

July 19, 2011

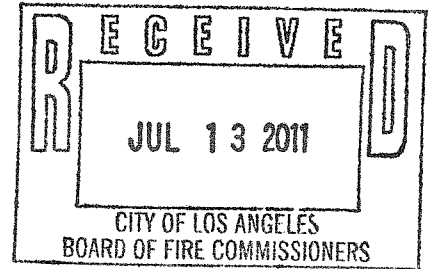
BOARD OF FIRE COMMISSIONERS  
FILE NO. BFC 11-104

Date: July 13, 2011

To: Honorable Board of Fire Commissioners

From: Stephen Miller, Independent Assessor *SM*

Subject: Policy Statement Regarding Access to Records, Files and Information by the Office of the Independent Assessor



FINAL ACTION:	<input type="checkbox"/> Approved	<input type="checkbox"/> Approved w/Corrections	<input type="checkbox"/> Withdrawn
	<input type="checkbox"/> Denied	<input type="checkbox"/> Received & Filed	<input type="checkbox"/> Other

## **Recommendation:**

The Office of the Independent Assessor has adopted a Policy Statement Regarding Access to Records, Files and Information. It is recommended the Board of Fire Commissioners receive and file the Policy Statement.

## **Summary:**

Repeated unsuccessful attempts have been made since December 2009 to have the City Attorney's Office provide and clarify legal advice concerning the Independent Assessor's authority to access confidential information. In August 2010, the City Attorney's Office provided advice that was inconsistent with a long line of formal City Attorney opinions dating back six decades, and inconsistent with less formal advice concerning such things as holding closed session meetings to consider disciplinary and personnel matters. Although the City Attorney's Office has not responded to the Independent Assessor's analysis of the issues or answered the Board's written questions concerning the issues, the City Attorney's Office provided written advice in May 2011 on a different matter that was inconsistent with its August 2010 opinion concerning the Board's authority.

Since then, Dean and Distinguished Professor of Law Erwin Chemerinsky has provided a legal opinion and analysis indicating the City Attorney's August 2010 advice is mistaken and the City Charter provides both the Board of Fire Commissioners and the Independent Assessor with access to all personnel files, disciplinary records and investigative materials. Following the

receipt of that opinion, the Office of the Independent Assessor has adopted its formal policy statement regarding access to information.

### **Background:**

The Board of Fire Commissioners approved the *Policies and Authority of the Independent Assessor* on December 15, 2009, which said Fire Department employees have a duty to cooperate and provide the Independent Assessor with complete and unrestricted access to all Fire Department information. The City Attorney's Office did not express any reservations or concerns about the Board adopting such a policy when this action was taken. A week later the Fire Chief sent a written communication to the Independent Assessor indicating the City Attorney's Office was looking into the Independent Assessor's authority to access personnel files.

On March 27, 2010, the Office of the Independent Assessor (OIA) published an *Assessment of the Department's Disciplinary Process and Professional Standards Division*, which reported, among other things, that an assessment impediment was created by a failure to provide access to all personnel files and payroll records.<sup>1</sup> It was recommended the Board direct the Fire Department to provide the Independent Assessor with immediate and unrestricted access to all Fire Department personnel and payroll records and files, regardless of format, unless the City Attorney's Office could provide written advice, with citations to legal authority, citing a valid legal basis for not providing access in no more than thirty (30) calendar days. The Board unanimously approved this recommendation on April 13, 2010.

When the City Attorney's Office had not provided the requested opinion in ninety (90) days, the Fire Chief issued a July 14, 2010 memorandum concerning access to records, files and information by the Independent Assessor. It reminded Fire Department employees they were required to cooperate with the Independent Assessor and had an affirmative duty to provide complete, unrestricted and prompt access to all Fire Department information. The Fire Chief's memorandum provided a well reasoned analysis of the authority for both the Board and the Independent Assessor under the City Charter and a prior City Attorney Opinion. The Mayor's Office reviewed the Fire Chief's memo before it was issued.

The City Attorney's Office sent a legal memorandum to the Board concerning the Independent Assessor's authority to access Fire Department personnel and disciplinary records and information on August 23, 2010.<sup>2</sup> The memorandum made the following major points:

1. The Independent Assessor has the same access to Department information as the Board of Fire Commissioners.
2. The *Ralph M. Brown Act* does not permit bodies such as the Board of Fire Commissioners to discuss personnel or disciplinary records in closed session because they have no authority over personnel actions or discipline matters.

