


**LOS ANGELES FIRE DEPARTMENT**

**BRIAN L. CUMMINGS**  
FIRE CHIEF

May 30, 2013

BOARD OF FIRE COMMISSIONERS FILE NO. 13-073
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TO: Board of Fire Commissioners

FROM: Brian L. Cummings, Fire Chief

SUBJECT: DEPARTMENT'S PRELIMINARY RESPONSE TO THE INDEPENDENT  
ASSESSOR'S REPORT RELATIVE TO ASSESSMENT OF THE  
ALTERNATIVE INVESTIGATIVE PROCESS

FOR INFORMATION ONLY:	<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 Withdrawn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

**For Information Only**

The Independent Assessor's Office completed an audit of the Fire Department's Alternative Investigative Process. The audit determined that the Fire Department needed to do more to improve oversight and reporting management, obtain dedicated resources to complete investigations in timely fashion, improve policy and practices, and maintain consistency with established policy and practices.

The Fire Department has addressed the recommendations and the findings included in the audit, and has established the proposed policies and procedures.

Attached for your review, is the Department's preliminary response to the Independent Assessor's report entitled "Assessment of the Fire Department Alternative Investigative Process."

Board report prepared by Daren Palacios, Chief Deputy, Administrative Operations.

Attachment

**Matrix for Independent Assessor for Alternative Investigative Process**

**CASE-SPECIFIC RECOMMENDATIONS**

<b>#</b>	<b>RECOMMENDATION</b>	<b>RESPONSIBLE PARTIES</b>	<b>TIMELINE</b>	<b>STATUS</b>
<b><i>Investigation of Subpoena Service</i></b>				
1	The Department should ensure that it accepts and investigates third-party complaints to the same degree and extent as firsthand complaints. Additionally, the Department's investigation should focus on the conduct engaged in by Department employees and avoid speculation about the complaining party's motives.	Fire Chief Cummings, Chief Palacios, Chief Frazeur and Jenny Park	Completed Implementation begins June 2013	A system which includes review by Risk Manager and Fire Chief at regular bi-weekly meetings has been implemented to assure compliance. Meetings scheduled 1 <sup>st</sup> and 3 <sup>rd</sup> Wednesdays of the month.
2	The City Charter should be amended to provide the Fire Department with the power to issue investigative subpoenas.	Chief Mathis Chief Ulrich and Paul Hayashida	March 2015	Proposed Charter language changes are complete. Changes will be forwarded by October 2014. Prior recommended changes have been approved in Commission, but failed in Council Committees.
<b><i>Complaint of Misconduct Initially Closed Without Investigation</i></b>				
3	The Department should take steps to ensure that PSD supervisors do not close cases without an investigation, especially when the Fire Chief has said that an investigation will be conducted. PSD supervisors who exceed their authority should be held accountable.	Fire Chief Cummings, Chief Palacios, Chief Ulrich, Jenny Park	Completed June 5, 2013	Admin Ops or PSD to update Fire Chief on status of PSD cases or Alternative Process cases by written report at bi-weekly meetings.
<b><i>Improper Use of Department Equipment</i></b>				
4	Clearly written guidelines concerning the use of Department resources from the Fire Chief provided to a defense representative at the time he or she is appointed may provide a short-term solution to educate defense representatives about using Department resources	Chief Mathis	Updating guidelines June 30, 2013	Guidelines to be updated and provided to labor organizations and defense representatives.
5	The improper use and abuse of Department resources and the making of misleading statements are serious allegations that must be thoroughly and completely investigated in a timely manner. If such allegations are sustained, appropriate corrective and /or disciplinary action should be taken consistent with disciplinary guidelines.	Fire Chief Cummings, Chief Palacios, Chief Ulrich	In progress August 1, 2013	The Department is developing an internal oversight by including a review by the Risk Manager and by providing a bi-weekly written reports to the Fire Chief.
<b><i>Report of Inappropriate Photographs</i></b>				
6	Complaints against a current Fire Chief, whether or not he or she was the Fire Chief at the time of the alleged incident, should be forwarded to the Mayor for investigation, adjudication and discipline. They should not be handled by Department members who report to the Fire Chief. Charter Sections 508 and 231 provide the Mayor with the authority to appoint, review and remove the Fire Chief.	Chief Ulrich, Chief Palacios, PSD Moderator	In progress September 1, 2013	Establish procedure where alleged misconduct claims will be forwarded to the Mayor's Office, who will then contact LAPD, Personnel Department, or appropriate agency to conduct investigations.
7	Without the appropriate Charter authority or other direction from the Mayor, cases involving alleged misconduct by the Fire Chief should not be forwarded to the Fire Commission for adjudication. The Commission does not have the express power to appoint, review and remove the Fire Chief.	Chief Ulrich, Chief Palacios, PSD Moderator	Implemented June 1, 2013	Cases will <b>not</b> be forwarded to Fire Commission. See status of Item #6 above.

