


MEMORANDUM

April 26, 2010

TO: Health and Human Services Committee

FROM: Vivian Yao, Legislative Analyst 

SUBJECT: **Worksession: FY11 Operating Budget**
Office of Human Rights

Those expected for this worksession include:

James Stowe, Director, Office of Human Rights
Debra Jones, Office of Human Rights
Phil Weeda, Office of Management and Budget

The Executive's recommendation for the Office of Human Rights is attached at ©1-5. Answers to Council staff's questions regarding the Department's recommended FY11 budget are attached at ©6-14.

I. OVERVIEW

For FY11, the Executive recommends total expenditures of \$2,068,310 for the Office of Human Rights, a \$92,500 or 4.3% decrease from the FY10 approved budget.

	FY09 Actual	FY10 Approved	FY11 CE Recommended	% Change FY10-FY11
Expenditures:				
General Fund	2,300,428	2,160,810	2,068,310	-4.3%
Grant Fund	-	-	-	-
TOTAL Expenditures	2,300,428	2,160,810	2,068,310	-4.3%
Positions:				
Full-time	21	18	18	0.0%
Part-time	-	-	-	
TOTAL Positions	21	18	18	0.0%
WORKYEARS	21.5	18.5	18.0	-2.7%

The Executive recommends no net change to the number of positions in the Office of Human rights because the three positions that are recommended for abolishment are counter-balanced by the three positions to be shifted from the Office of Human Resources that currently perform the EEO function for County employees.

JOB CLASS TITLE	FULL-TIME	PART-TIME	FILLED	VACANT	SALARY GRADE	REPRESENTED
INVESTIGATOR III	-1	0	0	-1	25	x
PROGRAM MANAGER	-2	0	-2	0	23	

The FY11 CE recommendation includes a net decrease of \$81,440 for standard adjustments that do not affect the level of services offered by the Department. Reductions related to personnel abolishment result in a decrease of \$353,670, and the shift of the EEO Program to the Department nets an increase of \$342,610.

Standard Adjustments:		
Retirement Adjustment	\$	19,030
Group Insurance Adjustments	\$	9,120
Printing and Mail Adjustments	\$	(2,350)
Motor Pool Rate Adjustments	\$	(4,030)
Biennial Hall of Fame Event	\$	(7,570)
Annualization of FY10 Personnel Cost	\$	(46,190)
Furlough Days	\$	(49,450)
Total Standard Adjustments	\$	(81,440)
Personnel Abolishment Adjustments:		
Abolish Program Manager I in Fair Housing	\$	(93,340)
Abolish Program Manager I in Community Mediation and Public Affairs	\$	(128,060)
Abolish Investigator III in Compliance	\$	(132,270)
Total Personnel Abolishment Adjustments:	\$	(353,670)
EEO Program Adjustments		
Shift Equal Employment Opportunity Program from the Office of Human Resources	\$	386,810
Shift Funding to County Attorney for EEO Investigations and Defense of Complaints	\$	(44,200)
Total for EEO Program Adjustments	\$	342,610
GRAND TOTAL	\$	(92,500)

II. FY11 EXPENDITURE ISSUES

SHIFT EQUAL EMPLOYMENT OPPORTUNITY (EEO) PROGRAM TO OFFICE OF HUMAN RIGHTS

EEO Program Adjustments		
Shift Equal Employment Opportunity Program from the Office of Human Resources	\$	386,810
Shift Funding to County Attorney for EEO Investigations and Defense of Complaints	\$	(44,200)
Total for EEO Program Adjustments	\$	342,610

The Executive has proposed shifting the EEO Program from the Office of Human Resources to the Office of Human Rights, which involves the transfer of \$386,810 and three

positions – a Manager II and two Human Resource Specialists. The transfer of a function currently performed by the Office of Human Resources to the County Attorney's office is tied to the EEO program shift and would result in a \$44,200 transfer of funds from the Office of Human Rights.

The April 20 packet on Expedited Bill 12-20 prepared by Senior Legislative Attorney Drummer discusses the relative merits of the proposed program transfer, and the Committee is scheduled to discuss this expedited bill immediately preceding consideration of the recommended FY11 budget for the Office of Human Rights. Council staff highlights the following issues related to the transfer:

- Council staff disagrees with the Executive's attribution of savings to this transfer. The three employees being transferred come with a full workload and perform a core human resources function. In addition, many of the functions of positions recommended for abolishment in Human Rights will be absorbed by existing Human Rights staff not the EEO unit. See ©11.
- The investigation and resolution of discrimination complaints before they result in litigation is a core function of the Office of Human Resources. Combining internal and external investigatory functions in the Office of Human Rights may be confusing to employees and may result in lower numbers of complaints resolved internally.
- The transfer of the EEO unit may weaken the perception that the EEO and Diversity Management is important to County management.
- It is appropriate to transfer the development of responses to EEO complaints filed with outside agencies from the EEO unit to the County Attorney's Office to maintain the perception of the EEO unit as a fair and independent investigator of internal complaints.

The HHS Committee Chair received correspondence from Odessa Shannon, a former Director of the Department, expressing concern about whether a sufficient firewall can be established that separates of Human Rights and EEO functions.

Council staff recommends (1) not shifting funding and positions related to the EEO unit from Human Resources to Human Rights and (2) shifting funding to the County Attorney's office for the defense of external EEO complaints filed with outside agencies.

If the Committee recommends shifting funding to the County Attorney's office to defend EEO complaints but does not recommend shifting the EEO unit to Human Rights, Council staff recommends deducting \$44,200 from the Human Resources budget.

PERSONNEL ABOLISHMENT

The Executive has recommended the following positions for abolishment. Council staff understands that the recommended elimination of positions is not directly tied to the decision to shift the EEO Compliance Unit from Humans Resources and discusses them separately from that issue.

