



DEPARTMENT OF LAW

BIENNIAL PERFORMANCE AUDIT REPORT

Fiscal Years Ended June 30, 2019 and 2018

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CITY OF BALTIMORE

BILL HENRY
Comptroller



DEPARTMENT OF AUDITS JOSH PASCH, CPA

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Honorable Bill Henry, Comptroller
and Other Members
of the Board of Estimates
City of Baltimore

Executive Summary

We conducted a Biennial Performance Audit of selected performance measures (see Table I on page 4) of the Department of Law (DOL) for the fiscal years (FYs) ended June 30, 2019 and June 30, 2018. The objectives of our performance audit were to: (1) determine whether DOL met its performance measure targets; (2) evaluate whether DOL has adequately designed internal controls related to the selected performance measures; and (3) follow up on prior findings and recommendations included in the previous Biennial Performance Audit Report, dated December 14, 2018.

According to the FYs 2018, 2019, 2020, and 2021 DOL Detail Board of Estimates Recommendations (Budget Books),

- **FY 2019:** The DOL did not meet the Percent of Public Information Act Requests Answered on Time target. According to DOL, it did not meet the target of this performance measure because of various reasons (i.e., significant increase in Public Information Act (PIA) requests, delay in providing of the requested documents by agencies, and the departure of veteran PIA attorneys).

The DOL met the targets of the Minority and Women's Business Opportunity Office's (MWBOO) two performance measures - Application Initial Review Turnaround Time (Days) and Application Review / Process Turnaround Time (Days). However, we did not validate the actual results of the performance measures because DOL could not provide adequate supporting documentation.

- **FY 2018:** The DOL met all three selected performance measure targets. However, we did not validate the actual results of the performance measures because DOL could not provide adequate supporting documentation.

We evaluated the processes and the design of internal controls of the selected performance measures for review. Our evaluation indicates that the City and DOL need to improve the efficiency, effectiveness, and accuracy of the performance measures, processes and internal controls summarized on the next page.

Biennial Performance Audit Report on Department of Law

- **Service 862, Percent of Public Information Act Requests Answered on Time-** The DOL is tracking the time when it receives requests from agencies for consultation and the time when DOL responds to agencies or information requestors. Therefore, this measurement is a portion of the overall PIA process¹ and does not measure whether the City, as a whole, is in compliance with the PIA requirements.
- **Service 869, Application Review / Process Turnaround Time (days) and Application Initial Review Turnaround Time (days)** - The MWBOO does not have formal (written, approved, dated) policies and procedures to: (1) document how MWBOO performance measures and targets were developed and calculated; and (2) maintain documentation to support the actual performance measures reported in the Budget Books. Also, during FY 2019 and FY 2018, MWBOO used a manual, paper-based process for reviewing hard copies of the applications. Also, MWBOO tracked the application review status and dates in an excel spreadsheet; however, the information in the spreadsheet was not entered consistently by MWBOO staff. Also, the documentation to support the calculation of the actual results were not maintained.

Of the four prior recommendations that we followed up as part of this Biennial Performance Audit (See Section II on page 10), one recommendation was fully implemented, and three recommendations were not implemented because of the following reasons:

- **Service 861, Number of Lawsuits Handled** - The performance measure is not relevant and DOL has no control over the number of lawsuits filed in any given fiscal year;
- **Service 869, Number of Applications Approved** - There was a change in MWBOO leadership and supporting documents were not provided; and
- **Service 862, Percent of Bills Reviewed On Time** - The case management software was not effective and does not address the needs of the Advice and Opinion Group, which handles the review of legislative bills.

To improve the transparency, sustainability, and reliability of the performance measures and their processes, the City Administration and the City Solicitor should implement the recommendations included in this report. Management responses are included in Appendix I.

We wish to acknowledge DOL's cooperation extended to us during our audit.

