



City of
Corpus
Christi

AU14-007
City Attorney's Office
Risk Management

Office of the City Auditor
Arlena Sones, CPA, CIA, CGAP
City Auditor

March 24, 2015

Executive Summary

An audit of the City Attorney's Office was conducted due to allegations made through the City Auditor's Hotline for Fraud, Waste, and Abuse. The Audit Committee approved the addition of this audit which will provide commentary on the allegations made against the City Attorney's Office, more specifically, Risk Management.

Objectives

The objectives for this audit project are to:

- Determine if sufficient controls exist over the liability fund self-insurance claims.
- Determine if liability claims transactions are paid appropriately.

Conclusion

While we found no fraudulent claims or payments in the self-insurance fund, it is our conclusion that sufficient controls do not exist over the liability fund as we found a high percentage of duplicated payments made in FY 2013. Further, payments appear to be appropriate; however, Risk Management procedures for validating payments are not followed. Additionally, the City Attorney's Office claims management system does not have the necessary controls in place to maintain an accounts payable function.

Recommendation

We recommend that the City Attorney's Office discontinue the practice of issuing checks for payment of liability claims and instead utilize the City accounts payable function in the Financial Services Department. Should the City Attorney's Office maintain its accounts payable function, management should implement more stringent controls for issuing checks.

Management responses have been incorporated into the body of the report and can be seen in full in Appendix A.

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Background

In January 2014, allegations of mismanagement and misuse of City funds in the City Attorney’s Office were made through the City Auditor’s Hotline for Fraud, Waste, and Abuse. After consultation with the City Manager and Interim City Attorney, it was decided that the Corpus Christi Police Department would conduct the initial investigation of the allegations of mismanagement and the City Auditor’s Office would audit the allegations of financial malfeasance. The Audit Committee approved the addition of this audit.

At the time the allegations were made, the City Attorney’s Office had seen the resignation of the previous City Attorney. The current City Attorney was hired on August 25, 2014.

The City Attorney’s Office is comprised of three divisions: Human Relations, Legal Services, and Risk Management. The mission of the Risk Management division is to successfully manage the claims and insurance program, limit liability, and provide the safest work environment for employees.

Exhibit 1 below shows the number of claims filed against the City for fiscal years (FY) 2012, 2013, and 2014. Additionally, the number of litigated claims and the amount of claims open as of January 28, 2015 are shown. There are a total of 74 claims still open from the past three years.

Exhibit 1

Liability Claims Data			
	FY 2012	FY 2013	FY 2014*
Claims Filed Against City	518	534	370
Claims Litigated	32	20	25
Claims Open as of 1/28/15	17	19	38
<i>*14 Month Fiscal Year</i>			
<i>Unaudited information obtained from TrackAbility</i>			

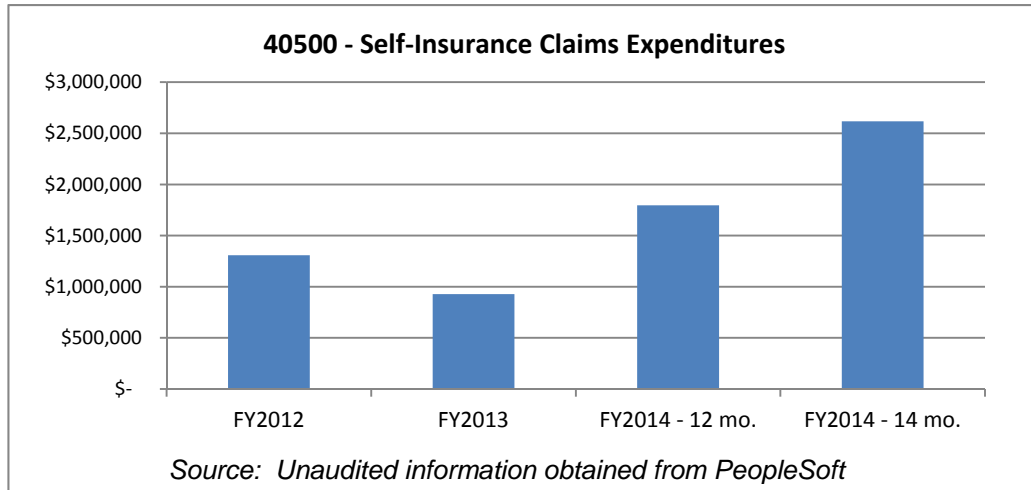
The City is self-insured with funds allocated from each department. Additionally, the City has purchased excess liability insurance for claims in excess of \$500,000. The liability fund, 5611, is comprised of four financial organizations:

- 40500 - Self-insurance claims
- 40520 - Insurance policy premiums
- 40525 - Property damage claims
- 40570 - Litigation support

The scope of this audit was limited to the 40500 - Self-insurance claims organization.

Exhibit 2 below shows the total expenditures for FY 2012 through FY 2014 for the self-insurance claims organization.