For FY11, the Department has recommended the elimination of a vacant investigator III position, which would result in a total of five investigators, down from nine investigators in FY09. Council staff notes that the office has been operating with this level of staffing in FY10 because of a vacancy in the Department. In order to absorb the workload from the abolishment, the Department proposes that it will assign computer record maintenance activities and other administrative and clerical functions to the front desk receptionist.

It is unclear how the abolishment of the Investigator III position will impact the workload of remaining investigators or the length of time it takes to complete an investigation. Council staff notes that there continues to be challenges in getting consistent information from the Department over the last year and a half. For example, the Department reported to the Committee during budget discussions in April 2009 that the average time needed to resolve cases was 9-12 months. It now reports that the length of time to close complaint cases for FY09 was 22 months.

The Department currently reports a continual decline in the time required to close complaints from 24 months in FY08 to an estimated 20 months in FY10 (©7). This decline in the time required to close complaints has occurred during a period when the Department's staff decreased from 9 investigators to 5 investigators. Members of the HHS Committee have previously expressed concern at the length of time it takes the Department to resolve complaints. Council notes that the average time to resolve cases for the Department is comparable to the 18-24 months average period for the United States Equal Employment Opportunity Commission (EEOC), as reported by the Department in January at © 17.

Recent data provided by the Department suggests that it is keeping up with cases filed in FY09 and FY10 to date. In FY09, 308 cases were filed and 307 cases were closed; in FY10, 271 cases were filed and 271 cases were closed.¹ The Department has reported 250 open cases in November 2009 (©15), 834 open cases in January 2010 (©17), and 444 open cases in April 2010. Department staff explains that the number of open cases is in constant flux and that staff turnover and changes in the case tracking system have contributed to challenges in collecting consistent data and may artificially inflate case closure data for FY09 and FY10.

Council staff concurs with the Executive in abolishing the Investigator III position for lack of reliable data on which to base staffing and funding recommendations. If complainants are dissatisfied with the handling of their complaint with the County department, State law allows complainants to seek legal remedy by filing an original action in circuit court alleging violations of County human rights laws. Council staff also notes that the Office of Human Rights handles discrimination complaints arising in the County that may also be handled by the EEOC and the Maryland Commission on Human Relations.

¹ Council staff notes there is discrepancy among recently reported numbers and discrepancy between recently reported numbers and those reported in the budget book.

Council staff recommends that the Committee return after budget to discuss the Department's performance measures to understand when the Council can expect to review meaningful data that accurately measures the effectiveness and efficiency of the Department's work.

Program Manager in Community Mediation and Public Affairs

-\$128,060

The Executive is recommending the abolishment of a filled Program Manager I position who performs outreach services. The Department reports that the current MLS Manager II and the Director will assume the duties of this position, which includes support to the Human Rights Commission. The Department suggests that there will be a reduction and prioritizing of outreach efforts in response to this abolishment. **Council staff believes that the outreach function, while important, is an area that can be reduced with less impact to the Department's core functions. Council staff recommends approval.**

Program Manager in Fair Housing

-\$93,340

The Executive is recommending the abolishment of a filled Program Manager I position who performs testing coordination. The Department reports that the Fair Housing Coordinator (Program Manager II) for the Fair Housing Division will absorb these duties. The Department also suggests that the testing program will reduce the number of paired tests and be more focused in categories of testing performed.

Correspondence from former Director Shannon to the HHS Committee Chair expressed concern that the elimination of this position will severely diminish the fair housing program and that existing staff may not be able to cover additional duties. **The Committees may want to discuss how the testing program will be changed and the extent to which existing staff can perform all the responsibilities of the current Program Manager I. If the Department is not able to cover the responsibilities of the position with existing staff, the Committee may be interested in exploring whether the fair housing program might be better served in another County department like Housing and Community Affairs or Consumer Protection.**

III. FY11 REVENUE ISSUES

County General Fund Revenues	Actual FY09	Budget FY10	Estimated FY10	Recommended FY11	% Change
EEOC Reimbursement	\$ 46,400	\$ 68,500	\$ 68,500	\$ 184,000	168.6%

The Department generates revenue from EEOC reimbursements for dual filed complaints that is returned to the County general fund. Although the amount reflected in the Department's recommended FY11 budget shows an increase of 168.6%, the Department explains that this figure is based on potential earnings under the Department's EEOC contract. Because the actual reimbursements are based on completed cases, the actual reimbursement might not increase to the level reflected. See ©12.

The Department reports that as a result of its participation in an EEOC review session, it will be designated as the County "Certified Agency" within six to eight months. In explaining the meaning of this designation, the Department has said:

The MCOHR Compliance Division has not ever applied to become certified by the Equal Employment Opportunities Commission as a certified Fair Employment Practices Agency (FEPA). Under our contract with EEOC we are not required to be certified which is why past management has not applied for certification. [Department management] felt it was important to accomplish certification to improve our status and make us even more competitive for contract work. We passed the first stage of certification which includes on sight review and evaluation of closed investigations. We achieved a preliminary [sic] certification of certified with reservations. We are now being followed by the Baltimore field office as a condition of becoming fully certified.

The certification is not a requirement or condition precedent to performing as a FEPA. Our contract performance has not been affected in the past by not having certification but we hope to be more competitive in the future by achieving certification. We are not the only FEPA local or nationwide that is not certified.

Correspondence from former Director Shannon to the HHS Committee Chair expressed concern about the reasons that the Department received conditional certification and was under the impression that Department has been a certified agency with the EEOC for a number of years. **The Committees may be interested in understanding whether the Department has ever been certified with the EEOC in any capacity, what reservations were raised as a part of the preliminary certification, and how those reservations will be addressed.**

Human Rights

MISSION STATEMENT

The mission of the Office of Human Rights is to enforce antidiscrimination laws in housing, commercial real estate, employment, public accommodations and intimidation; promote, monitor, and enforce fair housing laws relating to access and treatment; provide training and technical assistance in civil rights laws; address community conflict motivated by prejudice, intolerance, and bigotry; and promote increased understanding and tolerance among diverse groups.