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<sup>1</sup> Pages 154-157 of *Assessment of the Department's Disciplinary Process and Professional Standards Division*.

<sup>2</sup> The City Attorney's August 23, 2010 advice was released to the public as BFC 10-110 on the Commission's website after it was decided to discuss the advice in public at the September 21, 2010 Commission meeting.

3. The Board of Fire Commissioners has no access to personnel records because: a) the Board has no role in personnel actions or the discipline of Department employees, and b) the Fire Chief has exclusive jurisdiction over the appointment, discipline and transfer of Department employees.
4. The removal of an investigative function from the Independent Assessor's original class specification (job description) means access was not intended to extend to individual personnel and disciplinary information.
5. The Board of Police Commissioners and its Inspector General have greater access to personnel records and disciplinary information because of the Police Commission's involvement in the initial hiring, continued retention and annual evaluation of the Police Chief, as well as the Police Commission's duty to investigate and oversee the Police Department's handling of misconduct complaints.

At its regular meeting on September 21, 2010, the City Attorney's Office asked the Board to appoint a two-member subcommittee for the purpose of discussing City Attorney advice in private. President Genethia Hudley-Hayes and Vice President Casimiro Tolentino were immediately appointed at the same meeting. The City Attorney's Office was to schedule the private discussion.

On December 15, 2010, the City Attorney's Office was provided with and asked to review a draft analysis of and response to the City Attorney's legal advice prepared by the OIA. This draft response reviewed relevant prior City Attorney opinions, dating back as far as 1946; a Court of Appeal decision concerning a City board's authority; ballot arguments supporting creation of the Independent Assessor position; and a record of legal advice permitting Fire Commissioners to hold closed session meetings; all of which were not cited, discussed, reconciled with, or even mentioned in the City Attorney's August 23, 2010 memorandum. The City Attorney's Office has not discussed or addressed the analysis and draft response with the Independent Assessor or the Board's subcommittee in the more than 6 months since it was provided to the City Attorney's Office for comment. Some of the points raised by the OIA draft response include:

1. Charter section 523 says the Independent Assessor has the same access to Fire Department information as the Board.
2. Charter section 500 says both the Police Department and the Fire Department shall be under the control and management of a board of commissioners that shall be the head of the department. The head of each such department shall have the power to supervise, control, regulate and manage the department pursuant to Charter section 506.
3. A January 25, 1999 City Attorney report to the City Council said the Police Commission, as head of the Police Department, may access all information available to the department. A September 30, 1999 City Attorney report to the City Council says that when new Charter section 573 becomes operative on July 1, 2000, the Inspector General will "have

the same access ... to information” as the Police Commission; that the Commission, as head of the Police Department, has access to everything within the control of the Department; and that on July 1, 2000, the Inspector General will have the same authority.

4. Charter section 509, a May 9, 2006 City Attorney opinion, a September 20, 1999 City Attorney opinion and *Patton v. Board of Harbor Commissioners* (1970) 13 Cal.App.3d 536, 542-43, say a board, such as the Board of Fire Commissioners, has supreme or ultimate authority to instruct a general manager, such as the Fire Chief, with respect to all of his or her duties and responsibilities, including the authority to appoint, discharge, suspend, transfer or instruct a department’s employees. The September 20, 1999 City Attorney opinion says board instructions may be specific and that although rare, a managing commission may issue precise directions to the chief that are operational in their nature.
5. A 1946 City Attorney opinion says a public officer or board has those implied powers that are necessary to the exercise of the powers expressly granted, and the duty to acquire knowledge of department operations because such knowledge is essential to intelligent supervision by a board over a department. A January 6, 1997 City Attorney opinion letter says the Inspector General may review and copy any internal investigation, whether it be criminal or administrative, regardless of the personnel involved. This letter also says that in auditing any internal investigation, the Inspector General may require the cooperation of any Department employees, conduct interviews, and obtain documents and things necessary to a thorough investigation, because the voters granted the Inspector General responsibility to oversee the investigation and adjudication of misconduct in the Police Department, and *California Civil Code* section 3522 says one who grants a thing is presumed to grant also whatever is essential to its use.
6. The May 9, 2006 City Attorney opinion says a general manager, such as the Fire Chief, may not disregard the instructions of a board, such as the Fire Commission, and the fact a board does not appoint or remove the general manager does not diminish its authority as head of the department.
7. A January 14, 2008 report from the City Personnel Department to the City Council recommending creation of the Independent Assessor position said unfettered access to complaint and disciplinary tracking systems, databases, files, members, investigations, management, etc., is paramount because anything less would be an impediment. The Personnel Department report went on to say: “To guarantee and preserve the requisite access we strongly propose that such access be codified through ordinance or charter provision such as Charter section 573 that grants LAPD’s Inspector General access to Department Information.”
8. While the Independent Assessor has no authority to conduct investigations, as opposed to the Inspector General, the right to access all Fire Department information for purposes of conducting audits, assessments or reviews is not dependent on an investigative function. No legal authority supports the proposition that access to confidential information, oversight of the internal disciplinary process, or ensuring that misconduct investigations