Respectfully,



Josh Pasch, CPA
City Auditor
Baltimore, Maryland
December 31, 2020

¹ Each City agency has a designated Public Information Officer (PIO) / Custodian. The requests are received by the PIO / Custodian of various City agencies, and DOL only receives those requests if the agency seeks assistance from DOL. The requests do not come directly to the DOL because the PIA law (Maryland Code, General Provisions, § 4-202) requires that requests be received by the custodian. **Source:** DOL

Background Information

I. Department of Department of Law

The DOL is an agency of City government established by the City Charter. The City Solicitor, who is the head of the Department, is appointed by the Mayor and confirmed by the City Council. Under the City Charter, the City Solicitor is the legal adviser and representative of the City and its departments, officers, commissions, boards, and authorities and has general supervision and direction of the legal business of the City. In addition to overseeing DOL, the City Solicitor is a member of the Board of Estimates.

Under the City Solicitor's leadership, DOL functions as the City's full-service law firm. Its core Charter-mandated duties include: (1) representing the City in litigation matters, (2) protecting the City's corporate and financial interests in contractual, financial and real estate transactions, (3) collecting debts owed to the City, and (4) providing legal advice and counsel to the Mayor, City Council, and City agencies.

In performing these duties, attorneys are mindful of the City's specific financial and operational needs. Thus, DOL attorneys focus upon innovation, as well as revenue collection, generation, and preservation. They engage in preventive lawyering designed to anticipate and limit the City's liability, and in creative problem-solving designed to avoid disputes that impede the City's work. These approaches have recovered hundreds of millions of dollars for the City, and have prevented massive losses of funds, while advancing the City's goals.

II. Services

The following services are responsible for the selected performance measures included in this Biennial Performance Audit.

- **Transactions – Service 862.** This service provides Charter-mandated legal services essential for City operations and governance. It provides advice on the real estate, economic development, lending, and municipal finance; negotiates, drafts, and reviews all City contracts; processes Public Information Act (PIA) requests; and advises the Office, the City Council, and all City agencies, boards, and commissions on legal matters.
- **Minority and Women's Business Opportunity Office – Service 869.** This service is responsible for the certification of Minority Business Enterprises (MBEs) and Women's Business Enterprises (WBEs). It maintains a directory of certified businesses; investigates alleged violations of the Minority and Women's Business Enterprise (MWBE) ordinance; retains statistics on availability and utilization of MBEs and WBEs; sets annual contract participation goals; and provides assistance to bidders and developers in identifying MBE / WBE firms.

III. Selected Performance Measures

We judgmentally selected three performance measures of DOL for review which are summarized as follows:

Table I

Summary of Selected Performance Measures' Targets and Actuals as Reported in the Budget Books for Fiscal Years 2019 and 2018

Service	Performance Measure	Type	2019		2018	
			Target	Actual	Target	Actual
862	Percent of Public Information Act (PIA) Requests Answered on Time	Effectiveness	90	86	90	100
869	Application Review / Process Turnaround Time (days)	Effectiveness	39	30	30	18
869	Application Initial Review Turnaround Time (days)	Effectiveness	30	30	15	8

Source: FY 2018, 2019, 2020 and 2021 Budget Books

Objectives, Scope, and Methodology

We conducted our performance audit in accordance with *Generally Accepted Government Auditing Standards*, except for peer review requirements. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objectives of our audit were to:

- Determine whether the DOL: (1) met its performance measure targets; and (2) has adequately designed internal controls related to the selected performance measures; and
- Follow-up on prior findings and recommendations included in the previous Biennial Performance Audit Report, dated December 14, 2018.

The scope of our audit are three performance measures (see Table I on page 4) reported for the periods of FY 2019 and FY 2018. To accomplish our objectives, we:

- Reviewed documents such as organizational charts for applicable divisions and applicable policies and procedures;
- Interviewed key individuals to obtain an understanding of the processes and procedures;
- Observed the processes in the: (i) Trello system, which is MWBOO software that was implemented in January 2020, from application intake to approval of the application; and (ii) Minority Women’s Business Opportunity Office Directory Certification Database;
- Evaluated the design of certain: (1) internal controls such as recording, reporting, documenting and segregation of duties; (2) processes; and (3) procedures of the selected performance measures;
- Researched and reviewed Maryland Code, General Provisions, § 4-202;
- Judgmentally selected five agencies to survey their PIA procedures;
- Reviewed PIA tracking sheets and reconciled them to the actual results; and
- Reviewed applicable records to gain an understanding of the reasonableness of DOL’s implementation status of the prior findings and recommendations.

