



# City of New York

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## OFFICE OF THE COMPTROLLER

Scott M. Stringer  
COMPTROLLER



## MANAGEMENT AUDIT

**Marjorie Landa**

Deputy Comptroller for Audit

### **Audit Report on the New York City Commission on Human Rights' Processing of Complaints**

MJ13-110A

**March 2, 2015**

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
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NEW YORK, NY 10007

SCOTT M. STRINGER  
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March 2, 2015

To the Residents of the City of New York:

My office has audited the New York City Commission on Human Rights (CCHR) to evaluate CCHR's processes and timeliness in handling complaints that allege violations of the City's Human Rights Law. We perform audits such as this to help improve the operations and efficiency of New York City agencies.

This audit found that CCHR failed to meet its internally established one-year benchmark for investigating and closing complaints in over half of its cases. Further, we found that, notwithstanding its failure to meet its established timeframes, CCHR had not analyzed its case files to identify the key factors that affected its case processing and caused delays, nor had it developed any additional strategies to improve case timeliness. In addition, we found that CCHR lacked formal, written operating procedures for the handling and processing of complaints.

Based on the audit findings, we recommend that CCHR undertake a formal assessment of its case files to determine and identify key reasons for case delays and, based on the results of this assessment, develop strategies for alleviating or reducing delay. We further recommend that CCHR identify and correct the data fields in its Complaint Tracking System (CTS) that have inadequate entry controls; that it design and implement exception reporting to identify inaccurate data entries or rejected transactions; and that it consider replacing the CTS database entirely. Finally, we recommend that CCHR ensure that it has clearly defined policies and operating procedures in place to address the handling of complaints and case files.

The results of the audit have been discussed with CCHR officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please email my Audit Bureau at [audit@comptroller.nyc.gov](mailto:audit@comptroller.nyc.gov).

Sincerely,

A handwritten signature in blue ink that reads "Scott M. Stringer".

Scott M. Stringer

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# THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER MANAGEMENT AUDIT

## Audit Report on the New York City Commission on Human Rights' Processing of Complaints

MJ13-110A

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### EXECUTIVE SUMMARY

This audit evaluated the processes and timeliness in handling complaints alleging violation of the City's Human Rights Law<sup>1</sup> by the New York City Commission on Human Rights (CCHR).

CCHR is responsible for enforcing the Human Rights Law, which prohibits discrimination in employment, housing and public accommodations based on race, color, creed, age, national origin, alienage, citizenship status, gender, sexual orientation, disability, marital status and partnership status. A person who believes that s/he has been the victim of discrimination within the City and who has not already filed a complaint with the New York State Division of Human Rights, the Equal Employment Opportunity Commission, or any other similar agency or court, may schedule an appointment or walk in to CCHR's office in lower Manhattan to enter a complaint with the Law Enforcement Bureau.<sup>2</sup> This bureau is directly responsible for the intake, investigation, and prosecution of complaints alleging violations of the Human Rights Law.

### Audit Findings and Conclusions

The audit found that while CCHR had established an informal system of internal practices and protocols for handling complaints that reflect key provisions of the Human Rights Law and CCHR's "Rules of Practice,"<sup>3</sup> it failed to meet its internally established benchmark for the time in which it investigates complaints. Less than half of the 593 cases that CCHR closed between January 1, 2012 and June 14, 2013, 291 (49 percent), were closed within the agency's one-year benchmark. For the remaining 302 (51 percent) cases, CCHR took an average of 427 days to complete investigations and close the cases. CCHR had not analyzed its case files to identify the key factors that affected its case processing and caused delays, nor developed any additional strategies to improve case timeliness. The timely disposition of legal matters is important, particularly in a discrimination case, where the discrimination may continue until the case is

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<sup>1</sup> Title 8 of the Administrative Code of the City of New York.

<sup>2</sup> The City's Human Rights Law covers a broader range of conduct than either New York State or Federal Laws. It requires that a complaint be filed within one year of the last alleged act of discrimination.

<sup>3</sup> Title 47 of the Rules of the City of New York (RCNY).

resolved. Moreover, peoples' memories become less acute the longer that a matter remains unresolved, so it may be more difficult for CCHR to bring a successful action against a respondent if it takes more than a year to determine whether probable cause of discrimination exists.

The audit also disclosed that CCHR lacked formal, written operating procedures for the handling and processing of complaints. Formal written procedures help to ensure that every person involved in a process understands the tasks that are to be accomplished and the acceptable methods to be used in performing those tasks. Finally, the audit noted that CCHR's Complaint Tracking System (CTS) lacked adequate data entry controls to ensure that input data is complete, accurate, and reasonable. If left uncorrected, this weakness could impede the reliability of data, especially case-related performance statistics reported annually by CCHR.

