that are described in the audit report, the Department's ability to effectively manage its challenges are reflected in the following:

- In 1993 and 1994, despite a FY 91-92 budget reduction of \$2.5 million, the Department carefully managed its resources to implement much-needed automation. For example, in 1992, the Department had two (2) fax machines statewide and only two personal computers in every District Office. By 1995, all fifteen (15) District Offices possessed a fax machine, all clerical and professional staff had a personal computer, and extensive changes were introduced to improve efficiency through automation.
- In 1995, the Department revised its recruiting and entry level requirements to allow for the hiring of more qualified investigators. For the first time in the Department's history, an intensive two-week training academy was held to prepare the new investigators for the demands of the job.
- In 1995, the Department made a concerted effort to hire experienced litigators. Additionally, through specialized training, the Legal Division developed the ability to more effectively prosecute violations of the law.
- In 1996, the Enforcement Division implemented a new monitoring policy to require investigators to provide the Legal Division with more time to prepare the accusations of litigation-worthy cases.

ATTACHMENT B

During each of the last eight (8) fiscal years, the number of complaints filed with the DFEH has steadily increased:

COMPLAINTS FILED WITH DFEH								
Type of Complaint	Fiscal Years							
	88/89	89/90	90/91	91/92	92/93	93/94	94/95	95/96
Employment	7598	8314	10585	12343	13203	15571	16045	16991
Housing	836	760	828	690	476	403	924	943
Civil Rights (Includes hate-violence and denials of public accommodations)	98	124	151	140	111	137	177	167
Total	8532	9198	11564	13173	13790	16111	17146	18101

②

ATTACHMENT C:
EXPANSION OF DFEH JURISDICTION

- In 1992, the DFEH was charged with enforcing the California Family Rights Act (CFRA; Gov. Code §12945.2).
- In 1993, DFEH enforcement responsibilities increased as a result of changes to the FEHA which included new protections against sexual harassment (Gov. Code §12950), pregnancy discrimination (Gov. Code §12945 subds. (c) and (e)) and new protections for individuals with mental and physical disabilities (Gov. Code §12926 subds. (f), (i), (k), and (m); §12940 subds. (a), (k), and (l)). During that same year, the Legislature increased the remedies available under the FEHA (Gov. Code §12965 subd. (c) and §12970 subds. (a), (c), and (e)), expanded the protections of the California Family Rights Act (Gov. Code §12945.2), and clarified the FEHA's HIV/AIDS jurisdiction (Gov. Code §12926 subd. (k)).

In 1993, the FEHA's housing discrimination provisions were expanded to include protection for families with children and individuals with disabilities (Gov. Code §12955 subd. (a)).

- In 1994, additional amendments to the FEHA made its housing provisions substantially equivalent to the federal Fair Housing Amendments Act of 1988 (FHAA). These amendments also added new protections against discrimination in land use and zoning practices (Gov. Code §12955 subd. (l)) and a new prohibition against interfering with the exercise of one's right to be free from housing discrimination (Gov. Code §12955.7).
- In 1995, DFEH was charged with enforcing new pregnancy and CFRA regulations (Cal. Code of Regs., §§7291.2 to 7291.16; 7297.0 to 7297.11). In the same year, the FEHA was expanded to prohibit employers from gender discrimination relating to the wearing of pants at work (Gov. Code §12947.5).
- In 1996, the types of senior citizen housing developments subject to the FEHA increased (Civil Code § 51.4 subd. (c)(3)(A)).
- Effective January 1, 1997, the Department will assume the added jurisdiction of enforcing statutes that protect disabled individuals' access to public places and highways and their use of guide dogs and service animals (Civil Code § 54, 54.1, 54.2, 54.3).

Comments

California State Auditor's Comments on the Response From the Department of Fair Employment and Housing

To provide clarity and perspective, we are commenting on the Department of Fair Employment and Housing's (department) response to our audit report. The numbers correspond to the numbers we have placed in the response.

- ① In the following comments, we demonstrate that our report adequately addresses each of the concerns the agency raises. Comment 2 discusses workload and staffing issues; Comment 6 describes the impact of the department's additional jurisdictional responsibilities; and Comment 7 discusses statutory deadlines.
- ② Despite the department's repeated claims that we have not addressed caseload and staffing issues, our report specifically deals with these issues. The department has confused our fundamental disagreement with its assessment of the cause of its problems as a misunderstanding of the issues. In point of fact, the department's records do not support its assertion that workload has increased dramatically in recent years. Actually, over the past five years, the number of cases investigated and closed annually decreased from 9,535 to 9,149. (See Table 1 on page 2 of our report). Further, although total complaints filed increased by almost 5,000, from 13,173 in fiscal year 1991-92 to 18,101 in fiscal year 1995-96, most of the increase was in right-to-sue complaints requiring no investigative work. On pages 16 to 17 of its response, the department confirms that immediate right-to-sue complaints are filed and closed without any contact with an investigator and without undergoing any of the standard settlement or investigation procedures.