SECTION I

Current Findings and Recommendations

Finding #1: Service 862 – Transactions, Percent of Public Information Act Requests Answered on Time – The performance metric does not measure the actual response time for the entire Public Information Act process.

The City does not have a performance metric that measures the efficiency of the PIA process. The performance metric which was reviewed in this audit is for the DOL, which measures the DOL’s efficiency in relation to PIA requests. The DOL is measuring the percent of PIA requests answered in a timely manner by tracking the time when DOL receives requests from agencies for DOL’s consultation and the time when DOL responds to agencies or information requestors. Therefore, this measurement is a portion of the overall PIA process and does not measure whether the City, as a whole, is in compliance with the PIA requirements.

A cause for the lack of a citywide performance measure for the PIA process is because the City does not have a centralized and standardized process that handles PIA requests. Although the process is decentralized to agencies, the City does not have an overarching guidance for agencies to track, respond, document, and monitor to ensure PIA requests are responded timely as required in the Maryland Code, General Provisions., § 4-202 (see textbox). As a result, as shown in Table II on page 7, the agencies are not consistently tracking, documenting, and monitoring PIA requests.

Maryland Code, General Provisions, § 4-202 states that:

- “A custodian who approves the application shall produce the public record immediately or within a reasonable period that is needed to retrieve the public record, but not more than 30 days after receipt of the application.”
- “If the custodian reasonably believes that it will take more than 10 working days to produce the public record, the custodian shall indicate in writing or by electronic mail within 10 working days after receipt of the request: (i) the amount of time that the custodian anticipates it will take to produce the public record; (ii) an estimate of the range of fees that may be charged to comply with the request for public records; and ((iii) the reason for the delay.”

Recommendation #1: We recommend:

- The City’s Administration consider: (1) centralizing the PIA process; and (2) developing and implementing overarching guidance such as formal (written, approved, dated) policies and procedures to provide consistency, oversight, and Citywide tracking of PIA requests; and
- The City Solicitor conduct an independent research on the industry standard and / or comparable cities to establish performance metrics that are applicable to DOL’s goal and objectives.

**Table II
Summary of Survey Results for Judgmentally Selected Five Agencies**

Name of Agency	Policies and Procedures (Yes / No)	Documents Maintained (Yes / No)	PIA Log Maintained (Yes / No)
Baltimore City Health Department (BCHD)	No ¹	Yes	Yes
Department of General Services (DGS) ²	No	No	No
Department of Housing and Community Development (DHCD)	Yes	Yes	Yes
Department of Transportation (DOT) ³	No ¹	Yes	Yes
Department of Public Work (DPW)	Yes	Yes	Yes

Notes: ¹The BCHD and DOT have no formal policies and procedures, however, the PIOs provided a step-by-step process of the agency. DOT is planning to accomplish one in 2021.

²The DGS currently does not have a mechanism for tracking, or monitoring the requests. The only documentation maintained is email correspondence between DGS and DOL regarding whether or not data / information can be shared.

³ Prior to obtaining Office 365, DOT kept information on desktop computers. During the ransomware attack, the responsible personnel's computers were infected, and the data was lost. The DOT implemented a log in the current FY and DOT now hosts all documents on the Office 365 One Drive as a way to keep records in cloud storage.

Finding #2: Service 869, Minority and Women’s Business Opportunity Office, Application Initial Review Turnaround Time (days) and Application Review / Process Turnaround Time (Days) Minority and Women’s Business Opportunity Office’s actual amounts could not be validated.

The MWBOO did not have formalized (written, approved, dated) policies and procedures for establishing and calculating the FYs 2019 and 2018 targets and actual amounts. Also, MWBOO did not maintain complete records of the calculation of the actual amounts that were reported in the Budget Book for FYs 2019 and 2018. The FY 2019 spreadsheet provided did not agree to the amounts reported in the Budget Book. As a result, the FYs 2019 and 2018 actual amounts reported in the Budget Book could not be validated.