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8	The Charter should be amended to mirror the statute of limitations, and its tolling provisions, as set forth in the FBOR.	Chief Ulrich, Paul Hayashida	March 2015	See Status of Item #2 above.
9	In some but not all cases, conducting an investigation of an old incident, even if no disciplinary action can be taken, may allow the Department to learn important lessons that are useful in improving procedures and policies still in place. Such corrective actions can prevent similar incidents from occurring in the future.	Fire Chief Cummings, Chief Palacios, Chief Ulrich,	In progress September 1, 2013	Current workload exceeding part time workforce . Study of lessons learned for out of statute cases will be prioritized and completed when staff available.
<b><i>Timekeeping Issues</i></b>				
10	The Department should ensure that it seeks legal advice when there are objections and claims that investigations 1) constitute retaliation; 2) impinge on privileged conversations; 3) prevent members from being represented by the representative of their choice; or 4) otherwise interfere with union members' rights.	Chief Mathis Chief Ulrich	Implemented June 1, 2013	Process to obtain legal advice on these objections and claims has been institutionalized. City Attorney advice contained in Binder within PSD.
11	In the short term, the Department must ensure that the cost it incurs when appointing defense representatives is reasonable and necessary. The Department can be assisted in this endeavor with clearly written guidelines, continued monitoring and good legal advice.	Chief Mathis	In progress June 30, 2013	Guidelines to be reviewed and updated. Copies to be provided to labor organizations and defense representatives.
12	In the long term, the Department should consider amending City Charter Section 1060 so that it mirrors Section 1070, which governs the Police Department's Board of Rights process. Charter Section 1070, specifically subsection (m), provides the accused with a right to representation but at his or her expense. Therefore the Police Department is not obligated to pay for the defense representative's time spent preparing for and defending a Board of Rights. This change in the Department's Board of Rights process would eliminate many of the problems associated with monitoring defense representatives' timekeeping.	Chief Mathis Chief Ulrich, Paul Hayashida	March 2015	Proposed Charter language changes are complete. Changes will be forwarded by October 2014. Prior recommended changes have been approved in Commission, but failed in Council Committees.
13	Cases involving alleged timekeeping fraud must be fully investigated in order to determine whether such fraud occurred, and, if so, when exactly so that the correct statute of limitations period can be calculated. Furthermore, if the alleged conduct is sufficiently serious, the Department should consider forwarding the case to law enforcement authorities.	Fire Chief Cummings Chief Palacios Chief Frazier Jenny Park	In progress August 1, 2013	The Department is developing an internal oversight by including a review by the Risk Manager and by providing bi-weekly written reports to the Fire Chief.
<b><i>Defense Representative Assignment for a Board of Rights</i></b>				
14	In the short term, the Department should ensure, with the assistance of the City Attorney's Office, that its policies controlling the costs related to the appointment of defense representative, and the way it manages such policies, appropriately and reasonably balance the need for responsible financial controls with the need of defense representatives to have sufficient time to properly prepare for a Board of Rights hearing.	Chief Mathis	In progress June 30, 2013	Guidelines to be updated and provided to labor organizations and defense representatives.
15	In the long term, the City Charter should be amended to require that those facing a Board of Rights hearing pay their own expenses related to the hearing, which includes the cost of representation at the hearing.	Chief Mathis Chief Ulrich Paul Hayashida	March 2015	Proposed Charter language changes are complete. Changes will be forwarded by October 2014. Prior recommended changes have been approved in Commission, but failed in Council Committees.

