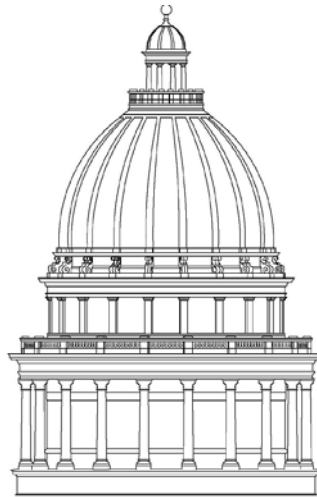


REPORT TO THE  
**UTAH LEGISLATURE**

Number 2015-05



**A Performance Audit of the  
Office of the Utah Attorney General**

June 2015

Office of the  
**LEGISLATIVE AUDITOR GENERAL**  
State of Utah





STATE OF UTAH

# Office of the Legislative Auditor General

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## Audit Subcommittee of the Legislative Management Committee

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Senator Gene Davis • Representative Brian S. King

JOHN M. SCHAFF, CIA  
AUDITOR GENERAL

June 23, 2015

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Performance Audit of the Office of the Utah Attorney General** (Report #2015-05). A digest is found on the blue pages located at the front of the report. The objectives and scope of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

John M. Schaff, CIA  
Auditor General

JMS/lm



# Digest of A Performance Audit of the Office of the Utah Attorney General

The Utah Attorney General (AG) is the constitutionally mandated legal adviser to the state. Our office was asked to conduct two audits of the Office of the Utah Attorney General (OAG). This audit addresses issues relating to performance and accountability. Areas of concern identified in this report have been long standing issues that preceded the current AG. The other audit, *An In-Depth Budget Review of the Office of the Utah Attorney General 2015-06*, addresses issues related to budgetary controls, appropriateness of spending, compensation, and the use of contract attorneys.

## Chapter II Attorney General's Office Needs Improved Accountability

The office needs improved performance management, as recognized by the newly elected AG. While the office has defined its mission and priorities, staff had difficulties articulating performance measures and performance management processes to support them. The process of using performance measures to make informed decisions about management processes is commonly referred to as performance management. The OAG can increase transparency and accountability by making reports on its performance measures and progress publicly available. Also, the OAG should make changes to its ethics processes to adequately address the possibility of employee misconduct within the chain of command.

**Comprehensive Performance Management Is Needed.** The collection and use of data tied to mission and priorities are critical to measuring agency outcomes. While the OAG tracks many measures, they are not used to determine divisions' success or to track agency progress toward established priorities. Simply setting priorities and measuring data has proven insufficient for the OAG to produce effective performance management. Organizational learning and improved outcomes come through performance management processes. Also, individuals in leadership positions with performance management experience must educate staff and exercise oversight over management processes.

**Public Reports Would Increase OAG Transparency and Accountability.** Unlike the Utah OAG, many reviewed peer offices produce annual reports available to the public through their websites and several produce additional performance reports. All but one of these same peer agencies also have statutory requirements to produce public reports, while Utah has no such reporting requirement for the OAG as a whole. We believe such reports would increase the transparency of the office's performance management efforts and should be required. Additionally, this public reporting would be a manifestation of management's commitment to accountability. In discussions with OAG leadership, they reported that such processes could impact the office's budget.

### **Current Internal Employee Whistleblower Reporting Processes are Inadequate.**

The OAG's current ethics policy lacks sufficient whistleblower provisions to adequately address internal employee misconduct. Particularly, it does not provide guidance for employees who need to report any misconduct of someone within the employees' chain of command. Also lacking are processes for anonymous reporting and comprehensive ethics data tracking and analysis. That said, all attorneys in the OAG are bound by the Rules of Professional Conduct.

## **Chapter III Comprehensive Employee Evaluation System Needed**

Under the previous AG's administration, the employee performance program, known as the Performance Improvement Program (PIP), suffered from poor documentation and inconsistent implementation. Inconsistent implementation appears to be caused by gaps in policy regarding management oversight and document retention. By comparison, peer law offices we contacted reported that they had sufficient documentation and management oversight as standard practices in their performance evaluations.

OAG leadership reported to us that prior to initiating our audit, they began developing a new performance evaluation program to address the deficiencies we report herein. In January 2015, the OAG rolled out the program, but because the program is still in development, we cannot say whether the program will meet the audit recommendations put forth in this chapter. However, in its current form, the program appears promising.