are conducted in a thorough, fair and effective manner is dependent on the authority to conduct investigations.

9. The Independent Assessor's approved class specification, both before and after deletion of an investigative function, says the Independent Assessor has the duty to review investigations to determine whether investigations are conducted fairly and comprehensively, and progress within standard time frames.
10. The Board's expressly stated power to instruct the Fire Chief in the appointment, discharge, suspension and transfer of Fire Department employees, pursuant to Charter section 509, provides a stronger basis for accessing personnel records, disciplinary information and investigative files than the Police Commission's Charter section 571(b)(1), which explicitly prohibits the Police Commission from issuing instructions concerning the Police Chief's disciplinary authority.
11. The Board of Fire Commissioners was not required to adopt any rules requiring the Fire Department provide the Independent Assessor with access to all Fire Department information because adoption of Charter section 523 provided all necessary access.

When the City Attorney's Office had not scheduled the private discussion they had requested in the four months following the September 21, 2010 Board meeting, the Board's subcommittee sent a January 18, 2011 letter to the City Attorney asking that the meeting be scheduled if the City Attorney's Office still wanted a private discussion of legal advice. More importantly, the Board's subcommittee provided the City Attorney with written questions concerning legal advice in an attempt to focus the discussion and address the issues that were most important to the Board.

The Board's subcommittee met with the City Attorney's Office on March 1, 2011. Although the Independent Assessor's authority was discussed briefly, most of the meeting was spent discussing other legal matters. President Hudley-Hayes asked that another meeting be set to discuss the Independent Assessor's authority. A follow up meeting has not been scheduled. The City Attorney's Office has not answered the subcommittee's written questions in the more than 5 months since they were sent to the City Attorney's Office.

On May 16, 2011, the City Attorney's Office provided a legal memorandum in response to a request for legal advice initiated by the Independent Assessor on an unrelated matter. Part of the City Attorney's response said the functions of discharging and suspending Department employees are reserved for the Fire Chief but are subject to review and corrective instruction from the Fire Commission. The May 16, 2011 advice cited Charter sections, a court of appeal decision and a prior formal City Attorney opinion, none of which were cited or distinguished when the City Attorney said the Board of Fire Commissioners has no role in personnel actions or discipline matters.

The City Attorney's May 16, 2011 opinion stating the Fire Chief's functions of discharging and suspending Department employees are subject to review and corrective instruction by the Board cannot be reconciled with the City Attorney's August 23, 2010 memo stating: 1) the Board has

no role in personnel actions or discipline; and 2) the Fire Chief has exclusive jurisdiction over the appointment, discipline and transfer of department employees. The City Attorney's May 16, 2011 advice is generally consistent with the City Attorney's analysis of board authority dating back at least six decades.

More recently, Dean Erwin Chemerinsky was asked for an opinion concerning the Independent Assessor's legal authority under the current Los Angeles City Charter. Dean Chemerinsky is the Dean and Distinguished Professor of Law at the University of California, Irvine School of Law, and a preeminent legal scholar. He previously served two years as Chair of the Elected Los Angeles Charter Reform Commission that was instrumental in drafting the current City Charter. A week after receiving the request and voluminous materials for review, Dean Chemerinsky provided a written opinion stating it is clear that the City Charter provides both the Board of Fire Commissioners and the Independent Assessor with access to all personnel files, disciplinary records and investigative materials, and the City Attorney's August 23, 2010 memorandum is mistaken.

On June 29, 2011, the City Attorney's Office received a letter from the OIA offering the chance to reconsider its August 23, 2010 advice concerning the Independent Assessor's authority and/or to comment on the accuracy of this board report, the Independent Assessor's policy statement and Dean Chemerinsky's opinion. On July 7, 2011, the Office of the Independent Assessor received a letter from the City Attorney's Office indicating, among other things, the City Attorney's Office is the City's sole authorized legal adviser, Dean Chemerinsky's analysis was incomplete and flawed, the Independent Assessor's policy statement was at odds with City Attorney advice and applicable law, a further Charter amendment was required to provide full access to information, and the City Attorney's Office was standing by its advice.

In the last 18 months since the City Attorney's Office said they were examining the authority of the Independent Assessor to access information, a number of questions and concerns have not been addressed by the City Attorney's Office. Some of those questions include:

1. What language of the City Charter supports the City Attorney's August 23, 2010 statement that the authority to "appoint, discharge, suspend or transfer" is **exclusive** to the Fire Chief?
2. How can the City Attorney's statement that the Fire Chief has "exclusive jurisdiction over the appointment, discipline, and transfer of employees in the department" be reconciled with the preamble to City Charter section 509 which says, "**Subject to the provisions of the Charter, the rules of the department and the instruction of his or her board,** the chief administrative officer of a department or bureau under the control and management of a board of commissioners, except the Police Department, shall ... appoint, discharge, suspend, or transfer the employees of the department?"
3. Why did the City Attorney's August 23, 2010 advice memorandum fail to discuss, distinguish or even mention City Charter section 509 when discussing the power and authority of a managing board such as the Board of Fire Commissioners?

4. Why did the City Attorney's Office fail to discuss, distinguish or even mention City Attorney Opinion No. 2006:1, dated May 9, 2006, the City Attorney's most recent formal opinion concerning the power and duty of a managing board (involving the Board of Animal Services Commissioners) in its August 23, 2010 advice memorandum when discussing the power and authority of the Board of Fire Commissioners?
5. Why did the City Attorney's August 23, 2010 advice memorandum fail to discuss, distinguish or even mention *Patton v. Board of Harbor Commissioners* (1970) 13 Cal.App.3d 536, 542-43, which discusses the ultimate power of a managing board, when discussing the power and authority of the Board of Fire Commissioners?
6. How does the City Attorney's Office reconcile its August 23, 2010 legal advice that the Board of Fire Commissioners has no role in personnel actions or discipline of department employees, and the Fire Chief has exclusive jurisdiction over the appointment, discipline and transfer of employees of the department, with the City Attorney's May 16, 2011 legal advice stating the Fire Chief's functions of discharging and suspending department employees are subject to review and corrective instruction by the Fire Commission?
7. How does the Fire Commission review the Fire Chief's discharge and suspension of Fire Department employees, and issue appropriate corrective instructions to the Fire Chief, as permitted by the City Attorney's May 16, 2011 advice, without full and unfettered access to all confidential information the Fire Chief relied on in taking such disciplinary action?
8. What case or statute supports the City Attorney's August 23, 2010 advice that the power to audit, investigate and oversee the handling of misconduct complaints provides greater access to information than the power to audit, assess and review?
9. How does the City Attorney's Office reconcile its August 23, 2010 advice that the Fire Commission and the Independent Assessor do not oversee the Fire Department's disciplinary system with the Independent Assessor's class specification which says the Independent Assessor does assist the Fire Commission with such oversight, and the City Attorney's failure to object to this language when reviewing the class specification in December 2008?
10. How does the City Attorney's Office reconcile its August 23, 2010 advice that the Independent Assessor may not review complaint investigations with the Independent Assessor's class specification which says the Independent Assessor does review complaint investigations to determine whether investigations are conducted fairly and comprehensively, etc., and the City Attorney's failure to object to this language when reviewing the class specification in December 2008?
11. Knowing about specific efforts to reform the Fire Department as a result of litigation brought against the City and highly publicized negative audit findings, did the City Attorney's Office previously fail to recommend and draft Charter language needed to

provide the Fire Commission and the Independent Assessor with the full access to all Fire Department information necessary to ensure reforms are successful?

**Conclusion:**

The City Attorney's August 23, 2010 legal advice concerning the Independent Assessor's authority appears to be mistaken and cannot be reconciled with: 1) the plain language of the City Charter; 2) formal opinions from the City Attorney's Office for six decades preceding August 2010; 3) the City Attorney's May 16, 2011 written advice; 4) City Attorney advice recommending Fire Commissioners engage in closed session meetings to discuss disciplinary and personnel matters before and since August 2010; or 5) the intent of the Charter. According to Dean and Distinguished Professor of Law Chemerinsky, the Los Angeles City Charter permits the Independent Assessor to access all personnel files, disciplinary records and investigative materials because the Board of Fire Commissioners has access to all such information.

The Independent Assessor's *Policy Statement Regarding Access to Records, Files and Information* is attached.



Los Angeles Board of Fire Commissioners  
Office of the Independent Assessor

**POLICY STATEMENT NO. 1**

**ACCESS TO RECORDS, FILES AND INFORMATION**

**Policy statement:**

The Independent Assessor shall have complete, unrestricted and prompt access to inspect and/or copy all information in the control or possession of the Fire Department in whatever form including reports, audits, reviews, plans, projections, documents, files, contracts, memoranda, correspondence, data or information on paper, audio, video, computer memory, tape/disc or other materials of the Department, including ongoing and pending matters. This includes but is not limited to all personnel files, payroll records, disciplinary records, investigative materials, financial records and materials related to or involving litigation of matters involving the Fire Department and its employees.

The Independent Assessor shall have complete, unrestricted and prompt access to any Fire Department employee, office, bureau, division, section or unit subject to limitations imposed by law or collective bargaining agreement.

The Independent Assessor shall have the power to interview Fire Department employees, and compel the production of such information, books, papers, records, data and documents as may be deemed necessary or relevant to any audit, assessment or review undertaken by the Independent Assessor.

The Independent Assessor is not required to articulate to the Fire Department, or its employees, any reason or rationale for any specific request, or obtain prior approval from the Board of Fire Commissioners for requests or interviews. No Fire Department protocols restricting access to information in the possession of the Fire Department or its employees shall apply to the Independent Assessor. The fact a specific type of record is not mentioned in this policy statement shall provide no basis for objecting to the access of all information under the control or possession of the Fire Department by the Independent Assessor.

Access by the Independent Assessor also means access by persons employed by the Independent Assessor pursuant to City Charter section 523(e).

**Legal authority:**

City Charter section 523 says the "Independent Assessor shall report to the Board of Fire Commissioners and shall have the same access to Fire Department information as the Board of Fire Commissioners." The Board of Fire Commissioners adopted rules

requiring Fire Department employees to cooperate with the Independent Assessor, which provides a basis and complete support for this policy statement.<sup>1</sup>

The Fire Department is under the control and management of the Board of Fire Commissioners who is the head of the Fire Department.<sup>2</sup> As head of the Fire Department, the Board of Fire Commissioners shall have the power to supervise, control, regulate, and manage the Fire Department.<sup>3</sup> No aspect of the Fire Department, including personnel, is excluded from the jurisdiction of the Board of Fire Commissioners.<sup>4</sup> The clear intent of the Charter is that the Board of Fire Commissioners, as a managing commission, manages all aspects of the Fire Department, including personnel matters.<sup>5</sup>

The fact the chief administrative officer of the Fire Department is the Fire Chief does not remove managerial authority over personnel from the Board of Fire Commissioners.<sup>6</sup> The Board of Fire Commissioners has supreme or ultimate authority to instruct the Fire Chief with respect to all of his or her duties and responsibilities, including the authority to appoint, discharge, suspend, transfer or instruct Fire Department employees.<sup>7</sup> Although rare from a practical standpoint, a managing commission, such as the Board of Fire Commissioners, may issue precise directions to the Fire Chief that are operational in their nature.<sup>8</sup>

The Fire Chief may not disregard and must honor the instructions of the Board of Fire Commissioners.<sup>9</sup> The Fire Chief's actions in discharging and suspending employees are subject to review and corrective instruction from the Board of Fire Commissioners.<sup>10</sup> The fact the Board of Fire Commissioners does not appoint or remove the Fire Chief does not diminish its authority as head of the Fire Department.<sup>11</sup>

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<sup>1</sup> *Policies and Authority of the Independent Assessor* approved by the Board of Fire Commissioners on December 15, 2009.

<sup>2</sup> Los Angeles City Charter section 500; Los Angeles City Attorney Opinion No. 2006:1, page 2, dated May 9, 2006 (referring to authority of Animal Services Comm. and general manager); opinion from Dean and Distinguished Professor of Law Erwin Chemerinsky, who previously served as Chair of the Elected Los Angeles Charter Reform Commission from 1997-99, pages 1-2, dated June 21, 2011.