Inter-departmental Transfer

In July 2010, the Equal Employment Opportunity Division of Human Resources will be merged with the Office of Human Rights to consolidate two units of County Government with similar missions.

BUDGET OVERVIEW

The total recommended FY11 Operating Budget for the Office of Human Rights is \$2,112,510, a decrease of \$48,300 or 2.2 percent from the FY10 Approved Budget of \$2,160,810. Personnel Costs comprise 91.7 percent of the budget for 18 full-time positions for 18.0 workyears. Operating Expenses account for the remaining 8.3 percent of the FY11 budget.

In the budget summary, FY09 actuals, FY10 budget, and FY10 estimate figures reflect the old organizational structure of the Human Rights Commission, while the FY11 budget figures reflect the new organizational structure.

LINKAGE TO COUNTY RESULT AREAS

While this program area supports all eight of the County Result Areas, the following are emphasized:

❖ ***A Responsive, Accountable County Government***

❖ ***Vital Living for All of Our Residents***

DEPARTMENT PERFORMANCE MEASURES

Performance measures for this department are included below, with multi-program measures displayed at the front of this section and program-specific measures shown with the relevant program. The FY10 estimates incorporate the effect of the FY10 savings plan. The FY11 and FY12 targets assume the recommended FY11 budget and FY12 funding for comparable service levels.

ACCOMPLISHMENTS AND INITIATIVES

❖ **ADMINISTRATION**

Built a new conference room for both County and public use.

Revised training techniques used for the office's Case Management System, "Time Matters".

❖ **FAIR HOUSING**

Performed over 200 match discrimination tests throughout the County; and

Held four successful "One Stop" training workshops and seminars for housing providers, County staff, and the community.

❖ **OUTREACH**

Revised a new Memorandum of Understanding (MOU) with the Montgomery County Public Schools (MCPS) and Law Enforcement to monitor hate violence incidents in schools;

Participated in a number of community events to educate the public on racial profiling (two forums), held another forum at the Gaithersburg Fair Housing Forum on Diversity Day, and held another forum at the Hispanic Festival at

Wheaton Regional Park, etc.; and

Successfully planned four community educational forums that were all televised and well attended.

❖ **THE COMMISSION ON COMMON OWNERSHIP COMMUNITIES (OCOC)**

Reviewed and revised the OCOC's Board of Appeal's process and procedures.

❖ **Equal Employment Opportunities Commission (EEOC)**

As a result of the office's participation in an EEOC review session, the office will be designated as the County's "Certified Agency" within six to eight months.

PROGRAM CONTACTS

Contact Debra Jones of the Office of Human Rights at 240.777.8459 or Phil Weeda of the Office of Management and Budget at 240.777.2780 for more information regarding this department's operating budget.

PROGRAM DESCRIPTIONS

Compliance

This program investigates and resolves formal sworn complaints of discrimination in employment, commercial and residential real estate transactions, public accommodations, and intimidation through a formal complaint process or through mediation. Complaints of discrimination are accepted and investigated on the bases of race, color, religious creed, ancestry, national origin, age (employment and real estate only), sex, marital status, sexual orientation, disability, presence of children (real estate only), source of income (real estate only), genetic status (employment only), gender identity, and family responsibilities (employment and real estate only).

Program Performance Measures	Actual FY08	Actual FY09	Estimated FY10	Target FY11	Target FY12
Complaints closed ¹	200	205	210	230	230
Length of time to close complaint cases (months)	24	18	14	10	10
Percentage of mediated cases resolved ²	50	50	50	50	50
Relief obtained ³	\$400,000	\$300,000	\$300,000	\$300,000	\$300,000
Training and outreach sessions held ⁴	20	20	25	30	30
Training and technical assistance sessions ⁵	12	12	15	15	15

¹ The Office of Human Rights continues to see an escalation in complaint intakes which directly impacts the number of cases filed with the office. Additionally, the office has a work sharing agreement with the Federal Equal Employment Opportunities (EEO) Office.

² Pursuant to strict enforcement guidelines, the office's educational outreach to businesses, visitors, and citizens has resulted in a continuance of a 50% success rate associated with cases resolved through the mediation process about discrimination cases.

³ Expeditious interventions and stricter performance investigative measures by the Office of Human Rights will cause a decline in the amounts of monetary awards. As complainant's issues are resolved more quickly, the damage amounts and awards decrease.

⁴ The office's training and outreach activities will increase to educate the most vulnerable populations about civil rights. Additionally, this office will have at least five additional outreach and/or training seminars to educate businesses.

⁵ Pursuant to an aggressive and proactive focus on educating the public and business about the rights and responsibilities associated with anti-discrimination laws, there will be an increase in services provided to individuals seeking guidance or assistance.

FY11 Recommended Changes	Expenditures	WYs
FY10 Approved	960,030	9.0
Decrease Cost: Printing and Mail Adjustment	-2,350	0.0
Decrease Cost: Abolish Investigator III - existing staff absorb workload	-132,270	-1.0
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	81,980	0.0
FY11 CE Recommended	907,390	8.0

Community Mediation and Public Affairs

This program provides support services serving as a mechanism for reporting, investigating, monitoring, and analyzing hate/violence incidents and provides compensatory funds to victims of such incidents. This program acts as a liaison to police departments and the school system pertaining to hate violence incidents and serves as staff support for the Commission on Human Rights, the Committee on Hate/Violence, and the Partnership Fund which is a sub-committee of the Committee on Hate/Violence. The program also provides technical assistance, training, and community mediation for reducing conflict and tension associated with racial, religious, ethnic, sexual orientation, or disability-based issues; promotes and supports the Network of Neighbors which is a support group for victims of hate or bias incidents. This program also conducts countywide forums to improve race/intercultural relations, hosts a semi-annual human relations camp for youth, and produces the County's Human Rights Hall of Fame recognition program and

inductions.