## **Audit Recommendations**

To address these weaknesses the audit made the following six recommendations:

1. CCHR should conduct a formal assessment of its case files to determine and identify key reasons for case delays.
2. Based on the results of that assessment, CCHR should develop strategies for alleviating or reducing those reasons for delay to create greater efficiency in the timely processing of cases.
3. CCHR should identify and correct the data fields in CTS noted as having inadequate entry controls to ensure no further errors in data entry. Program changes should ensure that personnel are prevented from entering erroneous dates, and correct existing dating problems.
4. CCHR should consider replacing its current CTS database or performing a comprehensive review of the system to identify existing problems and errors, and develop a systematic plan and timeframe for correcting those problems.
5. CCHR should design and implement exception reporting to identify inaccurate data entries or rejected transactions.
6. CCHR should ensure that it has clearly defined policies and operating procedures in place to address the handling of complaints and case files. These policies and operating procedures should establish at least a minimum acceptable set of requirements that reflect the Human Rights Law, Title 47 of RCNY, and Comptroller's Directives.

## **Agency Response**

In its response, CCHR officials generally agreed with 4 of the 6 recommendations (3, 4, 5, and 6) made in this audit. However, the agency failed to directly respond to two others (1 and 2) which concerned the need for CCHR to assess and identify key causes of case delays and to develop strategies for effectively addressing those issues.



# AUDIT REPORT

## Background

CCHR is charged with enforcing the City's Human Rights Law. The law prohibits discrimination in employment, housing and public accommodations based on race, color, creed, age, national origin, alienage, citizenship status, gender, sexual orientation, disability, marital status and partnership status. CCHR's Law Enforcement Bureau is directly responsible for the intake, investigation, and prosecution of complaints alleging violations of the City's Human Rights Law.

A person who believes that s/he has been the victim of discrimination within the City and who has not already filed a complaint with the New York State Division of Human Rights, the Equal Employment Opportunity Commission, or any other similar agency or court, may schedule an appointment or walk in to CCHR's office in lower Manhattan to enter a complaint with the Law Enforcement Bureau. Upon visiting CCHR, a staff attorney will meet with the complainant to conduct an intake interview to learn the facts alleged by the complainant and determine whether the case supports a claim that is within CCHR's jurisdiction. If so, the attorney will contact the subject of the complaint and attempt to resolve the matter. If such pre-filing intervention is unsuccessful, a complaint will be filed by a staff attorney with the CCHR Law Enforcement Bureau initiating the complaint process, and the party allegedly responsible for the discrimination (the respondent) will be served with notice of the complaint.<sup>4</sup> Complaints are not filed where the allegations are determined not to support a claim within CCHR's jurisdiction or in cases where CCHR has successfully intervened.

Once a complaint is formally filed and the process initiated, a Law Enforcement Bureau attorney will conduct an investigation. If the attorney finds evidence sufficient to establish probable cause to show that discrimination occurred then, on behalf of the complainant and in the public interest, CCHR will bring the case to the Office of Administrative Trials and Hearings (OATH) for trial.<sup>5</sup> If the parties to the case do not settle at a pre-trial conference, the case will be heard by an OATH administrative law judge who will issue a report and recommendation. Subsequently, a panel consisting of 3 of the 15 CCHR Commissioners will review the administrative law judge's Report and Recommendation and issue a Final Decision and Order.<sup>6</sup> A case will be dismissed at the complaint stage if the CCHR attorney's investigation does not establish probable cause to show discrimination; however, the complainant may appeal to the Commission Chair.

In Fiscal Year 2013, CCHR had a budget of \$6,498,218, consisting of \$4,583,372 for Personal Service (PS) covering 66 positions and \$1,914,846 for Other than Personal Service (OTPS) expenditures.<sup>7</sup> According to CCHR statistics, in Fiscal Year 2013 the agency received a total of 1,548 complaints of which 497 (32 percent) were filed with the CCHR Law Enforcement Bureau,

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<sup>4</sup> The complaint will include the names and contact information for the complainant and respondent(s) as well as the dates of and details about the claimed discriminatory events.

<sup>5</sup> OATH is a City agency, separate and independent from CCCHR.

<sup>6</sup> The Human Rights Law provides for CCHR to impose a civil penalty of up to \$125,000 when the Commission finds that a person has engaged in an unlawful discriminatory practice. Where CCHR finds that an unlawful discriminatory practice was the result of the respondent's willful, wanton or malicious act, a civil penalty of up to \$250,000 may be imposed. Further, CCHR may impose a penalty of up to \$10,000 against any person who knowingly makes a material false statement in any commission proceeding, or in any document or record. In addition to monetary penalties, CCHR will order respondents to cease and desist from unlawful discriminatory practices and provide remedies to plaintiffs, including hiring or reinstating employees, awarding back pay, paying compensatory damages, and/or extending full accommodations, advantages, facilities and privileges to an aggrieved person.