## **Chapter IV Efficiencies Will Increase with Improved Case and Document Management**

The lack of an office-wide electronic case management and document control system at the OAG has contributed to dropped cases, missed deadlines, unnecessary time spent searching through documents, and an inability to gather overall office-wide performance measures. Over the years, multiple case management systems of varying functionality have been developed by different divisions within the office, but half the divisions still have some attorneys individually tracking their own cases. The OAG acknowledges the need for an office-wide electronic case management system and has requested and received \$800,000 in one-time funds from the 2015 Legislature for this purpose. The OAG should establish modern office-wide electronic case management and electronic document control systems with appropriate controls and measures.

The legal community at large is moving toward electronic case management and document control systems as a way to improve efficiencies by centralizing document and

case information storage and increasing automation. However, currently the OAG information technology (IT) staff ratios are low, which will make it difficult for IT staff to support an office-wide case management system. Thus, management has also requested and received \$300,000 in ongoing monies for additional IT staff. With this increase, the OAG should closely monitor and evaluate IT staffing needs as the new system(s) are deployed and also work with the Legislature if additional resources are necessary.

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# REPORT TO THE UTAH LEGISLATURE

Report No. 2015-05

## **A Performance Audit of the Office of the Utah Attorney General**

June 2015

Audit Performed By:

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# Chapter I

## Introduction

The Utah Attorney General (AG) is the constitutionally mandated legal adviser to the state. Our office was asked to conduct two audits of the Office of the Utah Attorney General (OAG). This audit addresses issues relating to performance and accountability. Areas of concern identified in this report have been long standing issues that preceded the current AG. The other audit, *An In-Depth Budget Review of the Office of the Utah Attorney General 2015-06*, addresses issues related to budgetary controls, appropriateness of spending, compensation, and the use of contract attorneys.

### The Attorney General Is an Elected Constitutional Officer

Article VII, Section 1 of the *Utah Constitution* states that the AG is an elected constitutional officer of the Executive Department. The AG is elected to four-year terms and performs such duties as are prescribed by this Constitution and as provided by statute.

Article VII, Section 3 of the *Utah Constitution* also requires that the AG shall be 25 years or older at time of election, be admitted to practice before the Supreme Court of the State of Utah, and be in good standing at the bar.

Finally, Article VII, Section 16 of the *Utah Constitution* makes the AG the legal adviser of the state officers, except as otherwise provided by the Constitution, and requires that the AG shall perform such other duties as provided by law.

### Responsibilities of Attorney General Laid Out in Statute

The AG has statutory responsibilities to serve the state and its officers, boards, and commissions in criminal and civil matters. The AG also assists county, district, and city attorneys when required. The AG may also undertake special projects as directed and staff them accordingly.

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**Areas of concern identified in this report have been long standing issues that preceded the current AG.**

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**The AG is the elected legal adviser of the state.**

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**AG duties include legally advising state agencies, prosecuting and defending state causes, and assisting other public attorneys.**

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The duties of the AG are detailed in *Utah Code* 67-5-1 and 67-5-1.5, which states, in part, that the AG shall:

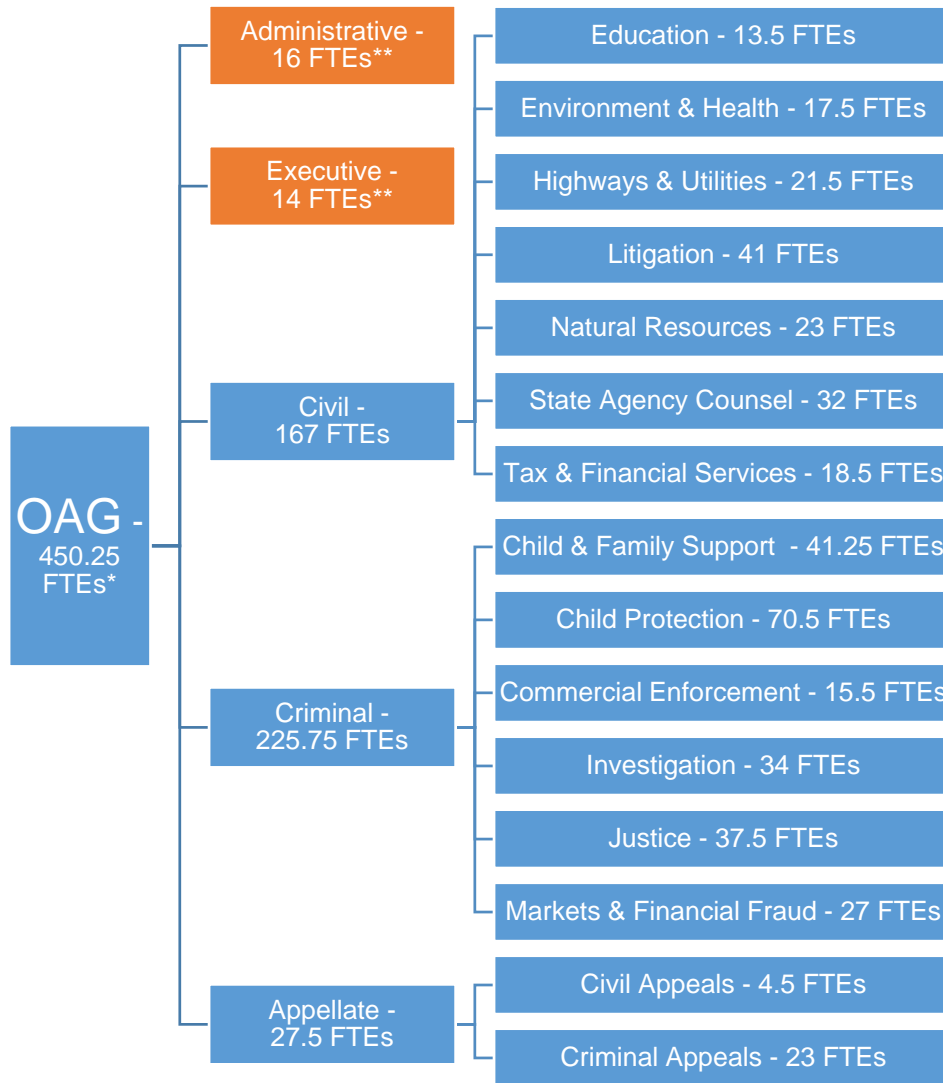
- (1) Perform all duties consistent with the attorney-client relationship
- (2) Prosecute or defend all causes to which the state or any officer, board, or commission is a party and represent the state in civil matters.
- (7) Give the attorney general's opinion in writing and without fee to the Legislature..., any state officer, board, or commission... upon any question of law relating to their respective offices;
- (8) When required by the public service or directed by the Governor, assist any county, district, or city attorney in the discharge of his duties;
- *5-1.5* The attorney general may undertake special duties and projects and, as permitted, employ or contract with investigators, prosecutors, and necessary support staff to fulfill the special duties undertaken under this section.

See Appendix A for the full list of AG duties and special duties as shown in state statute.

## **Office of the Utah Attorney General Has Divisions To Fulfill Constitutional and Statutory Purposes**

The OAG uses 3 departments and 15 legal divisions employing roughly 450 full-time equivalent (FTE) staff to fulfill its duties. Figure 1.1 shows the relationship between the departments and their divisions.

**Figure 1.1 The OAG Has 450 Full-Time Equivalent Employees (FTEs) in 3 Departments and 15 Legal Divisions.** FTE numbers reflect a snapshot of OAG staffing as of November 2014.



Source: OAG Administration

\* FTE numbers are a snapshot of OAG employees as of November 2014

\*\*The Executive and Administrative units are not considered departments but report directly to the AG.

The OAG has three main departments: the civil department, which deals mostly with state legal support, the criminal department, which provides state criminal investigation and prosecutorial functions, and the appellate department, which serves the appeals functions for both civil and criminal departments. The executive and administrative divisions provide guidance and support to the entire OAG.