<p>MWBOO’s Performance Measures</p> <ul style="list-style-type: none">• Application initial Review Turnaround Time (days) - The time it takes to conduct the initial review of a submitted new application.• Application Review / Process Turnaround Time (days) - The time it takes for an eligible bona fide Minority Business Enterprise (MBE) / Women’s Business Enterprise (WBE) to receive MBE / WBE certification after the new application for certification is received. <p>Source: DOL</p>

According to MWBOO,

- The background information of the performance measure is unknown due to change in leadership in December 2019; and
- The FY 2019 ransomware affected the data accuracy and data integrity.

Additionally, during FYs 2019 and 2018, MWBOO had a manual, paper-based process. Hard copy files were used for reviewing the application documents. The data were entered manually in an excel spreadsheet, which was used as a database and tracking system to identify the status of the applications. The initial intake date was entered into the spreadsheet by the secretary. The application review / process and completion dates, and other information were entered by the staff assigned to review the applications. According to MWBOO, as of January 2020, it has adopted Trello, a project management tool to help improve its data management. Also, MWBOO is in the process of getting a new software for Compliance / Certification. This software will allow the applicants to submit their applications electronically and upload documents. According to MWBOO, the new software will be useful for data extraction and reporting.

According to the *Standards for Internal Control in the Federal Government* issued by the Comptroller General of the United States:

- Management should implement control activities through policies;
- Management documents in policies the internal control responsibilities of the organization; and

- “Control activities can be implemented in either an automated or a manual manner. Automated control activities are either wholly or partially automated through the entity’s information technology. Manual control activities are performed by individuals with minor use of the entity’s information technology. Automated control activities tend to be more reliable because they are less susceptible to human error and are typically more efficient. If the entity relies on information technology in its operations, management designs control activities so that the information technology continues to operate properly.”

Recommendation #2: We recommend the City Solicitor:

- Develop and implement formal (written, approved, dated) policies and procedures that: (1) clearly document how MWBOO performance measures and targets were developed and calculated; and (2) provide guidance and directions to employees for tracking, monitoring, and reporting the performance measure as well as maintaining adequate documentation; and
- Fully transition to electronic application of MWBOO certification.

**SECTION II
Implementation Status of Prior Audit Findings and Recommendations**

Table III

Summary of Implementation Status of Audit Findings and Recommendations from the Performance Audit Report for Fiscal Years Ending 2017 and 2016 for Service 861 – Controversies²

No.	Findings	Prior Recommendation	Management’s Self-reported Implementation Status	Auditor’s Assessment
1.	FY 2017 and FY 2016 actual performance measure data for the number of lawsuits handled did not agree to the supporting documents provided by DOL. However, the inaccurate reporting did not change the fact that DOL did not meet its target for FY 2016 and did exceed its target for FY 2017.	Establish procedures for reviewing the data submitted to the Bureau of the Budget and Management Research (BBMR) for agreement to agency records to ensure reliability, completeness, and accuracy of data.	The DOL has implemented several procedures to ensure accurate recording and tabulation of data (i.e., electronic tracking and reporting systems such as Trello, Clio); however, DOL has no control over the number of lawsuits filed in any given FY. As a result, DOL will collaborate with the Department of Finance to change the performance measures to better align with outcomes that are controlled by DOL.	Not Implemented. This performance measure will be reviewed as part of the next performance audit for the status / implementation of DOL's action plan to change the performance measure to better align with outcome that are controlled by DOL.

² The selected performance measure for review was Number of Lawsuits Handled.

Table IV

Summary of Implementation Status of Audit Findings and Recommendations from the Performance Audit Report for Fiscal Years Ending 2017 and 2016 for Service 869 – Minority and Women’s Business Opportunity Office³

