

STATE OF CONNECTICUT



*AUDITORS' REPORT
FREEDOM OF INFORMATION COMMISSION
FOR THE FISCAL YEARS ENDED
JUNE 30, 2009, 2010, AND 2011*

AUDITORS OF PUBLIC ACCOUNTS
JOHN C. GERAGOSIAN ❖ ROBERT M. WARD

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STATE OF CONNECTICUT



AUDITORS OF PUBLIC ACCOUNTS

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December 3, 2012

**AUDITORS' REPORT
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FOR THE FISCAL YEARS ENDED JUNE 30, 2009, 2010, AND 2011**

We have examined the financial records of the Freedom of Information Commission for the fiscal years ended June 30, 2009, 2010, and 2011.

Financial statement presentation and auditing are done on a Statewide Single Audit basis to include all state agencies. This audit examination has been limited to assessing the Freedom of Information Commissions' compliance with certain provisions of financial related laws, regulations, contracts and grants, and evaluating the internal control structure policies and procedures established to ensure such compliance. This report consists of the Comments, Recommendations and Certification, which follow.

COMMENTS

FOREWORD:

The Freedom of Information Commission operates by the authority of Section 1-205 of the General Statutes.

Commission membership consists of five members appointed by the Governor with the advice and consent of either house of the General Assembly. Members serve in accordance with Section 4-1 of the General Statutes. As of June 30, 2011, the members were as follows:

	Term Expires June 30,
Norma E. Riess, Chairperson	2012
Sherman D. London	2012
Amy J. Livolsi	2015
Owen P. Eagan	2015
Jay A. Shaw	2014

The Freedom of Information Commission is charged with overseeing the public's access to the records and meetings of all public agencies. The commission investigates alleged violations of the statutes pertaining to freedom of information and is empowered to hold hearings, subpoena witnesses, require production of records and issue orders.

The Freedom of Information Commission operates under the executive branch of government. The Executive Director and General Counsel of the agency is appointed by the commission and is a classified employee, subject to the civil service rules. Colleen Murphy has served as the executive director and general counsel of the Freedom of Information Commission since February 1, 2006.

RÉSUMÉ OF OPERATIONS:

General Fund Receipts:

A summary of General Fund receipts during the fiscal years ended June 30, 2009, 2010, and 2011, is presented below:

	<u>2008-2009</u>	<u>2009-2010</u>	<u>2010-2011</u>
Civil Penalties	\$1,514	\$ 725	\$ 200
Recovery of Salary Overpayment			111
Refunds of Prior Year Expenditures	<u>(364)</u>	<u> </u>	<u>330</u>
Total General Fund Receipts	<u>\$1,150</u>	<u>\$725</u>	<u>\$641</u>

General Fund Expenditures:

General Fund expenditures during the fiscal years ended June 30, 2009, 2010, and 2011, are presented below:

	<u>2008-2009</u>	<u>2009-2010</u>	<u>2010-2011</u>
Personal Services	\$1,806,957	\$1,736,848	\$1,713,601
Other Expenses	163,666	132,629	139,507
Equipment	<u>21,202</u>	<u>7,413</u>	<u>10,737</u>
Total General Fund Expenditures	<u>\$1,991,825</u>	<u>\$1,876,890</u>	<u>\$1,863,845</u>

During the audited period, over 90 percent of expenditures in each fiscal year consisted of personal services costs for the Freedom of Information Commission. The majority of other expenditures included arbitration and mediation service fees, court reporting, and office equipment.

Subsequent Events:

The Connecticut General Assembly passed Public Act 11-48, An Act Implementing Provisions of the Budget Concerning General Government, during the 2011 regular session. In part, this act establishes the Office of Governmental Accountability, which consolidates the Freedom of Information Commission with eight other governmental agencies. These other agencies are: the State Elections Enforcement Commission, the Office of State Ethics, the Judicial Review Council, the Judicial Selection Commission, the Board of Firearms Permit Examiners, the Office of the Child Advocate, the Office of the Victim Advocate, and the State Contracting Standards Board. The act merges and consolidates within the Office of Governmental Accountability the nine existing agencies' personnel, payroll, affirmative action, administrative, and business office functions. The Office of State Ethics retains its independent decision-making authority, including budgetary and employment decisions.

CONDITION OF RECORDS

Our review of the Freedom of Information Commission's records revealed the following areas that require improvement.