The department's summary of complaints filed on page 25 of its response agrees with the information we have presented on complaints filed. However, the department's summary on page 25 fails to include the vital distinction between complaints requiring investigative effort and those requiring none.

The department also misrepresents the information we have provided on staffing issues and is clearly contradictory. On the one hand, it asserts we did not discuss staffing issues, yet on the other hand, it concurs with our position that it needs staff to help reduce its backlog of complaints. Apparently, the department disagrees with us that the positions should be limited-term. We have recommended that its additional staff be limited-term for good reasons: We do not believe its complaint processing is sufficiently expedited and, in the absence of a system to track time spent on investigating complaints, the department cannot demonstrate its permanent staffing needs. We discuss these issues on pages 14 through 21 of the report. We believe it is inappropriate to recommend that the department be provided additional permanent staff until it addresses these concerns. It is also important to note that the department's staffing level has increased from 181.2 full-time equivalent positions in fiscal year 1992-93, when it investigated and closed 9,741 complaints, to 258.8 in fiscal year 1995-96, when the department investigated and closed 9,149 complaints.

- ③ We disagree with the department's assertion that we have not recognized its contributions. One of the primary ways that the department can significantly contribute to eliminating discrimination is by efficiently processing complaints, and this activity consumes most its staff's time. As a result, our audit focused on evaluating the department's efficiency and management of complaint processing. On pages 24 through 26 and elsewhere in the report, we identify many of its recent actions to increase efficiencies and improve the quality of complaint processing. The department itself acknowledges our recognition of these accomplishments in Attachment A to its response.
- ④ In its comparison of current workloads with those from 1986, the department does not take into account changes that could affect the workload. For example, its recent changes to increase the efficiency of complaint processing, its automation efforts, and the nature and complexity of current complaints could all have an impact on the number of complaints a consultant can investigate. Therefore, our recommendation to track time spent on complaints, which the department is beginning to implement, is important as a means of assessing current staffing needs.
- ⑤ The department's loss of funding in fiscal year 1991-92, when the State was experiencing an economic downturn, is similar to that suffered by many departments. At the same time, many departments were asked to do additional work with reduced

staff. While we agree that this imposed a burden on the department, it does not distinguish the department from the many other departments similarly affected.

- ⑥ On pages 5 and 6 of the report, we discuss legislative changes during 1992 and 1993 that affected the department. Although we expected to find a significant increase in the department's investigative workload once the legislation became effective, we did not. As Table 1 and the related narrative on page 2 of the report illustrate, the department has not had a significant increase in its investigative workload since the legislation took effect.
- ⑦ We are genuinely perplexed by the department's assertion that we have accused it of "arbitrarily and irresponsibly" choosing to neglect newly filed cases. On pages 10 to 11 of our report, we discuss the department's legal responsibility to meet the 365-day statutory deadline and the consequences to the complainant, the respondent, and the department itself when it fails to meet the deadline, which it does for 30 percent of complaints investigated and closed. We have only noted the unfortunate consequence of focusing attention on complaints that are close to the deadline.
- ⑧ Once again, the department has misrepresented information in our report. Contrary to the department's assertion, our summary of its reasons for not attempting to interview witnesses before receiving a formal reply from the respondent addresses every argument it made in a written response to us on the issue, dated December 12, 1996. In contrast, the department neglects to acknowledge the impact of our recommendation that it solicit the respondent's perspective during an early abbreviated investigation, if possible. Any information gleaned would help provide balance in the department's perspective and would minimize any concerns about having to re-interview witnesses. When early abbreviated investigations and the resulting assessments of the difficulty or substantiability of complaints are not possible, we have recommended that the department perform its assessments and investigations soon after receiving the reply from the respondent.
- ⑨ The department is incorrect in its assertion that we misunderstood its expectations and appears to be quibbling over terminology. We measured the department's performance based on the statutory requirements and the department's internal policies identified in the report on pages 21 through 23. In general, departments establish internal policies or guidelines to assist them in effectively meeting their responsibilities. Presumably, the department would not establish policies that it

thought had no value. Once the department has established these policies or guidelines, its own interests dictate that it track compliance with them. We have done nothing more than good management dictates.