**As of November 2014, the OAG employed 450 FTE employees in 3 departments and 15 divisions.**

## Audit Scope and Objectives

Our office conducted a performance audit and an in-depth budget review of the OAG. The results of the in-depth budget review are found in a separate report: *An In-Depth Budget Review of the Utah Office of the Attorney General 2015-06*. This report addresses improved accountability and the efficiency and effectiveness of operations of the OAG. This chapter outlined the constitutional and statutory purposes of the AG and the organizational structure of the OAG. The remaining chapters address the following issues:

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**This audit addresses improved accountability and operations effectiveness.**

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- Chapter II – Instituting performance measures and management, increasing public transparency and accountability, and improving the employee ethics processes
- Chapter III – Improving individual accountability through comprehensive performance evaluations
- Chapter IV – Increasing office efficiency and effectiveness through office-wide case management and electronic documents



## **Chapter II**

# **Attorney General’s Office Needs Improved Accountability**

The office needs improved performance management, as recognized by the newly elected Attorney General (AG). While the office has defined its mission and priorities, staff had difficulties articulating performance measures and performance management processes to support them. The Office of the Utah Attorney General (OAG) can increase transparency and accountability by making reports on its performance measures and progress publicly available. Finally, the OAG should make changes to its ethics processes to adequately address the possibility of employee misconduct within the chain of command.

### **Comprehensive Performance Management Needed**

When we first met with the AG, he expressed the difficulty they were experiencing in measuring productivity. He felt the “apples-to-oranges” nature of the many different office functions made measurement difficult. However, in order to adequately determine if the overall mission and key priorities are being met, the OAG needs to implement performance measures.

The OAG articulates its mission as follows: “Uphold the constitution, enforce the law, provide counsel to state agencies and public officials, assist law enforcement, and protect the interests of the state, its people, environment and resources.” The current AG has also identified the office’s priorities as protecting citizens, protecting businesses and consumers, defending Utah’s laws and the state, and restoring public trust.

### **Performance Measures Relevant to Mission and Priorities Are Needed**

The collection and use of data tied to mission and priorities are critical to measuring agency outcomes. While the OAG tracks many measures, they are not used to determine divisions’ success or to track agency progress toward established priorities. Division directors have

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**The OAG needs improved performance measures and management, public transparency, and ethics processes.**

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**While the OAG tracks many measures, none are tied to stated OAG priorities or goals.**

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the discretion but not the responsibility to track performance indicators for their divisions. We believe performance measures should be developed and tracked for each division.

When we asked OAG leadership to give us their performance measures, they gave us a tracking spreadsheet with 416 measures that were being collected and stored. Those measures were most often program output and workload measures (for example, cases opened, caseload per attorney, investigations). While some of the measures being collected by the OAG may be useful, without being tied to objectives or goals to provide context, the measures have little relevance for use in agency improvement.

The National Performance Management Advisory Commission advises against producing too many measures. It states, “When developing measures, it is best to keep things simple. There is no advantage to tracking hundreds of performance measures that are never used.”<sup>1</sup>

When asked, two division directors were unable to articulate any specific measures tracked for their divisions. While other directors shared measures they used, the majority of the measures identified did not match their divisions’ measures being collected in the OAG’s tracking spreadsheet. We were often told that, in essence, “you can’t measure what we do.” Directors were quick to point out the shortcomings of any specific measure, saying that the work varies too widely from one division to another and from one specific case to another.

In response to such commonly heard statements, the National Performance Management Advisory Commission wrote that, “While some service areas are a more natural fit for measurement, the commonly used excuse that ‘you can’t measure what we do’ is simply not true.... A good set of measures provides a complete picture of an organization’s performance.”<sup>2</sup>

When pressed for the main purpose for their areas, managers often said that serving their clients was their biggest priority; however, none

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<sup>1</sup> A Performance Management Framework for State and Local Government. National Performance Management Advisory Commission. 2010. 39.

<sup>2</sup> A Performance Management Framework for State and Local Government. National Performance Management Advisory Commission. 2010. 39-40.

of the divisions collect a client satisfaction metric. While OAG management says they meet with clients often to assess attorney performance and client needs, management does not collect client feedback quantitatively. We agree that such meetings are important, but we also believe quantifiable measurement serves an important role.

The AG recently requested an audit of its clients' satisfaction by the state auditor. The State Auditor's office surveyed OAG clients and produced a largely favorable report on OAG client satisfaction. We believe this kind of approach would be helpful as a performance measure for divisions and the OAG as a whole because it provides empirical feedback from clients which can then be reviewed and analyzed.