No.	Findings	Prior Recommendation	Management’s Self-reported Implementation Status	Auditor’s Assessment
1.	<p>1) MWBOO FY 2017 actual performance measure data for the number of applications approved did not agree to the supporting list of FY 2017 New Application Approvals provided by MWBOO.</p> <p>2) Additionally, after reviewing the list of FY 2017 New Applications Approvals, the following errors were noted: a) one firm had duplicate certifications; and b) another firm had an incorrect certification date. This last certification is part of FY 2018 New Applications Approved.</p> <p>3) FYs 2017 and 2016 List of Waiver request was not provided for audit testing.</p>	<p>1) Establish procedures for reviewing the data submitted to BBMR for agreement to agency records to ensure reliability, completeness, and accuracy of data.</p> <p>2) Establish procedures for recording and monitoring documentation.</p>	<p>The MWBOO team has implemented the following processes to ensure compliance with Article 6 Subtitle 28 of the City Charter: Compliance reviews; Increased investigations (during the initial application review as well as during the contractual period); Issuing and pursuing of penalties (for non-complying MBE's / WBE's); and Implementation of Trello tracking system. The implementation of these processes and systems have allowed the MWBOO to accurately report on the number of applications received as well as approved according to provisions outlined in Article 5 Subtitle 28.</p>	<p>Not Implemented.</p> <p>See Finding 2.</p>
2	<p>FY 2017 target was inconsistently reported in the FY 2019 and 2018 Budget Books for the number of applications approved.</p>	<p>The BBMR establish procedures for reviewing the data submitted for agreement to agency records to ensure reliability, completeness, and accuracy of data.</p>	<p>See Action Plan response for # 1 above.</p>	<p>Implemented.</p>

³ The selected performance measure for review was Number of Applications Approved.

Table V

Summary of Implementation Status of Audit Findings and Recommendations from the Performance Audit Report for Fiscal Years Ending 2011 to 2014 for Service 862 – Transactions⁴

No.	Findings	Prior Recommendation	Management’s Self-reported Implementation Status	Auditor’s Assessment
1	The bill review process is currently supported with a Word document that does facilitate data analysis.	(1) Increase the use of technology to support the bill review activity. (2) Consider the use of Excel to track dates and facilitate data summarization and reporting.	Due to changes in leadership and Information Technology positions, the implementation of Clio (case management software) has been delayed; however, before implementing, DOL will be working with the Office of Innovation to ensure the correct tracking mechanism is being employed for the Advice and Opinion Practice Group and the agency overall.	Not Implemented. The DOL implemented and trained its lawyers and staff on the use of the Clio case management software, which was not effective and does not address the needs of the Advice and Opinion Practice Group, which handles the review of legislative bills. The DOL is working with the Office of Innovation to acquire a better software that would help in the bill review process. According to DOL, the implementation date is in the beginning of FY 2022.

⁴ The selected performance measure for review was Percent of Bills Reviewed on Time.

APPENDIX I

Management's Response to the Audit Report

Date: December 29, 2020

To: Josh Pasch, City Auditor

Subject: Management Response to Audit Report:
Biennial Performance Audit Report on Department of Law
for the Fiscal Years Ended June 30, 2019 and 2018

Our responses to the audit report findings and recommendations are as follows:

Recommendation # 1

We recommend:

- The City's Administration consider: (1) centralizing the PIA process; and (2) developing and implementing overarching guidance such as formal (written, approved, dated) policies and procedures to provide consistency, oversight, and Citywide tracking of PIA requests; and
- The City Solicitor conduct an independent research on the industry standard and / or comparable cities to establish performance metrics that are applicable to DOL's goal and objectives.

Management Response/Corrective Action Plan

Agree Disagree

Preserving and sharing information with the public is a critical component of a democratic government and necessary for rebuilding trust with our communities. The DOL and Mayor's Office are committed to creating process and timeliness standards for Maryland Public Information Act (MPIA) requests, with a goal of increasing transparency and accountability in City government. We will re-train agency staff on the workings of the MPIA so they can be best prepared to comply with requests that arise. Additionally, we will work to develop a web portal so that members of the press and public can see the MPIA requests received by the City and by when a response can be expected.

That being said, and in consultation with the Mayor's Office, we respectfully disagree with the recommendation that "the City's Administration consider: (1) centralizing the PIA process; and (2) developing and implementing overarching guidance such as formal (written, approved, dated) policies and procedures." Although on the first page of the audit, the footnote cites Section 4-202 of the Public Information Act, it mischaracterizes the purpose of this section. This section mandates that a request be given to the

government record custodian. That person is not the same as a PIO. Rather, the PIA law defines the custodian as the person legally responsible for keeping the record— typically the agency head as Official Custodian – or any person authorized to possess a record. Md. Code, Gen. Prov., § 4-101(d). It can also be an authorized document holder. *Id.* This is wholly separate from the PIO, which the PIA calls the Government Unit Representative that must assist the public with its record requests for each particular custodian. Md. Code, Gen. Prov., § 4-503. Both of these people are to be specific to the governmental unit that keeps the record.