FY11 Recommended Changes	Expenditures	WYs
FY10 Approved	272,480	2.0
Decrease Cost: Abolish Program Manager I - existing staff absorb workload	-128,060	-1.0
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	-7,050	0.0
FY11 CE Recommended	137,370	1.0

Fair Housing

This program coordinates all the activity of county departments, offices, and agencies to prevent housing discrimination in Montgomery County. This program also promotes fair treatment and access to housing choices through data analysis, testing, training, education, and other outreach strategies. This program also interacts with the Montgomery Public School District Social Studies Department to teach awareness of human rights issues, as they relate specifically to fair housing. This program is funded in part by the Home Investment Partnership (HOME) Grant in the Department of Housing and Community Affairs.

Program Performance Measures	Actual FY08	Actual FY09	Estimated FY10	Target FY11	Target FY12
Paired tests conducted to determine levels of discrimination ¹	200	200	200	200	200

¹ The office will conduct 200 paired tests to determine the level of housing discrimination in the County. The office will use a pool of 30 testers with diverse nationalities and racial backgrounds to conduct the tests for discrimination.

FY11 Recommended Changes	Expenditures	WYs
FY10 Approved	549,230	5.0
Decrease Cost: Abolish Program Manager I and Re-assign Testing Coordination for Housing	-93,340	-1.0
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	-106,030	0.0
FY11 CE Recommended	349,860	4.0

Administration

This program provides overall direction of the office, administration of the budget, personnel, procurement, automation, and support services. Also provided in this program is funding for human relations awards.

FY11 Recommended Changes	Expenditures	WYs
FY10 Approved	379,070	2.5
Increase Cost: Retirement Adjustment	19,030	0.0
Increase Cost: Group Insurance Adjustment	9,120	0.0
Decrease Cost: Motor Pool Rate Adjustment	-4,030	0.0
Decrease Cost: Biennial Hall of Fame Event	-7,570	0.0
Decrease Cost: Annualization of FY10 Personnel Costs	-46,190	0.0
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	-18,150	-0.5
FY11 CE Recommended	331,280	2.0

Equal Employment Opportunity and Diversity

The Equal Employment Opportunity (EEO) and Diversity Management team provides assistance, guidance, and training to employees and managers concerning equal employment and diversity management in order to promote a discrimination free workplace that values diversity. The team also investigates complaints of harassment and discrimination by and against employees. Additional services and programs include the mediation program, EEO compliance training, workplace harassment training, and the annual Montgomery County Diversity celebration. This program also supports the Montgomery County Diversity Council and participates in the ADA Task Force, Community Outreach Forum, Limited English Proficiency Committee, Diversity Health Fair, Diversity Educational Fair, the Juneteenth Program, Black History Month program, and co-sponsors events with the various employee organizations. The team is responsible for the production of the annual EEO and Diversity Action Plan and complying with other Federal EEO-related reporting requirements and statistical analysis.

FY11 Recommended Changes	Expenditures	WYs
FY10 Approved	0	0.0
Shift: Equal Employment Opportunity Program from the Office of Human Resources	386,810	3.0

	Expenditures	WYs
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	-200	0.0
FY11 CE Recommended	386,610	3.0

BUDGET SUMMARY

	Actual FY09	Budget FY10	Estimated FY10	Recommended FY11	% Chg Bud/Rec
COUNTY GENERAL FUND					
EXPENDITURES					
Salaries and Wages	1,606,744	1,480,150	1,463,240	1,409,600	-4.8%
Employee Benefits	506,050	528,040	445,320	527,740	-0.1%
County General Fund Personnel Costs	2,112,794	2,008,190	1,908,560	1,937,340	-3.5%
Operating Expenses	187,634	152,620	133,160	175,170	14.8%
Capital Outlay	0	0	0	0	—
County General Fund Expenditures	2,300,428	2,160,810	2,041,720	2,112,510	-2.2%
PERSONNEL					
Full-Time	21	18	18	18	—
Part-Time	0	0	0	0	—
Workyears	21.5	18.5	18.5	18.0	-2.7%
REVENUES					
EEOC Reimbursement	46,400	68,500	68,500	184,000	168.6%
County General Fund Revenues	46,400	68,500	68,500	184,000	168.6%

FY11 RECOMMENDED CHANGES

	Expenditures	WYs
COUNTY GENERAL FUND		
FY10 ORIGINAL APPROPRIATION	2,160,810	18.5
Other Adjustments (with no service impacts)		
Shift: Equal Employment Opportunity Program from the Office of Human Resources [Equal Employment Opportunity and Diversity]	386,810	3.0
Increase Cost: Retirement Adjustment [Administration]	19,030	0.0
Increase Cost: Group Insurance Adjustment [Administration]	9,120	0.0
Decrease Cost: Printing and Mail Adjustment [Compliance]	-2,350	0.0
Decrease Cost: Motor Pool Rate Adjustment [Administration]	-4,030	0.0
Decrease Cost: Biennial Hall of Fame Event [Administration]	-7,570	0.0
Decrease Cost: Annualization of FY10 Personnel Costs [Administration]	-46,190	0.0
Decrease Cost: Furlough Days	-49,450	-0.5
Decrease Cost: Abolish Program Manager I and Re-assign Testing Coordination for Housing [Fair Housing]	-93,340	-1.0
Decrease Cost: Abolish Program Manager I - existing staff absorb workload [Community Mediation and Public Affairs]	-128,060	-1.0
Decrease Cost: Abolish Investigator III - existing staff absorb workload [Compliance]	-132,270	-1.0
FY11 RECOMMENDED:	2,112,510	18.0