<sup>7</sup> City of New York, Adopted Budget, Fiscal Year 2013, Supporting Schedules pp 1675-1676

189 (12 percent) were deemed viable and settled through pre-complaint intervention, and the remaining 862 (56 percent) were closed without settlement or filing.

## **Objective**

To evaluate CCHR's processes and timeliness in handling complaints alleging violation of the City's Human Rights Law.

## **Scope and Methodology Statement**

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The audit scope covered Calendar Years 2012 and 2013, through June 14, 2013. This audit did not review the quality of CCHR's investigations, the quality of investigative evidence, or the outcomes of cases. The Detailed Scope and Methodology section at the end of this report describes the specific procedures and tests that were conducted.

## **Discussion of Audit Results with CCHR**

The matters covered in this report were discussed with CCHR officials during and at the conclusion of this audit. A preliminary draft report was sent to CCHR officials on January 9, 2015, and discussed at an exit conference held on January 21, 2015. On February 5, 2015, we submitted a draft report to CCHR officials with a request for comments. We received a written response from CCHR officials on February 19, 2015.

In its response, CCHR officials generally agreed with 4 of the 6 recommendations (3, 4, 5, and 6) made in this audit, but failed to directly respond to two others (1 and 2) which concerned the need for CCHR to assess and identify key causes of case delays and to develop strategies for effectively addressing those issues. The full text of CCHR's response is included as addendum to this report.

## FINDINGS AND RECOMMENDATIONS

The audit found that while CCHR has established an informal system of internal practices and protocols for handling complaints that reflect key provisions of the Human Rights Law and CCHR's "Rules of Practice,"<sup>8</sup> it failed to meet its internally established benchmark for the time in which it investigates complaints. Less than half or 291 (49 percent) of 593 cases that CCHR closed between January 1, 2012 and June 14, 2013, were within the agency's one-year benchmark. For the remaining 302 (51 percent) cases, it took CCHR an average of 427 days to complete investigations and close them. CCHR had not analyzed its case files to identify the key factors that affected its case processing and caused delays, nor had it developed any additional strategies to improve case timeliness. The timely disposition of legal matters is important, particularly in a discrimination case, where the alleged discrimination may continue until the case is resolved. Moreover, peoples' memories become less acute the longer that a matter remains unresolved and so it may be more difficult for CCHR to bring a successful action against a respondent if it takes more than a year to determine whether probable cause of discrimination exists.

The audit also disclosed that CCHR lacked formal, written operating procedures for the handling and processing of complaints. Further, we noted that CCHR'S computer-based case tracking system, CTS, lacked adequate data entry controls to ensure that input data is complete, accurate, and reasonable. If left uncorrected, this weakness could impede the reliability of data, especially case-related performance statistics reported annually by CCHR. These matters are discussed in greater detail below.

### **CCHR Did Not Achieve Its Internally-Established Benchmark for Processing Complaints**

CCHR implemented a one-year benchmark in 2002 to measure the age of pending cases (running from the time a complaint is filed to the time the investigation is completed) and reduce the backlog of cases that existed at the time. As highlighted in Table I, below, an analysis of CCHR's data showed that less than half, or 291 (49 percent), of the 593 cases CCHR closed during the period January 1, 2012 - June 14, 2013, were closed within one year.<sup>9</sup> The remaining 302 cases (51 percent) took between one and four years to close.

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<sup>8</sup>Title 47 of the Rules of the City of New York (RCNY).

<sup>9</sup>A case is "closed" for various reasons at different times during its life cycle. For example, a case may be closed because the matter falls outside of CCHR's jurisdiction. However, each case that proceeds to an investigation will be closed after a CCHR attorney determines whether probable cause has been established to show that discrimination occurred. Where probable cause has been found, the case is filed with OATH and closed with CCHR. Where no probable cause is found, the case is simply closed with CCHR.



**Table I**

Aging of 593 Filed Complaint Cases That Were Closed from January 1, 2012–June 14, 2013

<b>Detail/Category</b>	<b>Closed within 1 year</b>	<b>Closed between 1 to 2 years</b>	<b>Closed between 2 to 3 years</b>	<b>Closed after 3 or more years</b>	<b>Total</b>
Number of Cases (Percentage)	291 (49%)	210 (35%)	74 (13%)	18 (3%)	593 (100%)

Further, as shown in Table II, an analysis of CCHR’s data showed that of 583 filed complaint cases that remained active as of June 14, 2013, 181 cases (31 percent) had been open for more than a year.