Payroll and Personnel - Compensatory Time:

Criteria: The Department of Administrative Services (DAS) Management Personnel Policy 06-02 sets forth criteria for the granting of compensatory time to managerial and confidential employees. The criteria for granting compensatory time includes the following: "the extra time worked must be authorized in advance by the agency head or his/her designee, the authorization must include the employee's name and outline the reason for compensatory time; and, proof of advance authorization must be retained in the employee's personnel file for audit purposes." The policy also states that compensatory time "must be significant in terms of total and duration" and "does not include the extra hour or two a manager might work to complete normal work assignments in a normally scheduled workday." The work must be completed "at an approved work location."

The commission has a policy for non-managerial employees who are also eligible to receive compensatory time. The policy states that "any employee seeking to earn compensatory time may apply to their immediate supervisor in advance and in writing." Any such request "shall include a description of the agency-related work" and "the number of hours requested." Requests are permitted "only if approved in advance." The commission requires an Agency Business Request Slip, approving the compensatory time in advance. Managers are not required to submit request forms for approval.

According to DAS General Notice 2009-15, furlough days should be rescheduled in the event that work needs to be performed.

Condition: We reviewed ten instances of compensatory time earned from four managers and six non-managerial employees. Our review revealed the following:

Managerial Employees:

- All four instances of compensatory time earned by managers were not supported by prior written authorization as required by state policy. We were subsequently provided with documentation supporting the

reasons for the compensatory time; however, there was no indication that the compensatory time was approved in advance.

- Two of four instances of compensatory time did not appear to be significant in duration according to state policy. Each of these instances was two hours or less.

Non-Managerial Employees:

- Three of six instances in which all compensatory time was not authorized in advance.
- Two of six instances in which a portion of total compensatory time approved was not authorized in advance.
- One of six instances revealed that an employee earned compensatory time on a furlough day. The approval did not occur in advance.

We note that reasons for compensatory time stated on the agency business request slips appeared to be work related. However, it was unclear if the duties performed were in excess of the employee's normally scheduled work assignments as indicated by state policy.

Effect:

The commission is not in compliance with DAS established guidelines or its own policy relative to compensatory time. Without adequate documentation, the department has less assurance that the services it has compensated its employees for have actually been received.

Cost savings from the furlough day was not achieved.

Cause:

The commission has developed its own policy, which does not comply with Management Personnel Policy 06-02 issued by the Department of Administrative Services. The agency policy for managers approves "up to 15 hrs per week in advance" and requires the employee to work "nine hours at regular work time on any regular business day before compensatory time may be earned for that day."

The commission scheduled an employee to work on a mandated furlough day. We were told that the extra work involved preparation for a Supreme Court oral argument. However, we note that this employee worked the entire following week at regular time, prior to the date of the court case. The furlough day was not rescheduled.

Recommendation:

Freedom of Information Commission personnel responsible for authorizing and managing compensatory time should implement procedures to ensure compliance with DAS Management Personnel

Policy 06-02. Procedures should also be implemented to ensure that compensatory time is approved in accordance with agency policy for non-managers.

Agency Response: “The agency concurs with the finding for the most part, but believes the underlying facts provide a clearer picture and ought to mitigate the finding. Again, more detailed explanations relative to the specific instances cited was provided in the July 30, 2012 letter referenced previously.

Managerial employees. The draft indicates that four instances of compensatory time earned by managers were not supported by prior written authorization. Under Commission policy, managers are pre-authorized in advance for up to fifteen hours of compensatory time without individual supervisory approval. Further, a manager must work at least one additional hour on any given day before compensatory time can accrue. Any time beyond fifteen hours requires further advance approval. This longstanding policy provides the agency with some flexibility and lessens the administrative burden attendant to obtaining such approvals for professional employees, while putting controls in place as well. I am certain that the Commission has compensated its employees for services that have actually been received.

However, in view of the points raised in the draft audit findings and Management Personnel Policy 06-02 (MPP 06-02), the Commission pledges to review and revise its internal policy and procedures in this area.

Non-Managerial employees. The agency will be more careful to adhere to its policy regarding advance authorization for compensatory time for non-managerial employees and will ensure that it does not grant compensatory time on state furlough days.

It should be noted however that the rare instances of awarding compensatory time without prior approval were occasioned by the sometimes unpredictable nature of the legal work performed by Commission employees. Further, the identified loss of furlough savings was minimal (one person, and one part of one day) and agency employees ensured cost savings in other ways, including voluntary schedule reduction during this period.”