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16	Cases should be closed and appropriate notices should be sent to the complainant and subject in a timely manner.	Chief Palacios Chief Frazier	In progress August 1, 2013	Review of past cases and appropriate notices in progress will be completed on all current and future cases.
17	Reducing the delay in convening a Board of Rights hearing, reducing continuances and reducing the delay between sessions of the hearing should reduce the cost to the Department.	Fire Chief Cummings, Chief Palacios Chief Ulrich, Paul Hayashida	In progress, November 2013	PSD working on scheduling difficulties for Board of Rights, particularly addressing delays. Training to Chief Officers regarding Board of Rights and relevant Charter sections.
18	The Department should refer misconduct complaints lodged against the Fire Chief to the Mayor for investigation and adjudication. The Department should avoid having the Fire Chief's subordinates conduct such investigations.	Chief Ulrich, Chief Palacios, PSD Moderator	In progress September 1, 2013	Establish procedure where alleged misconduct claims will be forwarded to the Mayor's Office who will then contact LAPD, Personnel Department, or appropriate agency to conduct investigations.
19	Members should not be ordered to sign the admonition form when there is a refusal or objection to signing.	Chief Ulrich	Completed	Forms modified to indicate refusal to sign.
20	In the short term, the Department should ensure, with the assistance of the City Attorney's Office, that its policies for controlling the costs related to the appointment of defense representatives, and the way it manages such policies, appropriately and reasonably balance the need for responsible financial controls with the need of defense representatives to have sufficient time to properly prepare for a Board of Rights hearing.	Chief Mathis	In progress June 30, 2013	Guidelines to be updated and provided to labor organizations and defense representatives
21	In the long term, the City Charter should be amended to require that those facing a Board of Rights hearing pay their own expenses related to the hearing, which includes the cost of representation at the hearing.	Chief Mathis Chief Ulrich Paul Hayashida	March 2015	Proposed Charter language changes are complete. Changes will be forwarded by October 2014. Prior recommended changes have been approved in Commission, but failed in Council Committees.

### GENERAL RECOMMENDATIONS

22	Sufficient investigative, supervisory and management resources must be dedicated to an alternative investigation process to ensure that all members of the Department are held to the same high standards of behavior.	Fire Chief Cummings Chief Palacios, Chief Frazier	In progress November 2013	Short term solution to focus on cases using "V" hours. Long term solution is to work with Mayor's Office and Council to obtain permanent additional staff cut from budget.
23	While an alternative investigative process is required, the Department should consider having PSD conduct investigations of complaints against PSD personnel so long as no PSD supervisor is involved in the investigation either as a subject or a witness	Chief Palacios Jenny Park	Not to be implemented	Conflict, not enough investigators to ensure separation within the Division.

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24	The Fire Chief should immediately adopt a practice of ensuring that he receives regular reports concerning the status of all cases assigned to the alternative investigative process, except those involving himself, to ensure that investigations are timely, complete and thorough, and that both the investigation and adjudication for such cases comply with Department standards.	Chief Palacios Chief Frazier	Implemented June 1, 2013	Admin Ops to update Fire Chief on status of Alternative Process cases by a written report at bi-weekly meetings.
25	The Fire Commission should ensure that the manner, in which the Fire Chief manages the disciplinary process, including the alternative investigation process, is evaluated on a regular basis. This oversight requires the Commission to have access to the same information relied on by the Fire Chief to make disciplinary decisions, and have discussions about the management of specific complaints in order to evaluate compliance with Department policies.	Fire Chief	Pending	Per City Attorney response, access to information is limited to specific request approved by the Fire Commission.
26	The PSD should be sufficiently staffed, supervised and managed by professionals with substantial training and experience in the following areas: conducting, supervising and managing administrative and/or criminal investigations; prosecuting disciplinary cases; and complying with the laws governing such matters. The role and responsibility of sworn personnel in the PSD should be limited to supporting professional investigators, prosecutors, supervisors and managers, and providing subject matter expertise relating to emergency services.	Fire Chief Cummings, Chief Ulrich, Paul Hayashida	Pending	The Department is reviewing the current practice of one Civilian Investigator and one Sworn investigator for PSD cases.
27	If an investigation is referred to an outside investigator, the Department must verify that the individual has the required experience and expertise to conduct a complete, timely and thorough investigation in compliance with the FBOR and Department policies. The Department must also supervise all outside investigators to ensure investigations meet those standards.	Chief Palacios Chief Frazier Jenny Park	Considering November 2013	Analysis being done on success and costs of outside investigators.
28	Investigations must proceed in a timely manner, and investigators, their supervisors and ultimately the Fire Chief must be held accountable if they are not. The first step in every case must be determining the correct statute of limitation date. Then deadlines should be set and met for each important milestone in the investigation, including notifying the subject of the investigation, assigning the investigators, gathering all relevant evidence, conducting interviews, completing the investigation and executive officer reports, filing charges if the complaint is sustained and notifying the subject and complainant of the resolution. Emphasis should also be placed on the following: identifying potential violations of law, rules and policy; avoiding the compromise of potential criminal charges; and ensuring full compliance with due process and other statutory requirements. Most importantly, the investigation must be completed and charges must be filed before the statute of limitations period has expired.	Fire Chief Cummings, Chief Palacios, Chief Frazier Jenny Park	In progress August 1, 2013	The Department is implementing internal oversight by including a review by the Risk Manager and by providing a bi-weekly written report to the Fire Chief. Additionally an annual report to the Fire Commission will be completed or included as part of PSD's annual report.
29	If investigators, supervisors or managers discover additional allegations of misconduct during the course of an investigation, those allegations must be entered as a separate complaint in the CTS as soon as possible and an	Chief Palacios Chief Frazier	In progress August 1, 2013	The Department is implementing internal oversight by including a review