Exhibit 2



The increase of claims expenditures from FY 2013 to FY 2014 – 12 mo. is generally due to the settlement of several motor vehicle accidents. The additional increase in the last two months of FY 2014 is largely attributed to a \$700,000 U.S. Department of Justice settlement of a 2012 lawsuit.

Statutory Authority and Municipal Guidelines

In conducting our audit, we relied on the following authoritative guidelines to serve as criteria for the audit:

- Texas Statutes: *Civil Practice and Remedies Code, Title 5, Section 101; Insurance Code, Title 13, Section 4101*
- City Ordinance: *Article I, Section 17-15 through 17-19*
- Texas Tort Claims Act

Audit Objective, Scope and Methodology

The objectives of this audit project are:

- Determine if sufficient controls exist over the liability fund self-insurance claims.
- Determine if liability claims transactions are paid appropriately.

The audit scope was August 1, 2012 through July 31, 2013 for purposes of addressing the allegations of misuse of City funds. The City Attorney’s Office implemented new procedures since the allegations were made so we expanded the scope to include tests of controls over transactions from May 1, 2014 through July 1, 2014. We conducted this audit from October 2014 to December 2014.

Our methodology included inquiry, observation and data analysis. We reviewed Texas statutes, City ordinances, and department policies and procedures related to liability claims. We conducted interviews with staff and management of the City Attorney's Office. Additionally, we made inquiries with the City Secretary's Office and the Financial Services Department.

We relied on information from the TrackAbility claims management system which is the department's system of record used to maintain claim documentation and to generate claim payments. The system is not maintained by the City's MIS Department, but maintained by the vendor, Recordables, Inc. The audit team gained an understanding of the TrackAbility software system functions through discussion with City staff and Recordables, Inc. employees. We reviewed the accounts payable process and tested select general and application controls of the TrackAbility software system. The TrackAbility software system does not interface with the City's financial system of record, Infor, or the City's legacy system, PeopleSoft.

We also relied on financial information from the City's legacy system, PeopleSoft; however, we did not audit the general or application controls of the PeopleSoft system.

Audit steps were developed to test the validity of the claims and the authorization of claim payments made in FY 2013. We also tested for compliance with established policies and procedures.

We used random sampling to select 50 claim payments made in FY 2013. They included both indemnity settlements and invoices for administrative expenses (i.e. appraisal fees) from a total population of 446 payments. We judgmentally selected four more payments for testwork. We selected one payment because it was a duplicate payment and we selected three payments because they were the largest payment amounts in FY 2013. These 54 claim payments represent 49 invoices and 16 indemnity settlements paid on 43 unduplicated claims (a total of \$206,405.16).

We expanded our testwork to include expense payments made in FY 2014. We randomly selected 50 expense payments from a population of 560. In addition, we judgmentally added the 10 largest payment amounts in FY 2014. These 60 payments represent 51 invoices and 9 indemnity settlements paid on 42 unduplicated claims (a total of \$855,347).

We tested fifteen of the 25 indemnity settlements previously selected (16 from FY 2013 and 9 from FY2014) to determine if they had been authorized in writing by the appropriate individual in accordance with the City Ordinance.

Finally, we tested each of the 58 liability claims opened from May 1, 2014 to July 1, 2014 in the claims management system to determine if they had been filed through the City Secretary's Office.

City management is responsible for establishing and maintaining a system of internal controls to ensure assets are safeguarded, financial (and non-financial) activity is accurately reported and reliable, and management and employees are in compliance with laws, regulations, and agreements with other entities.

This audit report provides independent, objective analysis, recommendations, and information concerning the activities reviewed. The report is a tool to help management discern and implement specific improvements. The report is not an appraisal or rating of management.

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

Conclusion

While we found no fraudulent claims or payments, we conclude that sufficient controls do not exist over the liability fund, and existing controls are not consistently followed. Further, we did find a high percentage of duplicated payments made in FY 2013. Additionally, the City Attorney's Office claims management system does not have the necessary controls in place to maintain an accounts payable function.

Staff Acknowledgement

Jacey Reeves, Auditor

Audit Results and Recommendations

A. City Attorney's Office Accounts Payable Function

Instead of using the City's primary accounts payable function established in the Financial Services Department, the City Attorney's Office maintains a secondary accounts payable function. Management has not established sufficient controls to ensure appropriate claims payments are made (see sections A.1 through A.6).

Further, the claims management system used to warehouse claims activity lacks the basic general and application controls needed for an accounts payable function (see sections B, C, and D). Additionally, it does not interface with the City's financial system which causes the Financial Services Department to manually enter payment data into the City's financial system of record, INFOR. At year end, vendor payment information for tax purposes (Form 1099) must also be manually entered into the INFOR system.

When questioned as to why the City Attorney's Office does not use the City's accounts payable function to pay liability claims and expenses, management believes that having a signed check is a good negotiating tool when settling claims. By having their own system, they can print checks as needed.