Agency Backup Procedures:

Criteria: Good business practice suggests that electronic data stored on mobile

storage devices should be maintained in a secure off-site location as part of a disaster recovery plan. As a general rule, state records should not be kept at a personal residence.

Condition: The commission maintains its own dedicated server, independent of the Department of Administrative Services Bureau of Enterprise Systems and Technology. We discovered that a commission manager stores unencrypted backup tapes off-site, at the employee's personal residence. According to the agency, examples of electronic records include pending case documentation and case management databases. The State of Connecticut has a contract through the Department of Administrative Services, with Iron Mountain, an approved vendor for off-site records storage, including magnetic media. We were told that the commission considered off-site storage and determined it was not cost effective. The minimum cost for storage of magnetic media on a monthly basis is \$250.00 per month according to the contract.

Effect: The current practice for storing electronic records increases the risk that data could be lost or compromised in some manner.

Cause: We were unable to determine the cause for these deficiencies.

Recommendation: The Freedom of Information Commission should take steps to ensure that backup tapes are stored in a state-approved and secure off-site location.

Agency Response: "The FOI Commission concurs with the finding and will follow the proposed recommendation. The original decision to maintain backup electronic data at an employee's residence was made long ago, when the Commission was a small independent entity that took personal charge and responsibility over all of its functions. Moreover, since the FOI Commission does not generally maintain secure data, the security risk in this regard was deemed to be very low. The arrangement was also designed to be a cost-saving measure. At this point in time, as with the business services function referenced above, the FOI Commission's IT services have been merged into the OEA of the OGA. The FOIC has already had preliminary discussions about implementing the recommendation and intends to follow-through with employees of the OEA's IT department in the very near future to ensure the matter is addressed."

Access to Core-CT for Terminated Employees:

Criteria: The Core-CT Security Liaison Guide indicates that each agency has the responsibility to assign a Core-CT Security Liaison to be the primary contact for the Statewide Core-CT Applications Security Administrator. Agency security liaisons are responsible for requesting the deletion of

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user access immediately upon notice of an employee's termination, retirement, or transfer to another department or agency.

Condition: Our test of access to the Core-CT system for terminated employees disclosed an instance in which the commission did not request the deletion of user access immediately upon notice that the employee was leaving the agency. The employee retired effective July 1, 2011; however, we noted that the request for deletion of user access to Core-CT was not submitted until August 17, 2011. During this period, the employee had access to the Core-CT Financials Module and Human Resource Management System (HRMS).

Effect: There is an increased risk of unauthorized access to the Core-CT system and possible manipulation or destruction of data.

Cause: We did not determine the cause.

Recommendation: The Freedom of Information Commission should implement procedures to ensure that access to the state's Core-CT computer system is deactivated immediately upon termination of an employee.

Agency Response: "The FOI Commission concurs with the finding. The FOIC believes that the one instance cited is truly an isolated incident and that sufficient procedures were in place to prevent such an occurrence under normal circumstances. The failure at issue occurred at a time of significant change and some uncertainty for the agency, relative to the impending merger of the FOI Commission's business services functions into the OEA of the OGA, as referenced above. The individual responsible for the error has acknowledged the mistake and has provided sufficient assurances that it will not occur again."

RECOMMENDATIONS

Status of Prior Audit Recommendations:

Our prior audit contained one recommendation. The status of this recommendation is presented below.

- The Freedom of Information Commission should take steps to ensure familiarity and compliance with all of the state's personnel statutes, regulations, and policies. We reviewed a current telecommuting arrangement authorized by the agency and found no instances of noncompliance. We are not repeating this recommendation

Current Audit Recommendations:

1. **Freedom of Information Commission personnel responsible for authorizing and managing compensatory time should implement procedures to ensure compliance with DAS Management Personnel Policy 06-02. Procedures should also be implemented to ensure that compensatory time is approved in accordance with commission policy for non-managers.**

Comment:

We found instances where managerial and non-managerial employees earned compensatory time that was not supported by prior written authorization. We also found instances where managers earned compensatory time that was not significant in duration according to state policy. We were unable to determine if manager's compensatory time was worked at an approved location.

One non-managerial employee earned compensatory time on a furlough day.

2. **The Freedom of Information Commission should take steps to ensure that backup tapes are stored in a state-approved and secure off-site location.**

Comment:

The commission stores server backup tapes at a manager's personal residence. In addition, the backup tapes are not encrypted as required by state policy.