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	investigation must be initiated.			by the Risk Manager and by providing a bi-weekly written reports to the Fire Chief.
30	All relevant investigative materials (including complaints, subject notification letters, interview recordings, final investigation reports, etc.) should be maintained in a case file (hard copy and/or CTS) in a single location. The files for the cases reviewed for this report were found in multiple locations throughout the Department. Some cases had files and documents in multiple locations, and the individual who maintained some of these records had no knowledge that others also had files on the same case.	Chief Palacios Chief Frazeur PSD Moderator	Completed	All files currently managed by the Alternative Investigative Process Executive Officer, Chief Frazeur.
31	The Department should provide ongoing training for supervisors on the FBOR and collective bargaining agreements in order to increase overall compliance. This is especially true with respect to questioning potential subjects about allegations made against them and notifying individuals they are the subject of an investigation. Supervisors, who violate these standards, especially after such training, should be held accountable.	Chief Palacios, Chief Bercik Chief Ulrich, Paul Hayashida Jenny Park	In progress November 2013	Training plans being developed to address recommendations. PSD, Risk Manger and City Attorney to provide training.
32	Investigators must make every effort to interview all complainants, subjects and relevant witnesses. In seven of the 12 cases reviewed for this report, investigators failed to interview the subject, and in 10 cases they failed to interview the complainant. This failure to gather information from the primary individuals involved seriously undermines the factual conclusions reached, and in some cases prevents such conclusions from being made all together. Those complainants, subjects and witnesses who fail to cooperate with attempts to be interviewed should be held accountable.	Chief Palacios, Chief Ulrich, Paul Hayashida Jenny Park	In progress November 2013	Review of cases by Risk Manager to address complaints of cooperations and to hold members accountable.
33	The Department must adopt clear rules for how defense representatives use Department resources. This includes the use of printing resources and office access as well as using variable staffing hours or working overtime to prepare for Board of Rights hearings. Furthermore, when such policies are violated, they must be reported.	Chief Palacios, Chief Mathis Chief Ulrich, Paul Hayashida Jenny Park	In progress June 30, 2013	Guidelines to be updated and provided to labor organizations and defense representatives.
34	With respect to the time used by defense representatives to prepare defenses for Board of Rights hearings, the long-term solution is to amend the City Charter so that the Department is not responsible for paying the expenses related to the work of a defense representative.	Chief Palacios Chief Ulrich Paul Hayashida	March 2015	Recommended Charter changes are complete. Changes will be forwarded by October 2014. Prior recommended changes have been approved in Commission, but failed in Council Committees.
35	The Department must have a credible process for the complete, timely and thorough investigation of alleged misconduct by those assigned to the PSD.	Fire Chief Cummings Chief Palacios Chief Frazeur	In progress	The Department is developing an internal oversight to include a review by the Risk Manager and by providing bi-weekly written reports to the Fire Chief.