**Table II**

Aging of 583 Active (Open) Investigative Cases as of June 14, 2013

<b>Aging Category</b>	<b>Active less than 1 year</b>	<b>Active between 1 to 2 years</b>	<b>Active between 2 to 3 years</b>	<b>Active 3 years and more</b>	<b>Total</b>
Number of Cases (Percentage)	402 (69%)	100 (17%)	66 (11%)	15 (3%)	583 (100%)

The average length of time these cases had been active was 734 days (approximately two years). Officials explained that some cases linger because they are complex and others because of situations that delay case investigations. For example, they stated that delays could result from key witnesses or documents being unavailable. They also said that where respondents fail to answer the allegations, they must issue subpoenas to obtain responses and that also causes cases to be delayed. However, it was not possible to determine the primary causes for the significant number of cases that failed to be resolved within the agency’s benchmark of one year because CCHR has not performed a formal analysis to assess and identify the reasons.

While CCHR officials noted that the one-year target did not readily apply to cases of a “complex nature,” they did not describe the factors that would distinguish a case as “complex,” nor did the case data provide indicators or codes that would identify or distinguish a complex case from a routine case. Therefore, no distinction was made when we evaluated the case data for the period January 1, 2012–June 14, 2013.

CCHR officials maintained that controls are in place to monitor the progress and timeliness of cases. Specifically, they stated that those controls include:

- Law Enforcement Bureau Executive Director's meetings with each attorney individually twice a week to discuss intake issues and other matters requiring immediate attention.
- Weekly group staff meetings to discuss pending matters. During these weekly meetings, recent updates on the Human Rights Law are provided. Also, staff may raise concerns or questions and discuss difficulties with a specific case.

- A semi-annual review of each case by the Law Enforcement Bureau Executive Director with staff attorneys to assess each attorney's performance. During these reviews the progress of pending cases are also discussed and reviewed.

These controls, if operating as intended, may succeed in individual cases, but overall they have not produced the benchmark results which CCHR has sought. Further, they have limited effectiveness in identifying the main factors that slow investigations overall. Since CCHR does not have a way to identify the primary obstacles to timely case processing, it cannot develop strategies that could improve the timeliness of its case processing.

Timeliness plays an urgent role in the effective prosecution of legal infractions. Delay can make it difficult to build a case, protect a complainant from further discrimination, or achieve a successful resolution.

## Recommendations

1. CCHR should conduct a formal assessment of its case files to determine and identify key reasons for case delays.
2. Based on the results of that assessment, CCHR should develop strategies for alleviating or reducing those reasons for delay to create greater efficiency in the timely processing of cases.

**CCHR Response:** Officials did not directly address recommendations 1 or 2 in their response. Instead, they stated:

We will continue to strive toward this aggressive [one-year] benchmark, recognizing the unique dynamics of each case and need to properly address the rights and concerns of the parties involved. With respect to benchmarking such caseload, and mindful of activity volume, the 2012 Year-end Report for the New York State Unified Court System states that their goal is to resolve cases within 27 to 30 months from the Request for Judicial Intervention; much longer than the Commission's 12 month goal, and much longer than the average 14 months it actually took the Commission to resolve cases during the time period measured in the report. . . .

The Commission notes that these procedures may be revised after the Commission completes its transition in leadership. As of February 18, 2015, Carmelyn P. Malalis has assumed the role as Chair and Commissioner of the Commission, and plans to undertake an examination of the Commission's policies and operating procedures to assess how the Commission can clarify and refined them consistent with the Comptroller's recommendations.

**Auditor Comment:** The New York State Unified Court System's goal to resolve cases within specific timeframes does not apply to proceedings that are similar to the administrative cases before CCHR. Accordingly, we do not believe these to present a useful basis for comparison to CCHR's internal operations or an applicable measure for comparison to CCHR's timeframe for closing cases. Recommendations 1 and 2 were made to address CCHR's failure to assess the major causes of case delays and

to develop a strategy to effectively minimize those delays. We urge CCHR to specifically examine the causes of its case processing delays when it undertakes the promised general review of its current policies and procedures in order to create greater efficiency in its operations.

## Issues with Complaint Tracking Database System

CCHR's CTS database is a management tool that is used to track, record, and report the status of CCHR's cases. During audit testing, we noted that CTS lacked adequate data entry controls i.e., edit checks. Edit checks are tests for reasonableness, validity, limit, and completeness that are programmed into the database. This weakness, if left uncorrected, could impede the reliability of data, especially case-related performance statistics reported annually by CCHR.

Comptroller's Directive #18, §8.2, requires that "agencies must insure that adequate application controls are in place to eliminate input, processing, and output risks." It states that "automated controls built into application programs ensure that every transaction entering the information processing environment is authorized, recorded, and processed completely and accurately, protected from physical loss, theft, or unauthorized manipulation, and that the data file integrity is preserved."