Management also contends that its accounts payable function is more efficient as the claims management system ties the payment directly to the claim. By using the City's accounts payable function, the City Attorney's Office would have to enter the payment data into its claims management system. However, using the City's accounts payable function would reduce the manual effort expended by Financial Services Department. It would also reduce the risk of data entry errors made in the INFOR system. Additionally, the City's accounts payable function has a more robust system of internal controls through the use of purchase requisitions, purchase orders, and invoice matching procedures.

Recommendation:

Management of the City Attorney's Office should utilize the City's accounts payable function instead of maintaining its own accounts payable function in the claims management system.

If the City Attorney's Office maintains its accounts payable function, management should consult with the Purchasing and Accounts Payable divisions in order to establish internal controls that mirror those set in place by the Financial Services Department.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
Agree	Donna James-Spruce, Risk Mgr. Mark DeKoch, Asst. City Atty.	8/1/15

Action Plan:

It would not be prudent for the City Attorney's office to utilize the Finance Department's accounts payable function in its new financial management software (INFOR) because INFOR lacks the ability to associate payments with claims. Associating payments with claims is critical to maintaining the accountability and measurability of payments made to respond to claims and lawsuits. Manual entry of payments into Risk Management's new claims management software (ICE) that were made from the City's INFOR system would introduce a new mechanism for error.

The City Attorney's Office is in the process of establishing financial controls that mirror those controls that are in place by the Financial Services Department. These controls will become operational with Risk Management's new claims management system (ICE).

A.1 Liability Claims through City Secretary's Office

Liability claims are not filed in writing through the City Secretary's Office.

Seventeen of fifty-eight liability claims (29%) opened by the City Attorney's Office from May 1, 2014 through July 1, 2014 were not filed in writing by the claimant through the City Secretary's Office prior to receiving payments (totaling \$17,554.10). Additionally, seven of the seventeen claims were never filed in writing.

City employees usually report accidents to Risk Management prior to a claim being filed by the claimant. Instead of filing the report as "report only" in the claims management system, Risk Management might file it as an active claim.

When considering the cause for this issue, we attribute it to unclear criteria. For example, the City Attorney's Office revised its *practice* in 2014 to direct claimants to file through the City Secretary's Office; however, the department's *written procedure* recognizes claims received "via letter, phone call, email, etc."

Delving deeper into this issue we cite the City Code which states, "Before the city shall be liable for damages...[the person] shall give the mayor or city council notice in writing of such death, injury, damage or destruction within one hundred eighty (180) days ..." ¹

¹ City Code of Ordinance Sec. 17-16. - Same—Notice to mayor and city council; city not liable for injuries, damages, etc., upon failure to give notice.

Before the city shall be liable for damages for the death or personal injuries of any person or for damage to or destruction of property of any kind, which do not constitute a taking or damaging of property under Article I, Section 17, Constitution of Texas, the person injured, if living, or his representatives, if dead, or the owner of the property damaged or destroyed, shall give the mayor or city council notice in writing of such death, injury, damage or destruction, within one hundred eighty (180) days after the occurrences not subject to the Texas Tort Claims Act, stating specifically in such written notice when, how and where the death, injury, damage or destruction occurred and the apparent extent of any such injury, the amount of damages sustained, the actual residence of such claimant

The Texas Civil Practice and Remedies Act Sec. 101.101 also provides for written notice of a claim, but adds that the written notice requirements do not apply if the governmental unit has “actual notice” of death, injury or property damage.²

Recommendation:

Management should:

1. Develop and implement procedures to identify the claims that should be filed through the City Secretary’s Office.
2. Determine if the City Code Section 17-16 should be revised to more closely follow Texas Civil Practice and Remedies Act.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
Agree	Mark DeKoch, Asst. City Atty.	4/10/15

Action Plan:

1. We have developed a Payment Approval Form to be filed for all settlements and payments that substitutes for all internal accountability function of the City Code’s claims filing requirement. Maintenance of this completed form for all settlements will allow the City to avoid damaging its defenses by otherwise providing notice of claim that has not already been filed with the City Secretary by claimants.

The City’s defenses to trial are maximized if no claims are filed through the City Secretary’s office. Texas law provides that the obligation to file claims with the City Secretary is a legal prerequisite to filing suit upon some, but not all, claims. Therefore, if a claimant has bypassed the City Secretary, then the City’s defenses to suit are enhanced. Enhancing the City’s defenses to suit lowers the settlement value of the claimant’s case.

Protection from suit in the absence of a claim is not perfect. Therefore, we cannot simply ignore claims that have not been filed with the City Secretary. Claims not required by law to

for six (6) months immediately preceding the occurrence of such death, injury, damage or destruction, and the names and addresses of all witnesses upon whom it is relied to establish the claim for damages; and the failure to so notify the mayor or city council within the time and manner specified herein shall exonerate, excuse and exempt the city from any liability whatsoever. No act of any officer or employee of the city shall waive compliance, or stop the city from requiring compliance with the provisions of this section as to notice, but such provisions may be waived by resolution of the council made and passed before the expiration of the one-hundred-eighty-day period herein provided or period allowed by the Texas Tort Claims Act and evidenced by minutes of the council

² Texas Civil Practice and Remedies Act Sec. 101.101. NOTICE. (a) A governmental unit is entitled to receive notice of a claim against it under this chapter not later than six months after the day that the incident giving rise to the claim occurred. The notice must reasonably describe: (1) the damage or injury claimed; (2) the time and place of the incident; and (3) the incident.