The majority of clients we spoke with were complimentary of the OAG and most expressed gratitude for the attorneys assigned to them. However, some clients expressed past frustration with the OAG. A lack of attorneys' responsiveness to or alignment with clients' priorities has on occasion led to client-initiated accountability meetings with OAG assigned attorneys. One client shared a desire to receive regular updates on the status of any pending lawsuits against them, but was receiving nothing. In the past, one agency was so dissatisfied with its attorneys that it went to the extent of changing multiple processes to avoid using OAG attorneys.

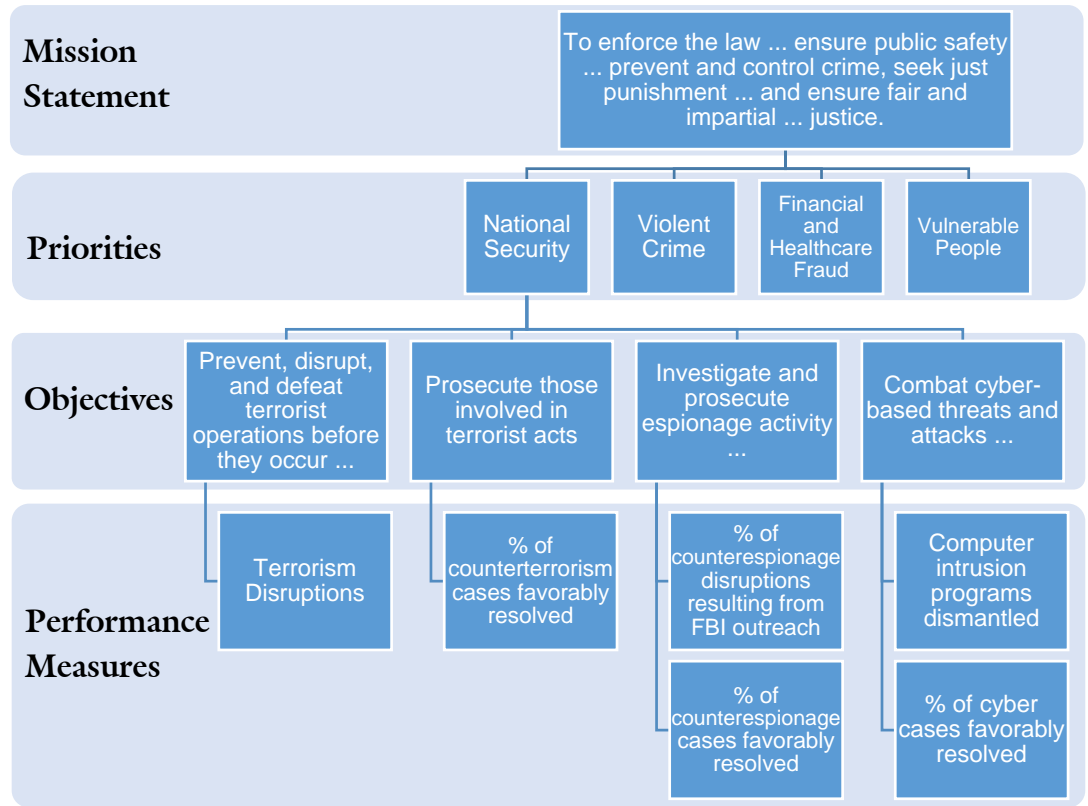
**The U.S. Department of Justice (DOJ) Tracks Performance Measures.** The DOJ performs similar functions to the OAG, in addition to many others. In approaching its own performance management, the DOJ identified its mission, priorities, objectives, and performance measures to determine agency success in fulfilling its mission. For example, as Figure 2.1 illustrates, the DOJ uses four objectives to meet its National Security priority and six measures to identify progress in meeting the objectives.

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**Client satisfaction measures would provide insight into the quality of OAG services provided.**

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**Figure 2.1 The U.S. Department of Justice Aligns Mission, Goals, Objectives, and Performance Measures.** This figure illustrates the objectives and performance measures for one of the DOJ's four priorities (National Security).



Source: U.S. Department of Justice 2013 Annual Performance Report and 2015 Annual Performance Plan  
 \*DOJ information is paraphrased. See source report for the complete text.

**The U.S. Department of Justice aligns its measures with its mission and priorities.**

While the DOJ has diverse roles it must perform, it articulates those priorities and objectives most relevant to fulfilling its mission. With appropriate performance measures, the agency is better equipped to identify and communicate progress in reaching its stated purposes. While the OAG has a mission and priorities, we believe the office is lacking that final component of performance measures tied to priorities. Without performance measures, the OAG lacks ability to measure agency progress toward meeting its priorities.