Of the total 27,968 records included in the CTS data copy as of June 13, 2014, various sorts and queries found the following:

- 649 complaint numbers were skipped or missing in the sequential numbering of complaints.
- 12 records had complaint numbers that did not match the 7-digit sequential numbering convention.
- 199 records had no complainant and respondent names indicated.
- 20 records were indicated as "test" data.

In addition, dating anomalies were found. As shown in Table III, a scan of the results of a sort of the "Interview Date" field disclosed entries that did not follow the established date format of DD-MM-YY. Moreover, the entries were not valid dates.

**Table III**

CTS Records Found with Incorrect Date Format in "Interview Date" Field

COMPLAINT NO.	F2_INTERVIEW_DATE
1001047	15 SEP 0956
1001065	15 NOV 0956
1001151	17 APR 0936
1004026	03 MAR 0197
1009005	09 MAY 0099
1013873	02 APR 0023

As demonstrated in Table IV, additional dating issues were detected in the "Interview Date" field, indicating a lack of, or inadequate, edit checks in CTS. Specifically, there were dates that

appeared as far back as 1939 and in the future as far as 2022. Upon comparing the “Interview Date” and “Date Entered” fields, it would appear that a 20-, 40-, and even 75- year span of time existed between the two, when in fact the dates should generally be the same or within a few days of each other.

**Table IV**

CTS Records with Date Anomalies in the “Interview Date” Field

<b>COMPLAINT NO.</b>	<b>F2 INTERVIEW DATE</b>	<b>F3 DATE ENTERED</b>
1000604	10-Jan-56	10-Jan-96
1011983	27-Mar-22 (*)	27-Mar-02
1017086	25-May-55	27-May-05
1017115	3-Jun-55	7-Jun-05
1018098	21-Mar-66	5-Apr-06
1019056	17-Jan-77	17-Jan-07
1022939	30-Dec-39 (*)	31-Dec-09
1025687	5-Sep-65	22-Aug-11
1026700	3-Apr-22(*)	5-Apr-12
1026800	25-Apr-22(*)	30-Apr-12
1026898	7-May-22(*)	24-May-12
1026912	3-May-22(*)	29-May-12

These anomalies indicate that edit checks in the date field are either not functioning properly or do not exist. Specifically, the system does not automatically flag discrepancies between the two fields and prevent errors from occurring when the dates put into CTS. CCHR uses its CTS database to track, record, and report the status of its cases. Since data entered into CTS is used by CCHR personnel to track and annually report statistics on its handling of case files, the anomalies noted above could have an impact on the reliability of those reported statistics.

CCHR officials acknowledged problems with CTS. They explained that CTS was modeled after a system used by the New York State Division of Human Rights. However, certain issues exist because CCHR’s processes differ somewhat from those of the State Division of Human Rights. Nevertheless, the results of our data reliability assessments indicate that CTS lacks proper edit checks that prevent inaccurate or incomplete data from being entered. Further, CTS does not generate exception reports to identify inaccurate or rejected data entries. Consequently, erroneous data entries likely go undetected and uncorrected.<sup>10</sup>

If left uncorrected, the deficiencies and inconsistencies we found in the CTS database could pose problems as time passes. The longer these matters go uncorrected, the more likely that the completeness, reliability, and accuracy of CTS information will come into question. This is an important consideration because CCHR uses CTS data to compile and publish its performance in its annual reports and citywide publications such as the Mayor’s Management Report.

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<sup>10</sup>In accordance with generally accepted government auditing standards, we assessed the reliability of the CTS data for our testing purposes. We did not, however, perform an audit of the CTS database. Accordingly, even though we found certain inconsistencies in the data set provided by CCHR, we had no evidence or test results from which to render an opinion and/or to draw conclusion about the reliability of CTS overall.

## Recommendations

3. CCHR should identify and correct the data fields in CTS noted as having inadequate entry controls to ensure no further errors in data entry. Program changes should ensure that personnel are prevented from entering erroneous dates, and correct existing dating problems.
4. CCHR should consider replacing its current CTS database or performing a comprehensive review of the system to identify existing problems and errors, and develop a systematic plan and timeframe for correcting those problems.
5. CCHR should design and implement exception reporting to identify inaccurate data entries or rejected transactions.

**CCHR Response:** CCHR generally agreed with the three recommendations (3, 4, and 5), stating:

The Commission's case tracking system highlighted in the Draft Report is written in a language that is no longer used, and in light of operational needs and system support consideration, we are currently working with DoITT [Department of Information Technology & Telecommunications] to acquire, adapt and install a new Law Manager case tracking module at the Commission. The actual implementation and use of this system is anticipated during the second quarter of Fiscal 2016. In the meantime, we will continue to assess opportunities to mitigate potential costs with respect to the ongoing use of the current system.