PROGRAM SUMMARY

Program Name	FY10 Approved		FY11 Recommended	
	Expenditures	WYs	Expenditures	WYs
Compliance	960,030	9.0	907,390	8.0
Community Mediation and Public Affairs	272,480	2.0	137,370	1.0
Fair Housing	549,230	5.0	349,860	4.0
Administration	379,070	2.5	331,280	2.0
Equal Employment Opportunity and Diversity	0	0.0	386,610	3.0
Total	2,160,810	18.5	2,112,510	18.0

FUTURE FISCAL IMPACTS

Title	CE REC.	(\$000's)				
	FY11	FY12	FY13	FY14	FY15	FY16
This table is intended to present significant future fiscal impacts of the department's programs.						
COUNTY GENERAL FUND						
Expenditures						
FY11 Recommended	2,113	2,113	2,113	2,113	2,113	2,113
No inflation or compensation change is included in outyear projections.						
Biennial Hall of Fame Event	0	8	0	8	0	8
This Biennial event recognizes Montgomery County residents who have made personal sacrifices that positively impacted County human rights issues.						
Motor Pool Rate Adjustment	0	4	4	4	4	4
Restore Personnel Costs	0	49	49	49	49	49
This represents restoration of funding to remove FY11 furloughs.						
Subtotal Expenditures	2,113	2,174	2,166	2,174	2,166	2,174



Isiah Leggett
County Executive

OFFICE OF HUMAN RIGHTS

James L. Stowe
Director

MEMORANDUM

April 12, 2010

TO: Vivian Yao
Legislative Analyst

FROM: Ramona Bell-Pearson, Compliance Director
Debra Jones, Administrative Assistant

SUBJECT: Office of Human Rights Statistical Updates

Ramona Bell-Pearson
Debra Jones

1. Please provide the following information for FY09 and FY10 to date:

- # of complaints filed:
Number of complaints accepted in FY09 = 308 FY10 (so far) 271
- total caseload (# of open cases at the start of year and # of new cases during year) :
At start of FY09 131 carry over cases and 308 new cases acquired during fiscal year
At start of FY10 289 carryover cases in office and 271 new cases have been accepted so far
- # of cases that attempted mediation:
FY09 mediation attempts = 37
FY10 mediation attempts so far = 50
- # cases resolved through mediation:
FY09 mediation resolutions = 18
FY10 mediation resolutions so far = 25
- # complaints broken out by type of discrimination:
Employment discrimination cases FY09 = 277 FY10 so far = 243
Public Accommodations discrimination cases FY09 = 9 FY10 so far = 10
Housing discrimination cases FY09 = 21 FY10 so far = 18
- disposition of cases: # of cases with findings of reasonable grounds; # with findings of no reasonable grounds:
No Reasonable Grounds case findings 97% of all cases
Reasonable Grounds case findings 3% of all cases
- amount of fair housing testing performed:
200 matched pair tests were performed; and
- the average time needed to resolve complaints:

Average time needed to complete investigation of average case is 12 months. It takes longer to actually close or resolve the complaint and that time varies depending on whether the Parties respond timely to requests for information or if case is appealed to the Commission.

2. Please provide updated performance measurement numbers (for FY09, FY10 estimated and FY11) including % of cases resolved through mediation and average time to resolve complaints.

Performance Measures for FY08, FY09, FY10 estimate, FY11 target and FY12 target for the categories listed are as follows:

- (1) Length of time to close complaint cases (months) for FY08 = 24 months; FY09 = 22 months; FY10 estimate to = 20 months; FY11 targeted to = 18 months; FY12 targeted to = 16 months
- (2) Percentage of mediated cases resolved in FY08 = 11%; FY09 = 17%; FY10 estimated to = 50%; FY11 targeted to = 55%; FY12 targeted to = 60%
- (3) Relief obtained category should be eliminated as the numbers are too difficult to report with any accuracy. Many of the settlements are confidential and not reported by the Mediator or Parties to our Agency and other settlements are non-monetary in nature including but not limited to apologies, job reinstatements, housing accommodations, etc.

3. 3. What is expectation of # of cases that each investigator needs to close out per year?

Each Investigator is tasked to close 30 cases under their annual performance plan.

4. Why is multilingual standby pay being eliminated?

The bilingual pay was eliminated because the Office of Human Rights no longer had any employees who would qualify for the pay. We have since employed a new Manager who will become qualified and reinstated a former employee who has already qualified for the pay. Our Budget Analyst has requested reinstatement of this item from the Office of Management and Budget for our budget.

5. Please provide a description of the options that a County employee with an employment grievance has for filing a claim or making a complaint currently.

A County Employee with an employment grievance has several options available under the current system of services offered by the County.

a) What processes are available to them?

If the Employee chooses to file internally by going to the Office of Human Resources Equal Employment Officer Division they can file a complaint that will be investigated. That Division consists of the Equal Employment Officer and Manager; two Investigators who perform investigations of complaints; and at least one administrative support Staff person who helps process the actions.

If an Employee chooses to file outside of the Office of Human Resources Equal Employment Officer Division they can file with the Office of Human Rights where the Compliance Division will handle the investigation of the case. That Division consists of a Compliance Director, Compliance Manager, five Investigators, and one support Staff member.

b) What are filing and timing requirements?

Human Rights Compliance Division takes information on Intake and frames the Complaint. Once the complaint is signed with an affirmation as to truthfulness, then the complaint investigation process begins. During the initial stages the Parties are given the opportunity to participate in mediation for the purpose of resolving by settlement any or all issues in dispute. If no mediation or no settlement occurs then the investigation proceeds.

Investigative Process

Respondent is given 30 days to provide a response statement which gives an explanation and defense to the allegations made in the complaint.