The DOL provides training and standard forms for agencies to answer requests on their own, and DOL stands ready to assist agencies in complying with the law. Not every request can be handled similarly and the DOL’s legal expertise in this area allows for flexibility, creativity and problem solving while mitigating any risk to the City.

The DOL welcomes any change to study the operations of any other comparable government law operations. While the performance of lawyers themselves are not rightly quantified in metrics, DOL welcomes any chance to have its budget and performance metrics changed from PIA requests to something that aligns with the DOL’s goals.

Implementation Date: June 30, 2021

Responsible Personnel: Michael Huber, Chief of Staff, Office of the Mayor

Auditors’ Response: The Department of Audits recognizes that a centralized tracking method is not required by Maryland Code. The Department of Audits continues to recommend that the City take a consistent approach, where possible, to processes that affect multiple agencies, such as PIA. Our audit has indicated (see Table II on page 7) that there is no centralized tracking and that certain agencies have more robust processes and controls over the PIA process. If the City management wanted to know the effectiveness of the PIA process, it would only be able to tell on an agency-by-agency basis for some of the agencies.

Recommendation # 2

We recommend the City Solicitor:

- Develop and implement formal (written, approved, dated) policies and procedures that: (1) clearly document how MWBOO performance measures and targets were developed and calculated; and (2) provide guidance and directions to employees for tracking, monitoring, and reporting the performance measure as well as maintaining adequate documentation; and
- Fully transition to electronic application of MWBOO certification.

Management Response/Corrective Action Plan

Agree Disagree

The DOL agrees with some of the Auditor’s recommendations as it pertains to the MWBOO certification review process. We agree with the causes identified by the Audit team and MWBOO will continue to make improvements with performance measures. While the process for tracking applications is antiquated (meaning use of Excel until the recent implementation of Trello), the tracking for number of days for application review and application review / turnaround time is reflected within the spreadsheet. In addition, the determination for total applications in 2019 was attained by a manual calculation process. To demonstrate responsiveness to suggestions provided by the Auditors during this current audit review, the MWBOO department immediately explored new ways to advance its functions and daily operations that will eventually lead to improvements with quantifying data related to the number of applications processed each year. These advances will also help MWBOO identify practical methodologies that support department operations and provide concise outcomes related to certification data. However, a vital factor to consider is the data analysis for certifications is not a typical / standard finite process given the level of investigation and evaluation MWBOO dedicates to each application. Therefore, some of the common quantitative / qualitative methodologies used to analyze data is not always going to be applicable to MWBOO’s application process. While DOL agrees an electronic certification process is needed, this will be a very gradual migration given the possibility of limited departmental funding, COVID-19 pressures on the City’s budget, and the need for additional staff. Please note the MWBOO department encountered major transitions with leadership twice within a two to three-year period. The MWBOO department is committed to implementing new developments that will greatly improve the qualitative and quantitative processes which may be reflected during the next auditing period.

Implementation Dates: December 13, 2020; December 14, 2020; December 21, 2020

Action Plans:

- December 13, 2020 - Full revision of application checklist which lists each phase of the application review process, the dates each step is executed, and captures total number of days / weeks for application intake, review, evaluation, and approval.
- December 14, 2020 - Revision of Standard Operating Procedures, which reflect a detailed and formalized process to show how applications are processed and how the number of days for intake / processing.
- December 21, 2020 - Full revision of application spreadsheet tracker which is being modified on Smartsheet. This is a cloud-based spreadsheet program that will still allow MWBOO to intake and process applications even in a future cyber-

attack surfaced. The modification and creation of existing spreadsheet has been created and staff will be able to use / access by January 5, 2021. This feature will allow MWBOO to generate reports that will capture number of days for processing and dates for each action related to application evaluations.

Responsible Personnel:

- LaShella Miller, Chief, MWBOO
- Shirley Davis, Secretary