## Lack of Formal Procedures

CCHR lacked formal, standardized operating procedures for the handling and processing of complaints. Comptroller's Directive #1 defines internal control activities as "the policies, procedures, techniques, and mechanisms used to enforce management's direction. They must be an integral part of an agency's planning, implementing, review and accountability . . . [and] . . . should be communicated to appropriate personnel and periodically reviewed and updated as needed."

CCHR officials asserted that the Commission's *Rules of Practice* (Title 47, RCNY) were used as the agency's policies and procedures. These Rules of Practice were promulgated in accordance with section §8-117 of the Human Rights Law and provide hearing and pre-hearing procedures and rules governing proceedings before the Human Rights Commission, e.g., discovery, motion practices, etc. However, these rules do not constitute or substitute for agency-specific operational procedures as established by Comptroller's Directive #1. For example, RCNY Title 47 does not specify the roles and responsibilities of CCHR supervisors and staff, nor the methods by which assigned tasks are to be performed. Formal written operating procedures can help to ensure that every person involved in a process understands the tasks and the acceptable methods to accomplish them. In the absence of comprehensive, written operating procedures, CCHR management cannot be certain that appropriate operating practices are properly communicated and consistently followed.



## Recommendation

6. CCHR should ensure that it has clearly defined policies and operating procedures in place to address the handling of complaints and case files. These policies and operating procedures should establish at least a minimum acceptable set of requirements that reflect the Human Rights Law, Title 47 of RCNY, and Comptroller's Directives.

**CCHR Response:** CCHR generally agreed stating:

The Commission notes that these procedures may be revised after the Commission completes its transition in leadership. As of February 18, 2015, Carmelyn P. Malalis has assumed the role as Chair and Commissioner of the Commission, and plans to undertake an examination of the Commission's policies and operating procedures to assess how the Commission can clarify and refine them consistent with the Comptroller's recommendations.

## CCHR Conformed to Its Stated Case Processing Protocols

CCHR followed its case processing protocols, which are summarized in the appendix. Tests involving 67 sampled case files, including 17 non-filed complaints<sup>11</sup> and 50 filed complaints (25 closed and 25 active as of June 14, 2013), showed that based on the case status, applicable protocols were followed. Specifically, for the 67 sampled case files the following was noted:

- For the 17 non-filed complaints sampled, each case file contained documentation of a CCHR staff attorney interview with the complainant, detailing the facts of the case and the justification for dismissing the case, in accordance with CCHR's stated practices.
- For the 25 filed complaint cases closed after investigation with a "no probable cause" determination, each case file contained evidence showing that a written notice of case determination had been served on the complainant and respondent detailing the reasons for the determination, in accordance with CCHR's stated practices.<sup>12</sup>
- For the 25 filed complaint cases that remained active as of June 14, 2013, each case file contained documentation showing that the respondent was served a "verified" complaint (signed and notarized by the complainant), which included details about the alleged, unlawful discriminatory practice, in accordance with CCHR's stated practices.

Based on these results and the corroboration of CCHR staff interviewed, there was reasonable assurance to conclude that CCHR complied with the internal procedures for case processing as they were explained to the audit team by CCHR officials.

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<sup>11</sup>Non-filed cases include those that are determined to be outside of CCHR's jurisdiction, or are not viable, or for which CCHR successfully intervened.

<sup>12</sup>When a case is closed with a "no-probable cause" determination, it means that the investigation was conducted and found that no probable cause existed, so the case was not forwarded to OATH.

## DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The initial audit scope period covered Calendar Year 2012. We subsequently expanded the scope to cover the first half of Calendar Year 2013 through June 14, 2013. To gain an understanding of CCHR's responsibilities regarding the handling of complaints received claiming discrimination pursuant to the City's Human Rights Law, we reviewed Chapter 40 (§900 –§906) of the City Charter, Title 8 of the City's Administrative Code covering the Human Rights Law, and CCHR's Rules of Practice (Title 47 of the RCNY). We also reviewed relevant sections of the Mayor's Management Report for Fiscal Years 2008-2012, CCHR's Annual Reports for 2011, 2012, and 2013, and other relevant information on CCHR's website.

In addition to the regulatory sources, to gain an understanding of CCHR policies, procedures, and practices for processing complaints, we interviewed the Executive Director, supervisors, staff attorneys and clerks within the Law Enforcement Bureau along with CCHR's Chief Information Officer. We also conducted walk-throughs<sup>13</sup> of CCHR's functions, reviewed relevant documentation and reports, and performed tests of controls. We documented our understanding of those controls, procedures and related processes in narrative and flow charts and confirmed this information with CCHR officials.