The Investigator receives the statement and prepares a summary of the statement to send to the Complainant so that Complainant can prepare and submit a rebuttal. Complainant is given 30 days to submit a rebuttal.

Once a rebuttal is received the Investigator completes the investigative review of the file and prepares the determination for management review.

This recitation does not account for requested and granted extensions of time made available to both the Complainant and Respondent.

Determination/Appeal Stage

When there is a no reasonable grounds to believe that discrimination occurred (no violation of Chapter 27), then the letter of determination issued by the Director offers the opportunity to appeal the finding to the Commission if an appealable basis is raised.

When there is a cause finding of discrimination (reasonable grounds to believe that a violation of Chapter 27 has occurred) then the determination offers an opportunity to conciliate the matter. If no settlement occurs through conciliation, then the case is referred to the Commission for a public hearing.

- c) What responsibilities do the different organization/agencies perform?

OHR for employment discrimination investigations can be filed jointly with the Equal Employment Opportunities Commission (federal) and perform investigations as a contractor to EEOC. This increases the damages available to the complainant if successful in their complaint process. The appeal process is to the Commission, the EEOC, federal or state court.

EEO has no authority to file complaints brought to them with EEOC and their damage relief is limited to those provisions available under the county regulations. The appeal process is to the Chief Administrative Officer when still aggrieved or to Human Rights or state court.

OHR is authorized to conduct investigations of allegations of discrimination in employment, housing, commercial real estate, and public accommodations. OHR investigative authority includes county agencies, private and public businesses, etc. if doing business in Montgomery County.

EEO has authority to conduct investigations into allegations of discrimination in employment only. EEO's jurisdictional authority includes only county agencies. EEO also acts as the representative to county agencies that have complaints made against them by preparing the Respondent statement when sent by OHR. They also assist in mediation or conciliation in supporting the county agency.

- d) Would anything change if the EEOC function currently housed in the Office of Human Resources became a part of the Office of Human Rights?

Merging EEO into OHR would create a conflict unless a fire wall is developed to bifurcate the services and functions as follows:

- 1) EEO Staff would need to be excluded from being involved in any investigations involving county agencies that come into Human Rights for investigation.
 - 2) EEO Staff would need to maintain separate files and separate work product for those cases in which they act as the representative of the Respondent County in a case under investigation by OHR
 - 3) The EEO investigative Staff would be available to perform investigations in all other areas covered by Chapter 27 outside complaints of discrimination made against the county.
- e) Are there any functions that these staff could no longer perform?

I am not aware of any functions the EEO Staff would not be able to perform if a fire wall as discussed earlier is established. If however, actions are not taken to segregate the work performed by EEO as the county representative in OHR investigations and as chief investigative unit of employment discrimination cases in county government; then a conflict will be created by merging them into Human Rights.

- f) Are there any efficiencies that would be realized by moving the EEOC function?

Yes the merger would provide two additional investigators to Human Rights who will be available to perform any of the housing, any commercial real estate and any public accommodations investigations. EEO Staff investigators would also be available to perform employment investigations in those cases not involving county agencies.

6. How much funding for fair housing is provided by the HOME grant?

The Fair Housing Division of OHR receives approximately \$37,000.00 from the HUD Community Block Grant Program. The funds are administered by DHCA and OHR is given a mandate to use the funds to affirmatively further fair housing programs such as the two One Stop Housing Seminars held twice annually and the Human Rights Camp Poster Contest and the

Lender Testing Program. All are examples of uses for which OHR employs the funds to affirmatively further fair housing.

7. Please explain how the existing staff will absorb the workload of the abolished Investigator III in Compliance, the Program Manager I in Community Mediation and Public Affairs, and the Program Manager I in Fair Housing?

As to the plan to absorb the work load resulting from the abolishment of the Investigator III position, compliance has a plan to redistribute the work load demands by reorganizing the methods and techniques utilized to accomplish the tasks.

I. Investigator III position

- a) More support will be obtained from the front desk Receptionist position to open, update and close cases in our work management computer system.
- b) More administrative and clerical work will be tasked to the Receptionist to prepare and all finalized determinations, to assist in filing and routing of intake services, to assist with mediation scheduling and conference room management.
- c) If the proposed transfer of the County EEO and Staff is accomplished then the intent would be to utilize the two Investigators that will be realized b that transfer to perform all aspects of compliance investigations that do not present a conflict for them in their capacity as EEO Staff. Both of those investigators are very familiar with this office as both are former compliance investigators from this Human Rights office.

**II. Program Manager I
Community Mediation and Public Affairs**

This work will be absorbed through a redistribution of work when the EEO Division comes to this Office from Human Resources. The current MLS Manager II and the Director will assume these duties. Additionally there will be a reduction and prioritizing of outreach efforts in response to this abolishment.

**III. Program Manager I
Fair Housing**

The Program Manager for the Fair Housing Division will absorb these duties which primarily consist of testing coordination. The testing program will reduce the number of sets tested and be more focused in categories of testing performed. Testing efforts will be lead by the Fair Housing Coordinator (the current Program Manager II).

8. Please explain why the amount of revenue projected for EEOC reimbursements are going up by 168.6%?

The \$184,840.00 that was projected as potential earnings under our EEOC contract was the figure when we were petitioning for contract modifications and updates. The amount that was approved for FY2010 was \$72,400.00. That includes payment for 129 cases (if completed and accepted) at a rate of \$550.00 per case and \$1400.00 for training provided to our Agency to cover expenses for education. Based on this explanation the reimbursements are not going up 168.6%.

Yao, Vivian

From: Bell-Pearson, Ramona
Sent: Monday, April 26, 2010 12:12 PM
To: Yao, Vivian
Cc: Garcia, Loretta; Stowe, James L.
Subject: Answers to recent questions posed

I have developed enough information to respond to two of the three most recent questions you posed between yesterday and this morning. They are as follows:

I understood you to be asking

Q: What is the longest time a case has been in the Dept. inventory? (This number was reported in November 2009 as dating back approximately 3 years.)