**Executive Branch Agencies in the State of Utah Also Track Performance Measures.** Like the OAG, many agencies have experienced frustration with measuring performance. The director for the Utah Department of Transportation (UDOT) told us that, in the past, their engineers struggled with performance measurement, saying that the engineering projects they handled were too complex and

varied to measure. Since then, UDOT has experienced a shift in organizational culture. UDOT now articulates strategic goals and performance measures to track progress toward goals. In 2014, the Governor’s Office of Management and Budget (GOMB) reported successes in five state agencies with implementing performance measurement and management processes. GOMB reports that those agencies were using performance measurement to identify opportunities for process improvement.

The state, through executive branch leadership, has worked to implement performance management processes statewide, most recently through the SUCCESS framework, but also previously through the Balanced Scorecard approach introduced by former Governor Huntsman.

**Other States’ Attorney General Offices Track Performance Measures Tied to Agency Priorities.** Washington, Colorado, and Oregon all use and report performance measures tied to agency priorities. Colorado’s Department of Law communicated to us that they believed that tracking performance measures was a productive use of their resources, saying the measures “help the department track efforts and results against established benchmarks.” Each of Colorado’s programs have established measures that are tracked on an annual basis. Arizona and Idaho OAG offices did not indicate to us that they use performance measures in such a way.

Also, both Colorado and Oregon track customer satisfaction metrics and report them annually in their public performance reports. Both states set annual targets and measure progress against those targets.

Tying performance measures to an agency’s mission and priorities provides a first step toward meaning and context for performance measures and gives management actionable information in fulfilling the agency’s mission.

### **Performance Management Must Be Integrated into the Management System**

OAG policy states that chief deputies are responsible for the quality of the work in their divisions and that division directors are likewise responsible for the work of their attorneys using methods adapted to the circumstances of each division. Accordingly, policy

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**Three of five peer OAG offices we contacted tie measures to agency priorities.**

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provides a list of possible methods managers may use in the management of their areas:

- Monitor and provide strategic guidance throughout the course of key cases.
- Observe or participate in practice arguments (moot courts).
- Review written pleadings and documents before they are sent out or filed.
- Observe attorneys in court, at hearings, in depositions, at meetings, or in interactions with clients.
- Discuss with clients their view of the quality of legal work product and legal representation by their assigned attorney.

These methods provide oversight of individual attorneys but do not give insight into the productivity or effectiveness of a division. If the last oversight method were to be used as a performance indicator, for example, the division would gather data from many clients. That collective data would indicate something about the quality of the legal work and representation. The data then could be used in a trend analysis to determine if work is improving over time. None of the customer feedback suggested above was used to build or provide data for performance indicators. While managers were not prohibited from developing performance indicators, we saw no indication that such principles were understood and encouraged.

Once goals and objectives are coupled with performance measures, the process continues with an informed analysis of the data. The final step in the process uses the analysis as the basis for informed decisions, whether to continue a current process or to make changes necessary to improve the organization. This process of using performance measures to make informed decisions about management processes is commonly referred to as performance management.

Simply setting priorities and measuring data has proven insufficient for the OAG to produce effective performance management. The National Performance Management Advisory Commission states that, “although measurement is a critical component of performance management, measuring and reporting alone have rarely led to organizational learning and improved

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**Performance management employs data measurement and analysis processes to encourage continuous improvement.**

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outcomes.” Organizational learning and improved outcomes come through performance management processes. Also, individuals in leadership positions with performance management experience have to educate staff and exercise appropriate oversight over management processes.

**Performance Management Must Be an Expected Management Practice.** To effectively manage the OAG according to performance management principles, leadership must create the expectation that performance management will be used in every division. A study by the National Performance Management Advisory Commission states:

Performance management becomes a sustained effort when the organization uses performance management practices routinely, believes in performance management as the preferred mechanism for managing resources, and, finally, develops the expectation that decisions will be based on performance information.<sup>3</sup>

The lack of OAG performance management appears to be due to leadership not requiring performance reports from the office or tying division funding to performance outcomes. One manager termed leadership management practices prior to the current Attorney General’s tenure as “management by crisis.”