(b) A city’s charter and ordinance provisions requiring notice within a charter period permitted by law are ratified and approved.

(c) The notice requirements provided or ratified and approved by Subsections (a) and (b) do not apply if the governmental unit has actual notice that death has occurred, that the claimant has received some injury, or that the claimant’s property has been damaged.

be filed with the City Secretary include claims in which:

- (1) a city has actual notice of the tort and/or resulting damage therefrom,
- (2) a city is potentially subject to liability other than tort (i.e. contract or inverse condemnation), or
- (3) suit is filed in federal court.

Also, some judges are simply pro-claimant, and attempt to insulate claimants from the harsh legal consequences of their failure to file claims through the City Secretary's Office.

All lawsuits are already filed with the City Secretary because she is the official recipient of service for the City.

2. We are not recommending a revision to the Section 17-16 of the City Code at this time because Section 17-16 reflects Article X, Section 10 of the City Charter. This provision is legally incapable of covering all claims because such coverage would be preempted by state and federal law (see above). Describing the full extent of claims covered by this provision would require the preparation of a much longer and more confusing City Code section. Therefore, we do not recommend a change thereto.

Section 17-16 reads as follows:

Sec. 17-16. - Same—Notice to mayor and city council; city not liable for injuries, damages, etc., upon failure to give notice.

Before the city shall be liable for damages for the death or personal injuries of any person or for damage to or destruction of property of any kind, which do not constitute a taking or damaging of property under Article I, [Section 17](#), Constitution of Texas, the person injured, if living, or his representatives, if dead, or the owner of the property damaged or destroyed, shall give the mayor or city council notice in writing of such death, injury, damage or destruction, within one hundred eighty (180) days after the occurrences not subject to the Texas Tort Claims Act, stating specifically in such written notice when, how and where the death, injury, damage or destruction occurred and the apparent extent of any such injury, the amount of damages sustained, the actual residence of such claimant for six (6) months immediately preceding the occurrence of such death, injury, damage or destruction, and the names and addresses of all witnesses upon whom it is relied to establish the claim for damages; and the failure to so notify the mayor or city council within the time and manner specified herein shall exonerate, excuse and exempt the city from any liability whatsoever. No act of any officer or employee of the city shall waive compliance, or stop the city from requiring compliance with the provisions of this section as to notice, but such provisions may be waived by resolution of the council made and passed before the expiration of the one-hundred-eighty-day period herein provided or period allowed by the Texas Tort Claims Act and evidenced by minutes of the council.

Section 17-16 more specifically describes the mandate of Article X, Section 10 of the City Charter, which reads as follows:

Sec. 10. - Notice of personal injuries required.

Before the city shall be liable for damages for personal injuries of any kind, the person injured or someone in that person's behalf shall file with the city secretary in the manner prescribed by ordinance notice in writing of such injury within one hundred eighty days after the same has been sustained, reasonably describing the injury claimed and the time, manner and place of the injury. The failure to so notify the city within the time and manner specified herein shall exonerate, excuse and exempt the city from any liability whatsoever.

These provisions are designed to implement the following section of the Texas Tort Claims Act.

Texas Civil Practice and Remedies Act § 101.101 provides:

(a) A governmental unit is entitled to receive notice of a claim against it under this chapter not later than six months after the day that the incident giving rise to the claim occurred. The notice must reasonably describe:

- (1) the damage or injury claimed;
- (2) the time and place of the incident; and
- (3) the incident.

(b) A city's charter and ordinance provisions requiring notice within a charter period permitted by law are ratified and approved.

(c) The notice requirements provided or ratified and approved by Subsections (a) and (b) do not apply if the governmental unit has actual notice that death has occurred, that the claimant has received some injury, or that the claimant's property has been damaged.

A.2 Invoice Approval

Invoices are submitted for payment without written approval.

Per Risk Management's "General Liability Claims Payment Process," prior to payment, the claims adjuster/attorney must audit the invoice, approve the invoice via signature, and attach it to the appropriate claim in the claims management system.

Over the course of two years, 24 of 100 sampled invoices (24%) were paid without the signature of the attorney/claims adjuster.

Recommendation:

Management should require claims adjusters/attorneys to audit, sign, and attach each invoice to the appropriate claim in the claims management system prior to payment request.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
Agree	Mark DeKoch, Asst. City Atty. Donna James-Spruce, Risk Mgr.	4/10/15
<p><i>Action Plan:</i> We have implemented this suggestion. In addition, the Claims Management Guideline and Claims Payment Process will be modified to reflect the requirement for adjuster and attorneys to audit, sign and attach each invoice to the appropriate claim in the system. Also, a bill review team has been established to review/audit attorney fee invoices prior to payment.</p>		

A.3 Indemnity Payments

Indemnity payments were processed without a signed settlement release form on file.