- ⑩ In addressing our data on its compliance with statutory requirements and departmental policies, the department misrepresents the “error” rate and fails to account adequately for what it calls “errors.” We present this information in Table 4 on page 22 and on pages 15 through 16 of the report. The department apparently has calculated an “error” rate based on the district office responses to the summaries of exceptions we provided to them for comment, but without allowing for our review of the district office responses. We provided these summaries in accordance with an agreement with the department to ensure the accuracy of the data we reported and to give the department an opportunity to challenge our conclusions, which we agreed to change if the department could demonstrate that we were in error.

Based on our review of the district office information, we had already made minimal changes to the compliance data before receiving the department’s response. In particular, we eliminated as exceptions respondents’ replies that were received within 60 days when the department could demonstrate that it granted an extension to the normal deadline and the respondents met the extended deadline. The department was able to provide this documentation for 13 of the 99 exceptions we noted, but it still resulted in a noncompliance rate of 36 percent. We made a few other appropriate changes, but found that the documentation and rationale the department provided did not justify most revisions it suggested. For example, the department proposed a revision based on a notation in a complaint file, “P/C to R—left message,” purportedly an abbreviation for “phone call to respondent.” Although the department presented “P/C to R—left message” as evidence that the consultant attempted a predetermination settlement, we did not find the evidence convincing and did not delete the exception. In total, we deleted only 8 of the 307 exceptions we originally reported in the Table 4.

It is also important to note that some initial errors resulted from the condition of the related complaint files. The department’s complaint files include a summary of investigative activity, known as the case diary. However, case diaries often did not document that the consultant complied with the statutory requirements and departmental policies we reviewed. In these cases, we attempted to find evidence of such compliance by reviewing all of the documents in complaint files to ensure we

did not inadvertently overlook compliance with requirements. In a few cases, the department was able to provide evidence that we had overlooked in the review of the complaint files or that was filed elsewhere.

Our conclusion remains that the department frequently did not comply with statutory requirements and its own internal policies established to ensure prompt processing and resolution of complaints.

- ⑪ We stand by our projections, which were made with the assistance of our consultant, an expert in statistical analysis.
- ⑫ The department has clearly misunderstood the intent of our recommendation, which is to provide complainants the opportunity to attend the intake and interview session as prepared as possible. Sending the questionnaire to complainants in advance would provide them with knowledge of the specific information that is needed to complete the interview. Contrary to the department's statements, including one additional document, the precomplaint questionnaire, would be neither inefficient nor costly. We are discouraged by the department's unwillingness to consider such minimal changes.
- ⑬ As we indicate on page 18 of the report, the department's consultants at the four employment district offices we visited have open caseloads ranging from 65 to 94. Although it routinely transfers complaints within district offices and to other offices, the department has not yet demonstrated that it has achieved appropriate workload balance.
- ⑭ The department is incorrect in its assertion that Figure 1 on page 3 of the report is misleading. The figure and related narrative fully disclose the nature of the information in the figure—the distribution of all complaint closure types that the department processed for fiscal years 1994-95 and 1995-96—which we present for background information only. However, in Comment 2, we discuss the department's own misleading analysis of its workload, in which it includes right-to-sue complaints filed with other complaints filed.
- ⑮ The department is incorrect in its characterization of information in the report. As we indicate on page 14 of the report, the department could not provide documentation of the suitability of its informal guidance to consultants to accept 50 to 65 percent of complaints reviewed for investigation. We agree that the department should accept complaints based on legal standards. However, we disagree that the department should

provide informal guidance on acceptance rates unless it can document the propriety of its guidance. The acceptance rates are not the legal standards, and the results of district administrators' reviews should provide adequate guidance to consultants on which complaints to accept.

- ①⑥ Text changed from "verified" to "probable cause."
- ①⑦ Text changed from "to discriminate" to "for his or her actions."
- ①⑧ Text changed from "it grants an extension" to "certain circumstances are met."
- ①⑨ Our report accurately describes the general responsibilities and jurisdiction of the department. The department has merely provided additional details.
- ②⑩ Our report does not make an erroneous representation. We report on page S-1 and page 1 of the report that the department represents complainants in administrative hearings or in civil court.
- ②⑪ Text changed to include "however, it will issue."

cc: **Members of the Legislature**
Office of the Lieutenant Governor
Attorney General
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps