

# **EXHIBIT #2**

## QUESTIONS SENT TO THE CITY ATTORNEY

On  
JANAURY 18, 2011

### **Los Angeles Fire Department's Independent Assessor's Authority to Access Fire Department Personnel and Disciplinary Records and Information:**

In connection with that part of the City Attorney's opinion dealing with liability risk:

1. Why does the City Attorney's opinion treat the head of the department like a member of the public or a litigant seeking discovery for the purpose of personnel records disclosure?
2. The City Attorney's opinion cites and relies on cases prohibiting the public disclosure of confidential personnel records to newspapers pursuant to the *California Public Records Act* (CPRA) or the production of confidential personnel records to litigants pursuant to the pretrial discovery statutes. Why does the City Attorney's opinion fail to cite any legal authority addressing access (as opposed to public disclosure and discovery production) to personnel records by the head of the employing department?
3. Why does the City Attorney's opinion treat the head of the Fire Department like a "member of the public," as defined by *Government Code* section 6252(b), as opposed to a "local agency," as defined by *Government Code* section 6252(b), when the issue is access to personnel records as opposed to public disclosure or discovery production?
4. The City Attorney's Office has previously assisted Board members with accessing and viewing confidential personnel files:
  - a. Are Board members now at risk of being named as defendants in lawsuits for accessing confidential personnel files?
  - b. What triggers the statute of limitations for such a lawsuit?
  - c. Does each person whose files have been viewed by Board members have a cause of action against Board members?
  - d. Should Board members disclose and identify each confidential personnel records viewed and discussed in preparation for a lawsuit and should Board members do anything in an attempt to mitigate the damages exposure?
  - e. Do Board members have a right to be defended and indemnified by the City for accessing and viewing personnel records?

- f. Do those whose records have been viewed by Board members, and Board members themselves, have viable legal malpractice actions against the deputy city attorneys who advised and assisted with accessing confidential records?
  - g. Do Board members sued for accessing confidential records have a right to be indemnified by the deputy city attorneys who advised and assisted Board members with accessing confidential records?
- 5. The Board previously directed employees under its control to attend disciplinary meetings where confidential personnel matters were discussed in detail. None of the many deputy city attorneys attending these meetings beginning in approximately January 2008 raised any objections to the Board's employees attending these disciplinary meetings until April 21, 2010, which is about a week after the Independent Assessor's report containing some criticism of the legal services provided by the City Attorney's Office became public:
  - a. Why did the City Attorney's Office, and the many deputy city attorneys who attended disciplinary meetings for the purpose of advising the Fire Department on confidential personnel matters, fail to object to the attendance of Board representatives until after publication of the Independent Assessor's report containing some criticism of legal services?
  - b. Does the failure to raise timely objections expose the City to the risk of Fire Department personnel winning money damages because the Board's direct employees had access to confidential records and heard the discussion of highly confidential information?
  - c. Are Board members and/or their direct employees now at risk of being held financially liable in lawsuits for accessing confidential personnel files at such disciplinary meetings;
  - d. What triggers the statute of limitations for such a lawsuit;
  - e. Does each person whose files have been discussed in the presence of an agent assigned by Board have a cause of action against Board's employee;
  - f. Should the Board or its employees do anything in an attempt to mitigate the damages exposure;
  - g. Do Board members and their employees have a right to be defended and indemnified by the City for accessing and viewing personnel records;
  - h. Do those whose records have been viewed by Board members, and Board employees themselves, have viable legal malpractice actions against the

deputy city attorneys who failed to raise timely objections and permitted such access for at least two years; and

- i. Do Board employees sued for accessing confidential records by attending disciplinary meetings have a right to be indemnified by the deputy city attorneys who failed to raise timely objections?

In connection with those portions of the City Attorney's opinion that state the Fire Chief has "exclusive jurisdiction" over personnel matters in the Fire Department:

1. What language in the Charter makes the authority to "appoint, discharge, suspend, or transfer" exclusive to the Fire Chief?
2. How can the City Attorney's statement to the Board that the Fire Chief has "exclusive jurisdiction over the appointment, discipline, and transfer of employees in the department" be reconciled with the preamble to 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 does the City Attorney's opinion to the Board fail to analyze the language and impact of Charter section 509? Why does the City Attorney's opinion to the Board fail to even mention Charter section 509?
4. City Attorney Opinion No. 2006:1 addresses the authority of Boards and general managers governed by Charter section 509 and other Charter sections. Why did the City Attorney's Office fail to discuss, distinguish, or mention Opinion No. 2006:1 in its August 23, 2010 opinion to the Board of Fire Commissioners?
5. City Attorney Opinion No. 2006:1 and *Patton v. Board of Harbor Commissioners* (1970) 13 Cal.App.3d 536, 542-43, both address the extent to which a general manager such as the Fire Chief must follow the instructions of a City Board or Commission and who has ultimate power and authority over discipline. Why does the opinion the City Attorney sent to the Board on August 23, 2010, fail to discuss, distinguish, or even mention these prior opinions and others like them?
6. Why does the City Attorney's opinion concerning the Independent Assessor's authority ignore, rather than distinguish, reverse or renounce, numerous past City Attorney opinions relating to the power of a City Board or Commission to access information and issue instructions to a general manager or chief administrative officer?

The City Attorney's opinion says the Board "has no role in the oversight of the disciplinary process." Please note the City Attorney's Office also helped write the

Independent Assessor's class specification and again reviewed the class specification after an investigative function was removed but before its final approval:

1. How does the City Attorney's Office reconcile the statement "the Board has no role in the oversight of the disciplinary process" with that portion of the Independent Assessor's class specification that says the Independent Assessor assists the Board in providing civilian oversight by monitoring the disciplinary process in the LAFD to ensure that investigations are conducted in a thorough, fair, and effective manner?
2. How does the City Attorney's Office reconcile the statement "the Board has no role in the oversight of the disciplinary process" with the class specification job duty that requires the Independent Assessor to conduct audits, including an annual audit, of the internal disciplinary system to identify trends and problems to ensure that oversight by the Board of Fire Commissioners is objective and comprehensive, and in compliance with recommendations?
3. To what extent does the Charter amendment drafted by the City Attorney's Office limit the Independent Assessor's powers and authority to assist the Board in providing civilian oversight by monitoring the disciplinary process to ensure investigations are conducted in a thorough, fair, and effective manner; and to what extent did the City Attorney's Office advise the Board, Mayor's Office, City Council and electorate of such limitations?
4. To what extent does the Charter amendment drafted by the City Attorney's Office limit the Independent Assessor's power and authority to conduct audits of the internal disciplinary system to identify trends and problems to ensure oversight by the Board of Fire Commissioners in objective and comprehensive, and in compliance with recommendations; and to what extent did the City Attorney's Office advise the Board, Mayor's Office, City Council and electorate of such limitations?
5. Why does the City Attorney's opinion sent to the Board on August 23, 2010, fail to mention or discuss the Independent Assessor's class specification language concerning the Board's oversight that the City Attorney's Office helped write and later reviewed again before final approval?

In connection with references to the *Brown Act* in the City Attorney's opinion sent to the Board on August 23, 2010:

1. How is the *Brown Act* applicable where the review of personnel files is not to be conducted by the local legislative body, but rather by an individual subordinate to the Board to whom the *Brown Act* does not apply?

2. Why has the City Attorney's Office continually advised and assisted the Board in holding closed session meetings to discuss confidential personnel and disciplinary matters when it now says that doing so would violate the *Brown Act*?
3. City Attorney Opinion No. 2004:8 says willful *Brown Act* violations can result in criminal penalties; and even inadvertent violations can result in substantial civil penalties including injunctive relief, as well as payment of attorney's fees and costs. In light of Opinion No. 2004:8:
  - a. To what extent are current and former Board members and deputy city attorneys exposed to criminal penalties for holding closed session meetings in light of what the City Attorney's Office said about 85 Ops.Cal.Atty.Gen 77 in its August 23, 2010 opinion to the Board?
  - b. To what extent are current and former Board members and deputy city attorneys exposed to civil penalties for holding closed session meetings in light of what the City Attorney's Office said about 85 Ops.Cal.Atty.Gen 77 in its August 23, 2010 opinion to the Board?
  - c. To what extent are current and former Board members entitled to be defended and indemnified by the City if prosecuted for criminal or civil *Brown Act* violations?
  - d. To what extent do current and former Board members have a viable cause of action for legal malpractice against deputy city attorneys who advised and assisted Board members in accessing and discussing confidential personnel matters in closed sessions if found in violation of the *Brown Act*?
  - e. Do persons whose confidential records have been discussed with Board members in closed session meetings have a cause of action against Board members; if so, what triggers the statute of limitation; and should Board members do anything in an attempt to mitigate damages?
  - f. To what extent do current and former Board members have a right to seek indemnity or bring legal malpractice actions against deputy city attorneys if Board members are found liable to those whose records have been viewed or discussed in closed session meetings?

With regard to the legislative intent section of the City Attorney's opinion sent to the Board on August 23, 2010:

1. Is it the opinion of the City Attorney's Office that the current Charter language, as drafted by City Attorney's Office, accurately reflects the **Personnel Department's recommendation** to the City Council that the Independent Assessor receive "unfettered access to complaint and disciplinary tracking

systems, databases, files, members, investigations, management, etc. ... because anything else would be an impediment?"

2. The City Attorney's Office helped write the Independent Assessor's class specification that says, among other things: The Independent Assessor assists the Board in providing civilian oversight by monitoring the disciplinary process in the LAFD and to ensure that investigations are conducted in a thorough, fair, and effective manner. The City Attorney's Office recommended no changes to this language after the City Council removed an investigation function and before final approval by the Civil Service Commission.

- a. To what extent does the current Charter language, as drafted by City Attorney's Office, limit or prohibit the Independent Assessor from performing all of the duties set forth in the class specification the City Attorney's Office helped draft and later reviewed again before final approval? If the Charter language does set forth limits, did the City Attorney's Office advise the Board, Mayor's Office, City Council or Civil Service Commission of the limits?
- b. Why does the opinion sent to the Board by the City Attorney's Office concerning the authority of the Independent Assessor fail to discuss or mention the class specification and job duties the City Attorney's Office helped write and later reviewed before final approval?
- c. Why does the City Attorney's Opinion say the Board **"has no role in oversight of the disciplinary process"** when the class specification the City Attorney's Office helped write and later reviewed before final approval says **"the Independent Assessor assists the Board in providing civilian oversight by monitoring the disciplinary process ...?"**

3. The City Attorney's opinion told the Board "since the IA has no authority to investigate, it is impermissible for the IA to have investigators as direct reports, or to otherwise receive investigative material or information regarding confidential personnel or disciplinary matters."

- a. What legal authority supports this opinion?
- b. How does the City Attorney's Office reconcile this opinion with the job duties set forth in the class specification the City Attorney's Office helped write, and later reviewed before final approval, that says the Independent Assessor **"reviews investigations** of complaints filed against Department employees to determine whether investigations are conducted fairly and comprehensively and progress within standard time frames, and to determine whether adjudication complies with Department policies and procedures?"

- c. Why does the City Attorney's opinion fail to discuss the effect, or even mention, that portion of the class specification that says the Independent Assessor reviews investigations of complaints?
- 4. The ballot arguments in support of the Charter amendment proposing creation of the Independent Assessor position included: "experience of our ... Police Department demonstrates that an independent monitor is essential in maintaining the highest professional standards ... Measure A will permit the Fire Commission to hire and supervise an Independent Assessor, who will monitor the Fire Department's efforts to implement discipline in an appropriate and consistent manner ... The Assessor's independence from the department chain of command will ensure confidence from the public ... that professional standards are established and enforced in a fair and evenhanded way... Prevent taxpayer dollars from going to pay costly courtroom verdicts... Measure A is ... about whether the person in this critical oversight role should be independent from the Fire Department chain of command... Experience with the ... Police Department's Inspector General has shown that an independent official helps ensure a rigorous and successful program to secure and maintain high professional and ethical standards... Independence also boosts citizen's confidence in the performance ... of the Fire Department... This in turn reduces the City's exposure to legal challenges and litigations costs... Support independent oversight... Vote "yes" on Measure A."

- a. Why does the City Attorney's Opinion fail to discuss the ballot arguments that accompanied Charter Amendment A, which created the Independent Assessor position (other than footnote 44 which suggests looking at the Ballot for the Charter amendment)?
  - b. Is it the opinion of the City Attorney's Office that the current Charter language, as drafted by the City Attorney's Office, does not permit the Independent Assessor to monitor the Fire Department's efforts to implement discipline in an appropriate and consistent manner independent from the Department's chain of command as the electorate was told?
  - c. To what extent does the Charter language, as drafted by the City Attorney's Office, limit the Independent Assessor in any way from fully performing all the tasks referred to in the ballot language provided to the electorate when asked to approve the Charter amendment drafted by the City Attorney's Office? Did the City Attorney's Office advise the Board, Mayor's Office, City Council or electorate of these limitations at any time?



In comparing the Police Commission's Inspector General position with the Fire Commission's Independent Assessor:

1. The City Attorney's opinion to the Board says the Police Chief and Fire Chief have exclusive jurisdiction over the appointment, discipline, and transfer of their respective department employees. If the authority over employee discipline is the same for both, why is the Police Chief expressly excluded from the language of Charter section 509 and the addition of Charter section 574 necessary?
2. How can both the Police Chief and the Fire Chief have exclusive jurisdiction over the appointment, discipline, and transfer of their respective department employees when Charter section 571 expressly prohibits the Police Commission from issuing instructions to the Police Chief regarding his or her disciplinary authority pursuant to Charter section 1070 but there is no equivalent Charter restriction for the Fire Commission?
3. Section 4.600 of the Los Angeles Administrative Code relates to the collection of information by the Inspector General from complaining Police Department employees or witnesses. It does not relate to, or reference access to or review of, confidential information. As such, how is section 4.600 relevant to the Independent Assessor's access to confidential information in any way?
4. Why does the City Attorney's opinion concerning the Independent Assessor's authority fail to discuss the application of, or even mention, the law of implied or presumed powers as discussed in City Attorney opinions in 1946 and 1997? What prohibits the law of implied or presumed powers from being applicable to the Independent Assessor to the same extent it was used to justify unfettered access by the Police Commission's Inspector General?
5. Twice in 1999 the City Attorney's Office provided the City Council with the same opinion concerning the legal basis for the Police Commission's unfettered access to all information under the control of the Police Department. Why did the City Attorney's Office provide the Board of Fire Commissioners with a completely different answer to the exact same question when providing an opinion concerning the Independent Assessor's authority in 2010?
6. Without conducting investigations of any kind, the Police Commission's Inspector General has been performing audits and reviews that result in complete and unfettered access to all information in the Police Department, including unrestricted access to confidential records, for many years preceding the creation of the Independent Assessor position. The Inspector General was conducting and openly publishing such reviews and audits when the City Attorney's Office drafted a Charter amendment for the voter's consideration that proposed the Independent Assessor would have the power and authority to audit, assess and review.

- a. Did the City Attorney's Office previously advise the Mayor's Office, Board of Fire Commissioners, City Council or voters the Independent Assessor would have less access to confidential information when conducting audits than the Inspector General has when conducting audits?
- b. Why would the City Attorney's Office draft a Charter amendment granting both the Inspector General and the Independent Assessor the power and authority to conduct audits if the result is more access to confidential records for the Inspector General when conducting an audit and less access when the Independent Assessor is conducting an audit?

New Charter language:

1. What language would need to be changed or added to the Charter to provide the Board of Fire Commissioners with the power and authority to provide civilian oversight over the Los Angeles Fire Department disciplinary process?
2. What language would need to be changed or added to the Charter to provide the Board and Independent Assessor with the unfettered power and authority to access all Fire Department information?
3. What was the cost of drafting and having the electorate vote on a Charter amendment proposing the creation of an Independent Assessor position that does not provide unfettered access to all Fire Department information, including confidential personnel records?
4. What will be the cost of drafting and having the electorate vote on a Charter amendment that will give the Board of Fire Commissioners the power and authority to provide civilian oversight over the Fire Department's disciplinary process?
5. What will be the cost of drafting and having the electorate vote on a Charter amendment that will provide the Board and Independent Assessor with unfettered power and authority to access all Fire Department information?

Timeliness of opinion:

1. On December 21, 2009, the Fire Chief sent an email indicating the City Attorney's Office had been invited to comment on the legal authority of the Independent Assessor to access personnel files. The Fire Department later reported a deputy city attorney told the Department to tell the Independent Assessor to tell the Board to request a legal opinion from the City Attorney's Office concerning the legal authority to review personnel files. On April 13,

2010, the Board directed the City Attorney's Office to provide a legal opinion in 30 days or the Fire Chief would be directed to provide complete access to the Independent Assessor. On May 11, 2010, the City Attorney's Office said it would issue its opinion that week. The legal opinion was not issued until August 23, 2010.

- a. Why did it take so long for the City Attorney's Office to provide its legal opinion?
- b. Why didn't the City Attorney's Office provide an opinion in response to the Department's questions concerning the Independent Assessor's authority and why was the Board required to take formal Board action before the City Attorney's Office issued an opinion?
- c. Why did the City Attorney's Office fail to provide its legal opinion within 30 days after April 13, 2010 as directed by the Board?

# **EXHIBIT #3**

DECEMBER 15, 2009

APPROVED: 12/15/09  
BOARD OF FIRE COMMISSIONERS  
BY: *Blanca Villarreal*  
COMMISSION EXECUTIVE ASSISTANT II

BOARD OF FIRE COMMISSIONERS  
FILE NO. BFC 09-117 R1

Date: December 3, 2009  
To: Board of Fire Commissioners  
From: Stephen Miller, Independent Assessor  
Subject: Policies and Authority of the Independent Assessor

FINAL ACTION:	<input checked="checked" 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:

Approve the attached "Policies and Authority of the Independent Assessor."

Summary:

In March 2009, the voters of Los Angeles approved Charter Amendment A, which created the position of Independent Assessor. Section 523 of the City Charter provides that the Independent Assessor shall have the power and duties to "under rules established by the Board of Fire Commissioners" audit, assess and review any portion of the Los Angeles Fire Department.

The Board of Fire Commissioners has appointed an Independent Assessor. The attached "Policies and Authority of the Independent Assessor" set forth a proposed set of rules that would govern the Independent Assessor's reporting relationship to the Board of Fire Commissioners as well as the relationship between the Independent Assessor and the Los Angeles Fire Department. This includes defining the authority of the Independent Assessor as well as the duties and responsibilities of the Fire Department.

**LOS ANGELES BOARD OF FIRE COMMISSIONERS**

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**POLICIES AND AUTHORITY OF THE INDEPENDENT ASSESSOR**

The Board of Fire Commissioners hereby establishes the following rules:

**PREAMBLE:**

In March 2009, the voters of Los Angeles approved Charter Amendment A, which created the position of Independent Assessor. Section 523 of the Charter provides that the Independent Assessor shall have the power and duty to "under rules established by the Board of Fire Commissioners" audit, assess and review any portion of the Los Angeles Fire Department. Accordingly, the Board of Fire Commissioners establishes the following rules.

**I. DIRECT REPORTING**

The Independent Assessor reports to and takes direction directly from the Board of Fire Commissioners (the Board) for all actions. The President of the Board embodies the authority of the Board and is the liaison for the Board on all communications, direction, assignments, and personnel matters relative to the Independent Assessor.

**II. DEFINITION OF TERM "INDEPENDENT ASSESSOR"**

The term Independent Assessor shall include employees of the Office of the Independent Assessor.

**III. DUTY TO PROVIDE ACCESS TO DEPARTMENTAL RECORDS AND INFORMATION****A. Duty to Cooperate**

Los Angeles City Fire Department (the Department) employees have an affirmative duty to cooperate with the Independent Assessor and to provide complete, unrestricted and prompt access to inspect and/or copy all Department physical or electronic records accessible to the Board, 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. The Independent Assessor is not required to articulate to the Department any reason or rationale for any specific request, or obtain prior Board approval for requests as described herein.

**B. No Restricted Access**

No Department protocols restricting access to Department records or information shall apply to the Independent Assessor. When inspecting, copying or duplicating Department records or evidence maintained by the Department, the Independent Assessor shall follow the same protocols pertaining to chain-of-custody, preservation of integrity of physical evidence and confidentiality applicable to Department personnel.

**C. Coordinate Activities**

When requesting materials from pending inquiries or investigations, the Independent Assessor shall coordinate all activities with the Department in a manner that does not interfere with or compromise the Department's work, inquiry or investigation.

**IV. ACCESS TO PERSONNEL**

**A. Prompt Access**

To carry out the duties of the office, the Independent Assessor shall have prompt access to any employee, and/or office of the Department, subject to limitations imposed by law or collective bargaining agreements. The Independent Assessor shall also have prompt access to any member of the Board's staff.

**B. Interviews and Documents**

To carry out the duties of the office, the Independent Assessor shall have the power to interview 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, investigation or review undertaken. The Independent Assessor shall notify the President of the Board of the issuance of such information requests.

**V. CONFIDENTIALITY OF COMPLAINANTS AND WITNESSES**

The Independent Assessor shall not disclose the identity of a complainant or witness without the individual's consent, unless such disclosure is unavoidable in order to investigate an allegation effectively or is otherwise required by law or the City Attorney's Office, provided, however, that the Independent Assessor shall

disclose the identity of such individual to the Board upon request. The Office of the Independent Assessor is not afforded an absolute privilege protecting conversations with complaining persons or witnesses, as a matter of law. Accordingly, any individual who requests confidentiality from the Independent Assessor shall be accurately informed of the inability to guarantee confidentiality.

## **VI. PROTECTION AGAINST RETALIATION**

### **A. Protected Right to Contact Independent Assessor**

It is the policy of the Department that employees are free to contact the Independent Assessor without fear that their employment status might be adversely affected. An employee's contact with the Independent Assessor shall play no role in any future employment action towards the individual by the Department. Retaliation by adverse employment action or harassment against employees who provide information to the Independent Assessor is a violation of Department policy and undermines the effectiveness of oversight efforts of the Independent Assessor by impeding the continued flow of information. However, the protections of this section shall not apply when the contact was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

### **B. Supervisory Vigilance**

The Board, the Independent Assessor and all Department supervisors shall be vigilant in protecting from retaliation or reprisal or threat of retaliation or reprisal any individual who discloses any information to the Independent Assessor.

### **C. Retaliation Complaints**

In the event that the Independent Assessor concludes that there is reason to believe retaliation against an individual has occurred, the Independent Assessor shall promptly forward a complaint, except a complaint against the Fire Chief, to the Commander of the Professional Standards Division or promptly request the Board to make a determination whether notice to the Professional Standards Division should be delayed.

## **VII. RULES PERTAINING TO ASSESSMENTS CONDUCTED BY THE INDEPENDENT ASSESSOR**

### **A. Definition of Assessment**

As used herein, "assessment" includes audits, inquiries, reviews, questions, and examinations of documents, data, records, evidence, or persons, and excludes the



routine or passive review of Department produced reports, files or Department investigations.

**B. Overall Power of the Independent Assessor to Audit the Department**

The Independent Assessor is empowered to initiate and conduct assessments of the Department, without limitation as to the type of activity of the Department, including oversight of ongoing and pending matters, unless directed by the Board to cease, end or limit an assessment, audit, inquiry, or review.

**C. Limitation of Access to the Records of the Independent Assessor**

The Independent Assessor is not obligated to provide access by the Department to the files of the Independent Assessor unless ordered to do so by the Board or required by law.

**D. Activities of the Independent Assessor Pertaining to Department Employees**

The Independent Assessor shall promptly forward any new personnel complaint made known to the Independent Assessor, except a complaint regarding the Fire Chief, to the Commander of the Professional Standards Division, or promptly request that the Board make a determination whether notice to the Professional Standards Division should be delayed. In forwarding matters to Professional Standards Division, the Independent Assessor shall disclose the identity of an eyewitness (i.e. percipient witness) to misconduct, unless the Independent Assessor promptly requests that the Board make a determination that disclosure is not necessary to investigate the allegations effectively.

When interviewing Department employees who are reporting misconduct, the Independent Assessor shall advise the Department employees that a report to the Independent Assessor does not satisfy their obligation to report misconduct pursuant to Departmental and City policies.

**E. Investigations of Individuals Not Employed By The Department**

The Independent Assessor does not have the power to conduct investigations of individuals not employed by the Department. However, the Independent Assessor may engage in the oversight of the Department's investigations of such individuals. In the event the Independent Assessor receives a report of criminal activity within the jurisdiction of the Department, the Independent Assessor shall promptly forward to the appropriate Department investigative unit all material information provided to the Independent Assessor

## VIII. REFERRAL OF CRIMINAL MATTERS TO OTHER AGENCIES

The Independent Assessor's powers do not include the independent power to refer criminal matters to outside law enforcement or prosecutorial agencies. In the event that the Independent Assessor determines that it is appropriate to provide law enforcement officials in agencies outside of the Los Angeles Fire Department with information or evidence relating to criminal acts, the Independent Assessor shall simultaneously recommend to the Board and the Fire Chief the reporting of the circumstances. If the Fire Chief fails to respond or fails to make the referral, then the Independent Assessor shall notify the Board of the failure to report. The Board then determines whether to instruct and direct the Fire Chief to make such a referral. In the event of a conflict of interest involving the Fire Chief or if the Fire Chief fails to comply with the Commission's instruction to refer a particular matter to an outside agency, the Commission may, in its discretion, make such a referral or instruct the Independent Assessor to do so on its behalf.

## IX. PUBLICATION

This document shall be promptly distributed by the Fire Chief throughout the Fire Department in the form of a Departmental Bulletin and shall be included in the Fire Department's Manual of Operation.

Adopted by the Board of Fire Commissioners on:

APPROVED: 12/15/09  
BOARD OF FIRE COMMISSIONERS  
BY: *Genethia Hudley-Hayes*  
COMMISSION EXECUTIVE ASSISTANT II

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Genethia Hudley-Hayes, President  
Board of Fire Commissioners