Risk Management’s “Guidelines for Liability Claims Management” states that the claimant must sign the settlement release form before the settlement check is processed.

Over a period of two years, 13 of 25 sampled indemnity payments (52%) were requested prior to the claimant signing the settlement release form, for a total of \$228,657.88. Further, five of 25 signed indemnity settlement release forms (20%) were never attached to the claim in the claims management system.

Per Risk Management, the claims adjusters/attorneys provide the indemnity payment to the claimant at the time the claimant signs the settlement release form.

The purpose of the settlement release form is to release the City from any further liability, and without a signed form the City could still be liable.

Recommendation:

Management should:

1. Require that settlement release forms be signed by the claimant prior to payment request, or update its procedures to reflect current practice.
2. Locate and attach the missing signed settlement release forms to the appropriate claim in the claims management system.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
Agree	Mark DeKoch, Asst. City Atty.	4/10/15

Action Plan:

We have modified the City’s Claims Management Guideline to provide that when possible, the signed settlement release should be obtained prior to settlement or exchanged for the settlement check at the time of settlement. Adjusters will locate and attach signed settlement release forms to the appropriate claim files, which have been provided by the City Auditor.

A.4 Payment Authorization

Indemnity payments over \$3,000 are not authorized in writing by the appropriate individual(s). Additionally, authorization thresholds have not been established for expense payments.

Per *Section 17-18* of the Code of City Ordinances, City Council has delegated its authority to allow, deny, or settle claims up to \$60,000. Until July 29, 2014³, liability claims were allowed or negotiated with the following conditions:

- \$0 to \$3,000 – Claims Adjuster/Attorney
- \$3,001 to \$20,000 – Risk Management Director
- \$20,001 to \$40,000 – City Attorney
- \$40,001 to \$60,000 – City Manager
- \$60,001+ – City Council

In FY 2013, 50% of payments did not have written authorization at the appropriate level. Further, in FY 2014 78% of payments did not have written authorization at the appropriate level.

According to the Risk Manager, approval is granted by the appropriate individual(s); however, it is typically verbal.

Recommendation:

Management should:

1. Require written approval for all payment requests.
2. Revise procedures for expense payments to follow the same approval thresholds as indemnity payments.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
Agree	Miles Risley, City Attorney Donna James-Spruce, Risk Mgr.	4/10/15

Action Plan:

We have created a Payment Approval Form to be used for settlements and expense payments. The form will require different signatures based on the level of monetary threshold; including the Risk Manager, City Attorney and City Manager.

³ The City of Corpus Christi Council approved an amendment to *Section 17-18* of the Code of City Ordinances increasing authorized settlement amounts.

A.5 Late Payments

Invoices were not submitted and paid timely in FY 2013. The average amount of time it took to pay an invoice was 35 days, with the most being 188 days. Additionally, 14 of 49 invoices sampled (29%) contained late fees for a total of \$326.27. In FY 2014 Risk Management improved the average amount of time it took to pay an invoice by nine days. Only one of 50 invoices sampled included a late fee (\$97.99).

Per the Texas Government Code 2251.021 payments are late on the 31st day after the receipt of goods/invoice.

Recommendation:

If the City Attorney’s Office maintains its accounts payable function, management should develop and implement procedures for timely submission and timely payment of invoices.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
Agree	Miles Risley, City Attorney	2/11/15
<i>Action Plan:</i>		
The City Attorney’s office has implemented a strict work-flow for processing invoices and timely submission to Risk Management for payment. Attorneys and Legal Assistants have been educated on the expectations of a 30 day turn around on invoice payments. This 30-day turn-around will only be inapplicable in the event of conflict with an invoicing entity concerning the City’s obligation thereto.		

A.6 Payment by Statement

Claims adjusters/attorneys are requesting payments based on statement balances instead of requesting payments by invoice.

An invoice is a bill while a statement is a summary of the amount owed by the customer. Paying by statement balance can result in duplicate payments being issued—once for the invoice and once for the statement. In FY 2013, four of 38 claims (11%) contained duplicate expense payments (a total of \$1,760.55). Reimbursement for the four duplicate payments has been received.

Per Risk Management’s “General Liability Claims Payment Process,” prior to payment, the claims adjuster/attorney must audit the invoice, approve the invoice via signature, and attach it to the appropriate claim in the claims management system.

We found no duplicate expense payments in FY 2014 in our test sample of 50 invoices paid on 36 claims.

Recommendation:

If the City Attorney’s Office maintains its accounts payable function, management should enforce its procedures to pay by individual invoice and not statement balance.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
Agree	Mark DeKoch, Asst. City Atty.	2/11/15
<i>Action Plan:</i> Attorneys and Legal Assistants are trained to pay current charges not statement balances.		

B. Unrecorded Payments

During FY 2013 and FY 2014, eight checks processed through the claims management system were not recorded in the claims management system. Even though there was no trace of these checks in the system, six of these checks cleared the bank (totaling \$12,502.88).