The Government Accountability Office (GAO) stated in its *Managing for Results* report that, “senior agency officials’ commitment to and accountability for improving performance are important factors in determining the success of performance and management improvement initiatives.”<sup>4</sup>

Other states are transitioning to performance management through statutory means. Washington statute stipulates processes for continuous improvement through performance management: “each state agency shall adopt procedures for and perform continuous

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**OAG leadership has not required performance reports from division managers.**

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<sup>3</sup> *A Performance Management Framework for State and Local Government*. National Performance Management Advisory Commission. 2010. 10.

<sup>4</sup> *Managing for Results: Agencies Have Elevated Performance Management Leadership Roles, but Additional Training Is Needed*. GAO-13-356 Performance Management Leadership. 2013. 29.

self-assessment of each activity, using the mission, goals, objectives, and measurements.”<sup>5</sup>

Colorado’s performance management statute also includes a provision for continuous improvement, “A performance management system should incorporate a continuous process improvement system based on Lean Government principles or another widely accepted business process improvement system.”<sup>6</sup>

While some states may mandate a specific performance management system (for example, SUCCESS, Balanced Scorecard, or Lean Government), we believe any management system with a minimum set of criteria can be effective.

The OAG should identify a performance management framework that will allow the office to exercise effective and measurable performance management.

**Leadership with Performance Management Training is Important.** Importantly, the initiative for such a framework must come from OAG leadership. In a report on the effectiveness of the federal Government Performance and Results Act Modernization Act of 2010 (GPRAMA), the Government Accountability Office made this statement:

Perhaps the single most important element of successful management improvement initiatives is the demonstrated commitment of top leaders. ... Organizations that successfully address their long-standing management weaknesses do not “staff out” responsibility for leading change. Top leadership involvement and clear lines of accountability for making management improvements are critical to overcoming organizations’ natural resistance to change...<sup>7</sup>

One division director expressed to us a common issue that most attorneys were trained in law, not management. We believe that general lack of training on measurement for performance outcomes

<sup>5</sup> Washington Statute: *RCW 43.88.090(4)*

<sup>6</sup> Colorado Revised Statute - *C.R.S. 2-7-204(2)(a)*

<sup>7</sup> *GPRAMA Modernization Act Provides Opportunities to Help Address Fiscal, Performance, and Management Challenges*. GAO-11-466T Government Performance. 2011. 9.

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**Leadership  
commitment to  
performance  
management is critical.**

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has contributed to the office's problems in performance measurement and management.

The Utah Governor's Office of Management and Budget identified the need for organizational capacity in performance management by hiring performance measurement data managers. UDOT designates staff responsible for performance measurement and management training in each division and hires private sector consultants to do annual performance audits of its project management practices.

Congress also addressed the need for organizational capacity in federal agencies by requiring performance officers in agency leadership. The GPRAMA mandates that an agency designate a performance improvement officer in each federal agency reporting directly to the chief operations officer.

We recommend the OAG improve performance management by putting employees in place with the knowledge and experience necessary to provide training and oversight of the office's performance management efforts.

## **Public Reports Would Increase OAG Transparency and Accountability**

Unlike the Utah OAG, many reviewed peer offices produce annual reports available to the public through their websites and several produce additional performance reports. All but one of those same peer agencies also have statutory requirements to produce public reports, while Utah has no such reporting requirement for the OAG as a whole. We believe such reports would increase the transparency of the office's performance management efforts and should be required. Additionally, this public reporting would be a manifestation of management's commitment to accountability. In discussions with OAG leadership, they reported that such processes could impact the office's budget.

### **OAG Should Produce Performance Reports To Enhance Transparency and Accountability**

The U.S. Department of Justice and four of five peer state attorneys general (Arizona, Colorado, Oregon, and Washington) produce publicly available annual reports for the office. Locally, Utah's

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**The OAG needs experienced and trained leadership in performance management.**

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**Annual public performance reports would increase accountability and make the OAG more transparent to the public.**

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State Courts System (Courts) also produces publicly available annual reports. The reports contain material about the role of the courts, significant programs and initiatives, and operational statistics for the year. The U.S. Department of Justice, Colorado, Washington, and Oregon also produce performance reports for their offices.

The Utah OAG does not produce a comprehensive annual report. Reports available on its website consist mainly of media releases on specific events or cases. The office does produce some reports to satisfy legislative requirements or committee requests, but any public exposure of those materials is incidental to the committee meetings.