<sup>3</sup> Los Angeles City Charter section 506(a); Los Angeles City Attorney Opinion No. 2006:1, page 2, dated May 9, 2006 (referring to authority of Animal Services Comm. and general manager); opinion from Dean and Distinguished Professor of Law Erwin Chemerinsky, page 2, dated June 21, 2011.

<sup>4</sup> Opinion from Dean and Distinguished Professor of Law Erwin Chemerinsky, page 2 dated June 21, 2011

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> Los Angeles City Charter section 509; Los Angeles City Attorney Opinion No. 99-7, page 6, dated September 20, 1999 (referring to authority of LAPD Inspector General (IG)); Los Angeles City Attorney Opinion No. 2006:1, page 3, dated May 9, 2006 (referring to authority of Animal Services Comm. and general manager); *Patton v. Board of Harbor Commissioners* (1970) 13 Cal.App.3d 536, 542-43.

<sup>8</sup> Los Angeles City Attorney Opinion No. 99-7, page 10, dated September 20, 1999 (referring to authority of IG).

<sup>9</sup> Los Angeles City Attorney Opinion No. 2006:1, page 5, dated May 9, 2006 (referring to authority of Animal Services Comm. and general manager); advice memorandum from the Los Angeles City Attorney to the Board of Fire Commissioners and Independent Assessor, page 8, dated May 16, 2011.

<sup>10</sup> Advice memorandum from the Los Angeles City Attorney to the Board of Fire Commissioners and Independent Assessor, page 8, dated May 16, 2011.

<sup>11</sup> Los Angeles City Attorney Opinion No. 2006:1, page 5, dated May 9, 2006 (referring to authority of Animal Services Comm. and general manager).

As head of the Fire Department, the Board of Fire Commissioners may access all information available to the Fire Department.<sup>12</sup> As head of the Fire Department, the Board of Fire Commissioners has access to everything within the control of the Fire Department.<sup>13</sup> The Board of Fire Commissioners and its individual members have the power and duty to acquire knowledge of Fire Department operations because such knowledge is essential to the intelligent supervision of the Fire Department by the Board of Fire Commissioners.<sup>14</sup>

It is an accepted rule of law that a public officer or board has not only the powers expressly enumerated by law, but also those implied powers which are necessary to the exercise of the powers expressly granted.<sup>15</sup> As the manager of the Fire Department, the Board of Fire Commissioners must have access to personnel files, disciplinary records and investigative materials.<sup>16</sup> In order for the Board of Fire Commissioners to exercise its management authority over the Fire Chief, the Board of Fire Commissioners must have full access to personnel materials.<sup>17</sup> It is simply inconceivable that the Board of Fire Commissioners as the manager of the Fire Department could fulfill its management duties without access to personnel materials.<sup>18</sup>

City Charter section 523 copies the language of section 573 concerning the Police Commissions' Inspector General.<sup>19</sup> It was the intent of the Charter Commissions that the Inspector General have full access to all personnel files, disciplinary records and investigative materials.<sup>20</sup> The most important function of the Inspector General was thought to be the review of the handling of complaints against Police Department employees.<sup>21</sup> Section 573 makes this authority explicit and section 523 simply copies this authority for the Independent Assessor.<sup>22</sup>

With the passage of City Charter section 523, the Independent Assessor has the same authority to access information controlled by the Fire Department as the Board of Fire Commissioners.<sup>23</sup> Since the Independent Assessor shall have the same access to Fire Department information as the Board of Fire Commissioners, there is no doubt that the Independent Assessor has access to personnel files, disciplinary records and investigative

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<sup>12</sup> Los Angeles City Attorney Report No. R99.0021, page 11, dated January 25, 1999 (referring to authority of IG).

<sup>13</sup> Los Angeles City Attorney Report No. R99-0302, page 4, dated September 30, 1999 (referring to authority of IG).

<sup>14</sup> 33 Ops. L.A. City Atty 46, page 4, dated January 28, 1946 (referring to authority of Police Comm.).

<sup>15</sup> *Id.* at p. 3.