In addition, one of the six checks duplicated an earlier payment (an amount of \$10,389.88). The City Attorney’s Office has received a credit memo for this duplicated payment.

Per Recordable, Inc. four of the eight unrecorded checks were not found in the claims management system due to data conversion issues from the legacy software system to the current software system. Recordables, Inc. stated that they cannot determine the cause of the remaining unrecorded checks. They did not know if the deletions were programmatic or manual errors.

The issue remained undetected because the City Attorney’s Office does not perform periodic reconciliations of the claims management system financial activity to the amount posted into the City’s financial system of record.

Recommendation:

Management should ensure the missing records are restored into the claims management system.

If the City Attorney’s Office maintains its accounts payable function, management should develop and implement procedures to periodically reconcile the claims management system financial activity to the City’s financial system of record.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
Agree	Donna James-Spruce, Risk Mgr.	6/1/15
<i>Action Plan:</i> The list of unrecorded payments has been provided to the system administrator, Trackability, with a request to restore the payment information in each file. As of 2/24/15 the records have been restored.		

Trackability destroyed payment records in upgrades, consequently we will no longer be upgrading the Trackability system. The City Attorney has provided notice of non-renewal to the current claims system provider. TML applied a credit for the overpayment in September 2014. A reconciliation of the payment data within the claims management system will be performed on a quarterly basis.

C. System General Controls

General controls over the claims management system such as requiring strong passwords and routinely changing passwords have not been implemented. Additionally, there is no test environment for the claims management system. Any changes are tested directly in the live system.

Further, one City employee had two user login ID's to access claims management, each with different access levels, and claims management user access was not terminated for one prior City employee. Additionally, the vendor's employees share a generic login ID to the system. With a generic login ID, no single employee can be held accountable for changes made to the system's software or data.

Per the General Accountability Office's Standards for Internal Control in the Federal Government (GAO Green Book), Section 11.07, "General controls include security management, logical and physical access, configuration management, segregation of duties, and contingency planning."

We did find that the most current version of the system is being used and the back-up and recovery is appropriate.

Risk Management has not renewed its contract with the current software company, and has plans to obtain a different system.

Recommendation:

Management should:

1. Periodically review user access to ensure only those with a valid need have access.
2. Consider obtaining a system that requires strong passwords, initiates periodic password changes, and provides a test environment.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
Agree	Donna James-Spruce, Risk Mgr.	8/1/15
<i>Action Plan:</i>		
A regular review will be conducted by the system administrator and City staff to ensure user access is appropriate.		
These deficiencies were present in the old Trackability claims management system. The City Attorney		

has provided notice of non-renewal to this claims system provider. The current provider will be replaced with a new claims management system, ICE.

D. System Application Controls

The claims management system does not have appropriate application controls in place. The system allows attachments and notes to be deleted by any user. Additionally, claim numbers assigned by the system are not sequential or uniform, and the system allows gaps in the check numbers and duplicated check numbers. Further, the system is not sophisticated enough to require invoice numbers prior to printing a check or to detect duplicate invoice numbers (see section A.6 above).

Strong application controls are recommended in any software system; however, it is essential in a system that has accounts payable functionality. Per the GAO Green Book, Section 7.04, "Internal risk factors may include the complex nature of an entity's programs..." Additionally, Section 10.01 states that "Controls over information processing include...edit checks of data entered, transactions in numerical sequences, comparing file totals with control accounts, and controlling access to data, files and programs."

Recommendation:

If the City Attorney's Office maintains its accounts payable function, management should seek a system which generates unduplicated and sequential check numbers and claim numbers, creates an audit trail for any deleted data, requires invoice numbers prior to processing a payment, and detects duplicate invoice numbers so as to avoid duplicate payments.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
Agree	Donna James-Spruce, Risk Mgr.	8/1/15
<p>Action Plan: Trackability does not have appropriate controls. Therefore, the City Attorney has issued a notice of non-renewal to the current claims system provider. The current provider will be replaced with an alternate claims system, ICE. ICE will detect duplicate payments, requires strong passwords, and number claims in sequential order. The Financial Services department has ordered check stock which is sequentially numbered.</p>		

Appendix A - Management Response



**City of
Corpus
Christi**

Arlena Sones, CPA, CIA, CGAP
City Auditor
Corpus Christi, Texas

Re: AU14-007 City Attorney's Office, Risk Management

We have carefully reviewed the issues presented in the audit report and our plans to correct the issues are described on the following pages.

We are committed to correcting the issues in the audit report by implementing the action plans in a timely manner.

LEGAL DEPARTMENT

Sincerely,

PO Box 9277
Corpus Christi
Texas 78469-9277
Phone 361-826-3360
Fax 361-826-3239


Miles Risley, City Attorney
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Appendix A - Management Response

A. City Attorney's Office Accounts Payable Function

Recommendation:

Management of the City Attorney's Office should utilize the City's accounts payable function instead of maintaining its own accounts payable function in the claims management system.