CCHR provided a copy of data extracted from CTS detailing historical case data through June 14, 2013, the date the data was extracted. We reviewed the data record layout, field types and descriptions, and then evaluated the data for gaps, duplications, and other anomalies in key fields. We identified and assessed the impact of certain deficiencies and anomalies disclosed during testing and determined that they did not significantly or adversely affect the reliability of CTS data for audit testing purposes. Subsequently, we identified records of complaints originating between January 1, 2012, and June 13, 2014. We then stratified the data according to case status, including (1) non-filed complaints; (2) filed complaints closed with no-probable cause determination, and (3) filed complaints that were still active (pending) as of June 14, 2013. As reflected in Table V below, we selected a total of 67 cases from the population of the three strata of cases that were initially generated from January 1, 2012 through June 14, 2013.

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<sup>13</sup> A walkthrough in audit is more than just a physical tour of a facility. Rather, for the purpose of audit, a walkthrough is a step-by-step test of all aspects of an environment, plan, or process to gain an understanding and to verify whether it is working for its intended purpose.

**Table V**

Population and Sample of Filed and Non-Filed Complaints 01/01/2012–06/14/2013

<b>Case Status</b>	<b>Population</b>	<b>Sample</b>
Non-filed Complaints (those made between 1/1/2012 and 6/14/2013): those not filed because they were not within CCHR jurisdiction, were not viable, or intervention lead to a resolution between the parties.	1506	17
Filed Complaints: those investigated and closed between 1/1/2012 and 6/14/2013, with “no probable cause” determination	544	25
Filed Complaints: those still active (or pending with Investigation ongoing) as of 6/14/13.	583	25
<b>Totals</b>	<b>2633</b>	<b>67</b>

These three samples were also used to evaluate and assess the reliability of the data for audit test purposes.

Based on these tests, we were reasonably assured that the data was reliable for audit test purposes. Subsequently, these same sampled case files were used to determine whether CCHR’s case handling and processing were conducted in accordance with the procedures and protocols as explained to us by CCHR officials.

The results of audit tests involving sampled case files were not projected to their respective populations. Nevertheless, they provided a reasonable basis to assess and draw conclusions about CCHR’s handling and processing of cases involving complaints alleging violation of the Human Rights Law.

**CCHR Complaint Process**

<b>Intake Interview</b>	The initial process begins in Intake where an attorney conducts an interview with the complainant. The complaint is assigned a unique number which is documented and tracked in CCHR’s Complaint/Case Tracking System (CTS). During the intake interview, a CCHR attorney determines whether the complaint is viable and within the jurisdiction of CCHR. (Per CCHR stated practices.)
<b>Mediation</b>	If the complaint is within CCHR’s jurisdiction, if appropriate, the attorney will first attempt to intervene and resolve the issue before a formal complaint is generated and filed. Both sides (complainant and respondent) are encouraged to participate in conciliation efforts through the Commission’s mediation program. (Per RCNY Title 47 & Title 8 of the NYC Administrative Code. The actual number of mediated cases is very small.)
<b>Complaint is Filed</b>	If intervention attempts fail and if the complaint cannot be mediated, CCHR’s Office of Docketing formally files and serves the complaint (Per RCNY Title 47 & Title 8 of the NYC Administrative Code).
<b>Investigation&amp; Determination</b>	<p>After a complaint has been filed, a CCHR attorney will conduct an investigation. S/he may interview the parties and witnesses, review the respondent’s answer and supporting documentation, issue interrogatories and document requests, conduct field visits and tests where appropriate.</p> <p>At the conclusion of the investigation, the Commission will make a determination. If the complainant receives a “probable cause” determination—meaning that sufficient evidence exists to establish that discrimination occurred—the case will be referred to the Office of Administrative Trials and Hearings for a trial. Where there is insufficient evidence to establish that discrimination occurred, the Commission will issue a “no probable cause” determination and the case will be dismissed. However, the complainant may appeal to the Commission Chair. (Per RCNY Title 47 &amp; Title 8 of the NYC Administrative Code.)</p>
<b>The Hearing Process</b>	At the Office of Administrative Trials and Hearings, an administrative law judge will hold a pre-trial conference. If the parties do not settle the case pre-trial, the administrative law judge will then conduct a hearing and issue a Report and Recommendation.
<b>Final Decision and Order</b>	A panel of Commissioners, appointed to the Commission on Human Rights by the Mayor, will review the administrative law judge’s Report and Recommendation and issue a Final Decision and Order. If no liability is found the case is dismissed. If liability is found, a relief order is issued. (Per RCNY Title 47 & Title 8 of the NYC Administrative Code.)
<b>Remedies</b>	The Commission will exercise its broad remedial powers if it determines that the respondent engaged in unlawful discrimination. Remedies may include requiring the respondent to hire, reinstate or promote a complainant; to compensate the complainant for lost wages; to provide a reasonable accommodation for a complainant’s disability; to rent or sell a housing accommodation to a complainant; and/or to compensate a complainant for emotional distress. In addition, the Commission has the power to order respondents to implement anti-discrimination policies or participate in training. Finally, the Commission may impose a civil penalty of up to \$250,000 if the Commission finds that the discrimination was the result of a willful or malicious act. (Per RCNY Title 47 & Title 8 of the NYC Administrative Code.)