<sup>16</sup> Opinion from Dean and Distinguished Professor of Law Erwin Chemerinsky, page 2, dated June 21, 2011.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> *Id.* at p. 3.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> Los Angeles City Attorney Report No. R99-0302, page 4, dated September 30, 1999 (referring to authority of the IG).

materials.<sup>24</sup> The Independent Assessor's access to such files, records and materials is made explicit by City Charter section 523, which says the Independent Assessor shall audit, assess and review the Fire Department's handling of complaints of misconduct committed by employees, sworn or civilian of the Fire Department.<sup>25</sup> It would be impossible to perform this task without access to personnel files, disciplinary records and investigative materials.<sup>26</sup> There is no way to assess the handling of misconduct complaints or misconduct without access to personnel files.<sup>27</sup>

The people of Los Angeles have granted the Independent Assessor responsibility to audit, assess and review the investigation and adjudication of misconduct within the Fire Department.<sup>28</sup> To fulfill this mandate it is presumed that the Independent Assessor has all the powers essential to the fulfillment of that responsibility.<sup>29</sup> Thus the Independent Assessor may review and copy any internal misconduct investigation, whether it be criminal or administrative in nature, regardless of the personnel involved.<sup>30</sup> In auditing any internal investigation, the Independent Assessor may require the cooperation of any Fire Department employee(s), conduct interviews and obtain documents and things necessary to determine if the Fire Department's investigation is thorough.<sup>31</sup>

The Los Angeles Civil Service Commission approved the Independent Assessor's class specification on March 12, 2009.<sup>32</sup> It was intended the Independent Assessor would assist the Board of Fire Commissioners in providing direction and strong independent civilian oversight of the Fire Department, conduct an annual audit of the disciplinary process and ad hoc audits.<sup>33</sup> It was intended the Independent Assessor would conduct highly complex and sensitive administrative audits, reviews and assessments including, but not limited to, EEO complaints and discipline, hazing, and fraud and corruption.<sup>34</sup>

The Independent Assessor oversees the Fire Department's internal disciplinary process, civil litigation, EEO investigations, the application of discipline, and other audits and reviews.<sup>35</sup> The Independent Assessor assists the Board of Fire Commissioners in civilian oversight by monitoring the disciplinary process and ensuring investigations are

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<sup>24</sup> Opinion from Dean and Distinguished Professor of Law Erwin Chemerinsky, dated June 21, 2011.

<sup>25</sup> *Id.* at p. 3.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> Los Angeles City Charter section 523; Los Angeles City Attorney opinion letter to Inspector General Katherine Mader, page 1, dated January 6, 1997 (referring to authority of IG).

<sup>29</sup> *Civil Code* section 3522; Los Angeles City Attorney opinion letter to Inspector General Katherine Mader, page 1, dated January 6, 1997 (referring to authority of IG).

<sup>30</sup> Los Angeles City Attorney opinion letter to Inspector General Katherine Mader, page 1, dated January 6, 1997 (referring to authority of IG).

<sup>31</sup> *Id.* at pp. 1-2.

<sup>32</sup> Board of Civil Service Commissioners' meeting minutes of March 12, 2009, page 16.

<sup>33</sup> Report from the Personnel Department to the Civil Service Commission titled: *Creation of New Class-Independent Assessor, Fire Commission*, File No. 52482, page 1, dated March 4, 2009.

<sup>34</sup> *Id.* at pp. 1-2.

<sup>35</sup> Independent Assessor's class specification, page 1, dated March 12, 2009.

conducted in a thorough, fair and effective manner.<sup>36</sup> The Independent Assessor has the duty to review complaint investigations filed against Fire Department employees to determine whether investigations are conducted fairly, comprehensively and progress within standard time frames, and to determine whether adjudication complies with Department policies and procedures.<sup>37</sup> The Independent Assessor has the duty to conduct audits of the internal disciplinary system to identify trends and problems to ensure oversight by the Board of Fire Commissioners is objective, comprehensive and in compliance with recommendations.<sup>38</sup> The Independent Assessor has the duty to review and evaluate citizen complaints intake procedures to ensure thorough investigations and the timely processing of complaints.<sup>39</sup> The Independent Assessor has the duty to audit the Professional Standards Division, including EEO section investigations, to ensure thorough and unbiased adjudication and consistent disciplinary action.<sup>40</sup>

Adopted and effective July 7, 2011.

Stephen Miller  
Independent Assessor

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<sup>36</sup> *Ibid.*

<sup>37</sup> *Id.* at p. 2.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*