If the City Attorney's Office maintains its accounts payable function, management should consult with the Purchasing and Accounts Payable divisions in order to establish internal controls that mirror those set in place by the Financial Services Department.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
Agree	Donna James-Spruce, Risk Mgr. Mark DeKoch, Asst. City Atty.	8/1/15
<p>Action Plan: It would not be prudent for the City Attorney's office to utilize the Finance Department's accounts payable function in its new financial management software (INFOR) because INFOR lacks the ability to associate payments with claims. Associating payments with claims is critical to maintaining the accountability and measurability of payments made to respond to claims and lawsuits. Manual entry of payments into Risk Management's new claims management software (ICE) that were made from the City's INFOR system would introduce a new mechanism for error.</p> <p>The City Attorney's Office is in the process of establishing financial controls that mirror those controls that are in place by the Financial Services Department. These controls will become operational with Risk Management's new claims management system (ICE).</p>		

A.1 Liability Claims through City Secretary's Office

Recommendation:

Management should:

1. Develop and implement procedures to identify the claims that should be filed through the City Secretary's Office.
2. Determine if the City Code Section 17-16 should be revised to more closely follow Texas Civil Practice and Remedies Act.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
Agree	Mark DeKoch, Asst. City Atty.	4/10/15
<p>Action Plan: 1. We have developed a Payment Approval Form to be filed for all settlements and payments that substitutes for all internal accountability function of the City Code's claims filing requirement. Maintenance of this completed form for all settlements will allow the City to avoid damaging its defenses by otherwise providing notice of claim that has not already been filed with the City Secretary by claimants. The City's defenses to trial are maximized if no claims are filed through the City Secretary's office. Texas law provides that the obligation to file claims with the City Secretary is a legal prerequisite to</p>		

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filing suit upon some, but not all, claims. Therefore, if a claimant has bypassed the City Secretary, then the City's defenses to suit are enhanced. Enhancing the City's defenses to suit lowers the settlement value of the claimant's case.

Protection from suit in the absence of a claim is not perfect. Therefore, we cannot simply ignore claims that have not been filed with the City Secretary. Claims not required by law to be filed with the City Secretary include claims in which:

- (1) a city has actual notice of the tort and/or resulting damage therefrom,
- (2) a city is potentially subject to liability other than tort (i.e. contract or inverse condemnation), or
- (3) suit is filed in federal court.

Also, some judges are simply pro-claimant, and attempt to insulate claimants from the harsh legal consequences of their failure to file claims through the City Secretary's Office.

All lawsuits are already filed with the City Secretary because she is the official recipient of service for the City.

2. We are not recommending a revision to the Section 17-16 of the City Code at this time because Section 17-16 reflects Article X, Section 10 of the City Charter. This provision is legally incapable of covering all claims because such coverage would be preempted by state and federal law (see above). Describing the full extent of claims covered by this provision would require the preparation of a much longer and more confusing City Code section. Therefore, we do not recommend a change thereto.

Section 17-16 reads as follows:

Sec. 17-16. - Same—Notice to mayor and city council; city not liable for injuries, damages, etc., upon failure to give notice.

Before the city shall be liable for damages for the death or personal injuries of any person or for damage to or destruction of property of any kind, which do not constitute a taking or damaging of property under Article I, *Section 17*, Constitution of Texas, the person injured, if living, or his representatives, if dead, or the owner of the property damaged or destroyed, shall give the mayor or city council notice in writing of such death, injury, damage or destruction, within one hundred eighty (180) days after the occurrences not subject to the Texas Tort Claims Act, stating specifically in such written notice when, how and where the death, injury, damage or destruction occurred and the apparent extent of any such injury, the amount of damages sustained, the actual residence of such claimant for six (6) months immediately preceding the occurrence of such death, injury, damage or destruction, and the names and addresses of all witnesses upon whom it is relied to establish the claim for damages; and the failure to so notify the mayor or city council within the time and manner specified herein shall exonerate, excuse and exempt the city from any liability whatsoever. No act of any officer or employee of the city shall waive compliance, or stop the city from requiring compliance with the provisions of this section as to notice, but such provisions may be waived by resolution of the council made and passed before the expiration of the one-hundred-eighty-day period herein provided or period allowed by the Texas Tort Claims Act and evidenced by minutes of the council.

Section 17-16 more specifically describes the mandate of Article X, Section 10 of the City Charter, which reads as follows:

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Sec. 10. - Notice of personal injuries required.

Before the city shall be liable for damages for personal injuries of any kind, the person injured or someone in that person's behalf shall file with the city secretary in the manner prescribed by ordinance notice in writing of such injury within one hundred eighty days after the same has been sustained, reasonably describing the injury claimed and the time, manner and place of the injury. The failure to so notify the city within the time and manner specified herein shall exonerate, excuse and exempt the city from any liability whatsoever.

These provisions are designed to implement the following section of the Texas Tort Claims Act.

Texas Civil Practice and Remedies Act § 101.101 provides:

(a) A governmental unit is entitled to receive notice of a claim against it under this chapter not later than six months after the day that the incident giving rise to the claim occurred.