A: **As last reported there is a case dating back to 2006 which is now being clarified as being opened in our inventory in November 2006. This case has been open for 41 months so far. I can update to say that the investigation was completed and the determination was mailed in March 2010 and we are now waiting for the appeal period to run before the case can be finally closed in all divisions of our inventory.**

Q: What is the next longest pending group of cases in the Dept. inventory? (This number was reported in November 2009 as dating back approximately 18 months.)

A: **The next oldest group of open cases, of which there are less than 10, have also been reported earlier as dating back to 2008. That group has taken approximately 23 months so far to complete the investigations but all are currently under management review for final disposition to be rendered. The dates on these cases vary but all were filed within 2008 which is why I am reporting approximately 23 months as the life span of open cases in this category.**

Q: Further clarification is sought on the number (not percentages) of cases resolved in FY09 and FY10 as either no reasonable grounds findings or reasonable grounds findings?

A: **As reported earlier this month; for FY09 and FY10, 97% of case inventory was closed with a no reasonable grounds finding and 3% of case inventory was closed with a reasonable grounds or cause finding. That is now being clarified with more specificity:**

**the total number of cases closed in FY 09 = 307
97% of that number is 297 which closed as no reasonable grounds finding
3% of that number is approximately 10 which closed as reasonable grounds or cause findings**

**the total number of cases closed in FY10 (as of April 9, 2010) = 271
97% of that number is 262 which have closed as no reasonable grounds findings
3% of that number is approximately 9 which have closed as reasonable grounds or cause findings**

As to the request for supporting documentation for the performance measures numbers submitted for FY08 and FY09 I will need more time to reconstitute the information. I obtained the information from Investigator records and need to make further inquiries to be able to organize into a format that can

be released in support of the FY08=24 month length of time to close number and the FY09=22 month length of time to close number. You should bear in mind that the numbers released are average times to close which means there are some cases that fall outside of this number for each year. For example the 2008 cases (totaling less than 10) that are still pending but do not make up the majority of cases from FY08 that have been closed.

I will get that information to you as soon as possible before Wednesday's hearing.

Ramona
Ramona Bell-Pearson
Compliance Director
Office of Human Rights
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Rockville, Maryland 20850
(240) 777-8491

Everyone Counts in Montgomery County!
The April 1, 2010 Census is important, safe, and easy.

providing full administrative support and dental assistants as the only support the Montgomery Cares contractual dentists and hygienists. We already contract with multiple dentists and hygienists in the community.

Council staff comments: The Committee has discussed the tremendous need for dental services for the uninsured and underinsured and so Council staff still questions why these resources could not have been used during the year. Council staff is also not clear about the meaning of the comment that some of the surplus funds are going to be used to acquire administrative support positions. Is the projected surplus more than \$48,000? Will the positions noted in the response be filled in FY10?

Office of Human Rights

Item S1 Decrease Cost: Lapse Vacant Manager and Investigator III Positions -\$48,620

Because the Office of Human Rights lost 3 out of 9 investigator positions in FY09, HHS Committee members requested status updates to monitor trends related to the Department's resolution of discrimination cases. Please provide responses to the following questions related to the Department's caseload and case resolution process:

What is the current caseload for the Department? What has been the average time required to resolve its inventory of cases in FY10? What is the longest time that a case has been on the Department's inventory in FY10? How many cases have been resolved in the first four months of FY10?

Response: There are approximately 250 cases open that have been distributed among five Investigators. This does not include those complaints processed through Intake that do not result in an open case, but do require work hours of Investigators. That amounts to 50 more complaints that do not become cases under investigation. Those 50 rejected complaints represent 20% of the work that comes into the office. Between July and November of 2009, the office received 71 new cases. The average time to complete an investigation is between 9 and 12 months with the exception of the more complex cases or those involving delays due to extensions granted, etc. That amounts to no more than 2 cases in each Investigator's workload that falls outside of the 9-12 month completion timeframe. There is one case that lapsed into FY10, which is 4 years old (the Investigator of this case indicates that this will result in a cause finding and his investigation will be concluded no later than 11/9/09). The next oldest case also lapsed into FY10, which is 18 months old (the Investigator of this case estimates the investigation will be completed towards the end of November 2009). Through the first four months of FY10 the office has either resolved or closed 52 cases. As stated above, there were approximately 20% more complaints that were reviewed and considered by the Compliance Division which did not result in becoming open cases. Upon review of those complaints, the division rejected them for various reasons. Through the first quarter of this fiscal year, the office received 100 new complaints with 71 becoming actual cases under investigation.

Council staff comments: The Executive recommends the \$48,620 in savings for the Office of Human Rights attributable to the lapse in filling vacant Manager and Investigator III positions. The Department will lapse the Investigator III position through December.

Investigations are a core function of the Department, and the Committee has been concerned about the Department's ability to dispose of its investigations in a timely fashion. With the recent reductions and vacancies to investigators, the Department currently has 5 investigators, down from 9 in FY09, and the caseload and backlog for the Department appears to be growing.

The Department reports that there are approximately 250 open cases compared to 161 cases as of October 1, 2008. Between July and November 2009, the office received 71 new cases but closed only 52 cases. Approximately 10 cases are older than 12 months. Moreover, the Department reports that one case that lapsed into FY10 was 4 years old contrary to information provided in budget that no case was older than 24 months.

Council staff concurs with the Executive recommendation to take \$48,620 in savings by lapsing the two positions. The savings resulting from the Investigator III vacancy has in large part been achieved, and it is not likely that the position could be filled before the end of the year. However, the Committee should encourage filling this vacancy with due speed if it is interested in keeping caseload and backlog from increasing. If further savings are required in the future, other areas of the Department's budget should be explored including training expenses and dues/memberships instead of leaving investigation positions unfilled.