**COMMISSION ON HUMAN RIGHTS**  
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February 19, 2015

Office of the New York City Comptroller  
Municipal Building: 1 Centre Street: Room 1100  
New York, New York 10007  
Attn: Majorie Landa  
Bureau of Audit

Re: Draft Report comments – Audit MJ13-110A

Dear Ms. Landa:

The New York City Commission on Human Rights submits the following comments to the Draft Report for the above-referenced audit. The Comptroller's Office made six recommendations in the report. The first two and the sixth recommendation deal with the handling of cases; and the third, fourth and fifth recommendations deal with the Commission's current case tracking system ("CTS"). It is worth noting that proactive efforts to implement the changes suggested in the CTS recommendations (#s 3, 4 & 5) proposed by the Comptroller are already underway, and CCHR expects to fully implement them by FY 2016. Moreover, as of February 18, 2015, Carmelyn P. Malalis – appointed by Mayor Bill de Blasio in November- has assumed the role as Chair and Commissioner of the Commission. The new leadership plans to undertake an assessment of the Commission's policies and operating procedures to determine how CCHR can refine them consistent with the Comptroller's recommendations – and become a more robust enforcer of the City's expansive human rights laws, protecting the dignity of all New Yorkers.

**Response to Recommendation #s 1, 2 & 6**

In 2002, when the Commission had a backlog of 5,000 cases; some up to 20 years old, a policy was instituted wherein cases were to be resolved within one year of the filing of a complaint – specifically, one year from filing of the complaint to the issuance of a determination. The Comptroller's report states that during the 18 month period measured, the Commission only met its one year benchmark in just over half of its cases. The remaining cases took an average of 427 days to issue a determination; 62 days more than the 365 day benchmark. We will continue to strive toward this aggressive benchmark, recognizing the unique dynamics of each case and need to properly address the rights and concerns of the parties involved. With respect to benchmarking such caseload, and mindful of activity volume, the 2012 Year-end Report for the New York State Unified Court System states that their goal is to resolve cases within 27 to 30 months from the Request for Judicial Intervention<sup>1</sup>; much longer than the Commission's 12 month goal, and much longer than the average of 14 months it actually took the Commission to resolve cases during the time period measured in the report.

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<sup>1</sup> The Request for Judicial Intervention is made after a complaint has been filed in the New York State Supreme Court. In many cases, it is not filed until motions or discovery are appropriate, months after a complaint has been filed.



With regard to Recommendation # 6, Commission attorneys who handle discrimination cases have been supervised by an Executive Director and Deputy Commissioner. Attorneys have conducted intake interviews in every case and have spoken with the Executive Director or Deputy Commissioner while the complainant is still present in the office to ensure that all relevant information has been obtained. The Complaints drafted by the attorney have been reviewed by the Executive Director or Deputy Commissioner. The Law Enforcement Bureau has had weekly meetings to discuss pending cases that raise unique issues and how to handle them. The Executive Director and Deputy Commissioner have conducted two case reviews with each attorney each year, and conducts additional reviews for individual attorneys as the need arises. The Deputy Commissioner has received monthly reports regarding the age of cases and has discussed older cases with assigned attorneys as needed. The Executive Director and Deputy Commissioner have reviewed all determinations before they have been issued.

The Commission notes that these procedures may be revised after the Commission completes its transition in leadership. As of February 18, 2015, Carmelyn P. Malalis has assumed the role as Chair and Commissioner of the Commission, and plans to undertake an examination of the Commission's policies and operating procedures to assess how the Commission can clarify and refine them consistent with the Comptroller's recommendations.

#### **Response to Recommendation #s 3, 4 & 5**

The Commission's case tracking system highlighted in the Draft Report is written in a language that is no longer used, and in light of operational needs and system support consideration, we are currently working with DoITT to acquire, adapt and install a new Law Manager case tracking module at the Commission. The actual implementation and use of this new system is anticipated during the second quarter of Fiscal 2016. In the meantime, we will continue to assess opportunities to mitigate potential costs with respect to the ongoing use of the current system.

Very truly yours,



Clifford Mulqueen  
Deputy Commissioner/General Counsel