3. **The Freedom of Information Commission should implement procedures to ensure that access to the state's Core-CT computer system is deactivated immediately upon termination of an employee.**

Comment:

The commission did not request the deletion of user access to Core-CT immediately upon notice of termination as required by the Core-CT Security Liaison Guide.

INDEPENDENT AUDITORS' CERTIFICATION

As required by Section 2-90 of the General Statutes, we have audited the books and accounts of the Freedom of Information Commission for the fiscal years ended June 30, 2009, 2010 and 2011. This audit was primarily limited to performing tests of the agency's compliance with certain provisions of laws, regulations, contracts and grant agreements and to understanding and evaluating the effectiveness of the agency's internal control policies and procedures for ensuring that (1) the provisions of certain laws, regulations, contracts and grant agreements applicable to the agency are complied with, (2) the financial transactions of the agency are properly initiated, authorized, recorded, processed, and reported on consistent with management's direction, and (3) the assets of the agency are safeguarded against loss or unauthorized use. The financial statement audits of the Freedom of Information Commission for the fiscal years ended June 30, 2009, 2010 and 2011, are included as a part of our Statewide Single Audits of the State of Connecticut for those fiscal years.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the Freedom of Information Commission complied in all material or significant respects with the provisions of certain laws, regulations, contracts and grant agreements, and to obtain a sufficient understanding of the internal controls to plan the audit and determine the nature, timing and extent of tests to be performed during the conduct of the audit.

Internal Control over Financial Operations, Safeguarding of Assets and Compliance:

Management of the Freedom of Information Commission is responsible for establishing and maintaining effective internal control over financial operations, safeguarding of assets, and compliance with the requirements of laws, regulations, contracts, and grants. In planning and performing our audit, we considered the Freedom of Information Commission's internal control over its financial operations, safeguarding of assets, and compliance with requirements as a basis for designing our auditing procedures for the purpose of evaluating the agency's financial operations, safeguarding of assets, and compliance with certain provisions of laws, regulations, contracts and grant agreements, but not for the purpose of expressing an opinion on the effectiveness of the agency's internal control over those control objectives. Accordingly, we do not express an opinion on the effectiveness of the Freedom of Information Commission's internal control over those control objectives.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions to prevent, or detect and correct on a timely basis, unauthorized, illegal or irregular transactions, or breakdowns in the safekeeping of any asset or resource. A *material weakness* is a deficiency, or combination of deficiencies in internal control, such that there is a reasonable possibility that noncompliance which could result in significant unauthorized, illegal, irregular or unsafe transactions and/or material noncompliance with certain provisions of laws, regulations, contracts, and grant agreements that would be material in relation to the agency's financial operations will not be prevented, or detected

and corrected on a timely basis.

Our consideration of internal control over financial operations, safeguarding of assets, and compliance with requirements was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial operations, safeguarding of assets, and compliance with requirements that might be deficiencies, significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control over the agency's financial operations, safeguarding of assets, or compliance with requirements that we consider to be material weaknesses, as defined above. However, we consider the following deficiencies, described in detail in the accompanying Condition of Records and Recommendations sections of this report, to be a significant deficiency: Recommendation # 2: Payroll and Personnel – Compensatory Time A *significant deficiency* is a deficiency, or combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Compliance and Other Matters:

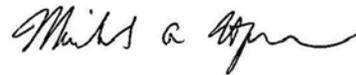
As part of obtaining reasonable assurance about whether the Freedom of Information Commission complied with laws, regulations, contracts and grant agreements, noncompliance with which could result in significant unauthorized, illegal, irregular or unsafe transactions or could have a direct and material effect on the results of the agency's financial operations, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion.

The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under Government Auditing Standards. However, we noted certain matters which we reported to agency management in the accompanying Condition of Records and Recommendations sections of this report.

This report is intended for the information and use of agency management, the Governor, the State Comptroller, the Appropriations Committee of the General Assembly and the Legislative Committee on Program Review and Investigations. However, this report is a matter of public record and its distribution is not limited.

CONCLUSION

In conclusion, we wish to express our appreciation for the cooperation and courtesy shown to our representatives by the personnel of the Freedom of Information Commission during this examination.



Michael A. Haynes
Auditor II

Approved:



John C. Geragosian
Auditor of Public Accounts



Robert M. Ward
Auditor of Public Accounts