Public Libraries

The Executive recommends a total of \$1,595,310 in reductions for the Department of Public Libraries, or 4.2 percent below the FY10 approved budget.

Ref. No.	Reduction	Amount
S1	Reduce Library Materials	-\$1,350,000
S2	Increase Lapse	-\$90,000
S3	Reduce 6 days Sunday Service at Gaithersburg during construction closure	-\$18,570
S4	Decrease cost for Gaithersburg supplies during construction closure	-\$1,550
S5	Reduce General Supplies	-\$14,400
S6	Decrease cost of printing, paper, and mail	-\$35,000
S7	Decrease cost of book processing	-\$65,000
S8	Decrease cost for training	-\$20,000

Council staff comments: Council staff did not forward any questions to the Office of Management and Budget regarding these reductions but notes that the reduction in materials will leave a total FY10 materials budget of \$4,162,630. The libraries have taken materials reductions in the last two budget years and the FY09 savings plan, as the HHS Committee discussed during FY10 budget worksessions. The resulting FY10 materials budget would be the lowest in the past ten years. However, Council staff would view materials reductions as preferable to the alternatives of reducing staff levels or affecting branch services and hours.

2. Health Promotion and Prevention -\$100,000

Council staff comments: The Round 1 Savings Plan assumes a \$5,000 savings in the Health Promotion and Prevention category and the Round 2 Savings Plan assumes an additional \$100,000. Council staff suggests the Committee ask the Department to provide a follow-up memo that provides information on all health promotion and prevention dollars and activities that were included in the FY10 originally approved budget, where there have been reductions as a result of State cuts, and where there have been reductions because of the Savings Plan. This can then be used for a baseline discussion for the FY11 budget.

3. Care for Kids -\$110,000 (see response to Question #9)

Council staff comments: Council staff concurs with the Executive's recommended Savings Plan reductions but suggests that a discussion of the Care for Kids program be added to the March session that will also include the update on Montgomery Cares. The response notes that there is capacity to serve about 800 children at the school based health centers but that only about half of that capacity is being used. While Care for Kids contract providers would lose clients if they are reassigned to the school based health centers, it does not make sense for the school based centers to have such a high level of unused resources. The HHS and ED Committees may also want to consider this data as they discuss where new school based health center capacity is being added.

Office of Human Rights

The Executive is recommending one Round 2 reduction to the Office of Human Rights' FY10 Operating Budget totaling \$70,470.

Council staff questions:

1. Page 9, S1: Caseload and Investigator Position: What is the current caseload for the Department? Please answer the following questions for FY10: How many new cases have been filed? How many cases have been resolved? What has been the average time required to resolve cases? What is the longest time that a case has been on the Department's inventory?

Response: *The current case inventory for the Office of Human Rights is 834 open cases. 174 cases have been filed since July 1, 2009. Additionally, there are 44 cases (not included in the 174 noted above) that were reviewed and declined as not meeting our jurisdictional authority. Since July 1, 2009, there have been 96 investigations completed. The standard used to determine which cases have been resolved was an analysis of those cases that have had the investigation completed. As of January 15, 2010, the average time required to resolve a case is approximately 15 months. This estimate pertains to the time required to move a case through our investigative process, from intake to completion of the investigation. This resolution average is up from the previous 10-12 month average, due in part to a reduction in our investigative staff, as a result of recent retirements. Note, the EEOC average for case resolution is 18-24 months and they have a significant backlog. The longest time a case has been in the Department's inventory is approximately 4 years.*

Council staff comments and recommendations:

The Executive recommends holding an Investigator III vacancy through the end of the fiscal year. **The Department reports that the number of open cases and the average time required to resolve cases are increasing.** 174 cases have been filed since July 1, 2009, but only 95 investigations have been completed. The average time required to resolve a case is approximately 15 months instead of the 9-12 month average previously reported in November 2009. The Department also continues to report that a case that has been on the Department's inventory for over 4 years.

The data provided by the Department is confusing in that it reports a case inventory of 834 open cases; yet approximately 250 open cases were reported in November 2009. **The Committee may want to seek clarification on why there is such a large difference in the numbers reported for open cases in November 2009 and mid-January 2010.**

During the budget review process last year, the Council made a \$15,000 reduction to the Department's Biennial Hall of Fame event from a proposed \$22,570. In past years, the event has served 100-150 people, and the Committee reflected that the Department could charge admission to the event to defray costs. Year-to-date budget information reflects a budget of \$22,516 for Special County Functions with a \$14,460 remaining balance. **The Committee may want to clarify what the Department has budgeted for the Hall of Fame event in FY10.**

Council staff notes that there may be additional areas for cost savings that are consistent with reductions taken by other department/agencies. There are significant balances remaining in the following operating expenses categories: Services and Contracts; Education, Tuition, and Training; Printing/Central Duplicating; Dues/Memberships; Office Supplies & Equipment; Special County Functions; and Boards/Commissions/Committees.

Council staff recommendation: Given the information on increasing case inventory and the time needed to resolve cases, Council staff recommends filling the Investigator III position. The Savings Plan would include the savings based on the expected lapse that would accrue until the position is filled. The balance would come from additional cuts to operating expense categories.

Public Libraries

The Executive is recommending 15 Round 2 reductions to the Public Libraries' FY10 Operating Budget totaling \$1,079,220.

Combined with the Round 1 reductions of \$1.6 million, the total FY10 recommended savings are \$2.7 million and 7.12 percent below the FY10 approved budget. This percent reduction is the second largest percent reduction of any other County department (second only to the Office of the County Attorney, a much smaller budget). DPL is eliminating six positions, five of which are currently filled.

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