The notice must reasonably describe:

- (1) the damage or injury claimed;
- (2) the time and place of the incident; and
- (3) the incident.

(b) A city's charter and ordinance provisions requiring notice within a charter period permitted by law are ratified and approved.

(c) The notice requirements provided or ratified and approved by Subsections (a) and (b) do not apply if the governmental unit has actual notice that death has occurred, that the claimant has received some injury, or that the claimant's property has been damaged.

A.2 Invoice Approval

Recommendation:

Management should require claims adjusters/attorneys to audit, sign, and attach each invoice to the appropriate claim in the claims management system prior to payment request.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
Agree	Mark DeKoch, Asst. City Atty. Donna James-Spruce, Risk Mgr.	4/10/15

Action Plan:

We have implemented this suggestion. In addition, the Claims Management Guideline and Claims Payment Process will be modified to reflect the requirement for adjuster and attorneys to audit, sign and attach each invoice to the appropriate claim in the system. Also, a bill review team has been established to review/audit attorney fee invoices prior to payment.

A.3 Indemnity Payments

Recommendation:

Management should:

1. Require that settlement release forms be signed by the claimant prior to payment request, or update its procedures to reflect current practice.

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2. Locate and attach the missing signed settlement release forms to the appropriate claim in the claims management system.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
Agree	Mark DeKoch, Asst. City Atty.	4/10/15
Action Plan: We have modified the City's Claims Management Guideline to provide that when possible, the signed settlement release should be obtained prior to settlement or exchanged for the settlement check at the time of settlement. Adjusters will locate and attach signed settlement release forms to the appropriate claim files, which have been provided by the City Auditor.		

A.4 Payment Authorization

Recommendation:

Management should:

1. Require written approval for all payment requests.
2. Revise procedures for expense payments to follow the same approval thresholds as indemnity payments.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
Agree	Miles Risley, City Attorney Donna James-Spruce, Risk Mgr.	4/10/15
Action Plan: We have created a Payment Approval Form to be used for settlements and expense payments. The form will require different signatures based on the level of monetary threshold; including the Risk Manager, City Attorney and City Manager.		

A.5 Late Payments

Recommendation:

If the City Attorney's Office maintains its accounts payable function, management should develop and implement procedures for timely submission and timely payment of invoices.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
Agree	Miles Risley, City Attorney	2/11/15
Action Plan: The City Attorney's office has implemented a strict work-flow for processing invoices and timely submission to Risk Management for payment. Attorneys and Legal Assistants have been educated on the expectations of a 30 day turn around on invoice payments. This 30-day turn-around will only be inapplicable in the event of conflict with an invoicing entity concerning the City's obligation thereto.		

A.6 Payment by Statement

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Recommendation:

If the City Attorney's Office maintains its accounts payable function, management should enforce its procedures to pay by individual invoice and not statement balance.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
Agree	Mark DeKoch, Asst. City Atty.	2/11/15
<i>Action Plan:</i> Attorneys and Legal Assistants are trained to pay current charges not statement balances.		

B. Unrecorded Payments

Recommendation:

Management should ensure the missing records are restored into the claims management system.

Should the City Attorney's Office maintain its accounts payable function, management should develop and implement procedures to periodically reconcile the claims management system financial activity to the City's financial system of record.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
Agree	Donna James-Spruce, Risk Mgr.	6/1/15
<i>Action Plan:</i> The list of unrecorded payments has been provided to the system administrator, Trackability, with a request to restore the payment information in each file. As of 2/24/15 the records have been restored. Trackability destroyed payment records in upgrades, consequently we will no longer be upgrading the Trackability system. The City Attorney has provided notice of non-renewal to the current claims system provider. TML applied a credit for the overpayment in September 2014. A reconciliation of the payment data within the claims management system will be performed on a quarterly basis.		

C. System General Controls

Recommendation:

Management should:

1. Periodically review user access to ensure only those with a valid need have access.
2. Consider obtaining a system that requires strong passwords, initiates periodic password changes, and provides a test environment.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
Agree	Donna James-Spruce, Risk Mgr.	8/1/15
<i>Action Plan:</i> A regular review will be conducted by the system administrator and City staff to ensure user access is		

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appropriate.

These deficiencies were present in the old Trackability claims management system. The City Attorney has provided notice of non-renewal to this claims system provider. The current provider will be replaced with a new claims management system, ICE.

D. System Application Controls

Recommendation:

If the City Attorney's Office maintains its accounts payable function, management should seek a system which generates unduplicated and sequential check numbers and claim numbers, creates an audit trail for any deleted data, requires invoice numbers prior to processing a payment, and detects duplicate invoice numbers so as to avoid duplicate payments.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
Agree	Donna James-Spruce, Risk Mgr.	8/1/15
<i>Action Plan:</i> Trackability does not have appropriate controls. Therefore, the City Attorney has issued a notice of non-renewal to the current claims system provider. The current provider will be replaced with an alternate claims system, ICE. ICE will detect duplicate payments, requires strong passwords, and number claims in sequential order. The Financial Services department has ordered check stock which is sequentially numbered.		