In some instances, the lack of performance information from the OAG creates costly questions. For example, the Legislative Fiscal Analyst (LFA) recommended a return on investment study on the OAG's Medicaid Fraud Control Unit in January 2010. Unable to get their concerns addressed, a legislative performance audit was finally prioritized to address the issues.

Such a lack of publicly available data on OAG activities caused one legislator to express concern about the ability of the public to make informed voting decisions concerning the Attorney General. In an unrelated instance, another legislator expressed frustration with the OAG's level of accountability and the lack of information issuing from the office.

### **Statutory Requirements Appear to Be Impetus Behind Many Peer Agency Reports**

Statutes mandate public performance reporting from many peer agencies we identified. Utah lacks such a statute for the OAG. Consequently, very little performance information is made available to the public or the Legislature.

The Department of Justice has statutory public performance reporting mandates requiring, in part,

- Annual performance goals that are, where possible, objective quantifiable, and measurable
- Descriptions of how performance goals align with the agency's general goals and objectives

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**The U.S. DOJ and three of five peer state offices have statutory requirements to publicly report performance.**

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- Descriptions of how goals are to be achieved, including training, technology, other resource needs, clearly defined milestones, and individuals responsible for the achievement of each performance goal
- Balanced performance indicators for assessing progress toward performance goals

This list illustrates federal statutes behind the DOJ performance measures shown in Figure 2.1. The DOJ has implemented its priorities with corresponding performance measures in accordance with federal statute.

The National Association of Attorneys General reports that some states require annual reports as part of the attorney general's budget submission. Three of the five peer states we contacted (Colorado, Oregon, and Washington) all have statutory performance reporting requirements.

The Courts' annual report is also statutorily mandated in *Utah Code 78A-2-104*. Courts publishes its annual reports on its website, although the statute does not require the reports to be posted there.

Currently, Utah statute requires the AG to produce limited annual reports for the Legislature on two programs within the OAG. While the statute requires annual reporting, it makes no stipulation that those reports be made publicly available. As a result, the OAG does not make the reports available on its own website. While a concentrated search for the reports on the Legislature's website revealed annual reports on the SECURE strike force's activities, we could find no reports on the status of the Crime and Violence Prevention Fund without requesting it from OAG leadership.

In the Legislative Fiscal Analyst's 2013 report on off-budget funds, the fiscal analyst states that the Crime and Violence Prevention Fund report had not been submitted for the prior three years. In response, the OAG said they did not submit a report because the statute provided no detail on when or to whom the annual report was to be given.

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**Posting performance reports on agencies' websites fosters transparency and civic engagement.**

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The issue of not knowing to whom reports should be provided could be easily clarified by requiring the agency to post reports on its website. Colorado statute has such a requirement. The U.S. DOJ also has such a requirement. In addressing the federal performance reporting statute's requirement of performance reports on agencies' websites, the GAO stated, "by also requiring information to be posted on a government-wide website, the act will make performance information more accessible and easy to use by stakeholders and the public, thus fostering transparency and civic engagement."

We recommend that the Legislature consider requiring in statute annual performance reports from the OAG and that the statute stipulate the reports be made available on the OAG's website to support compliance and increase transparency.

### **Current Internal Employee Whistleblower Reporting Processes are Inadequate**

The OAG's current ethics policy lacks sufficient whistleblower provisions to adequately address internal employee misconduct. Particularly, it does not provide guidance for employees who need to report any misconduct of someone within the employees' chain of command. Also lacking are processes for anonymous reporting and comprehensive ethics data tracking and analysis. That said, all attorneys in the OAG are bound by the Rules of Professional Conduct.

The formation of the OAG's current ethics committee and definition of ethics policy did not envision any concerns of internal employee wrongdoing. The current ethics committee in the OAG does not have a sufficiently broad mandate or policy guidance to permit it to handle internal whistleblower type complaints, nor does it have sufficient independence to handle such confidential matters. Its chief role has been to provide guidance on technical conflicts of interest, conflicts screens, and to evaluate the OAG response to possible unethical conduct in matters pertaining to opposing counsel.

Though originally lacking a formal ethics committee or processes, over time a committee was established in OAG policy to address questions regarding attorney ethical conduct. Even at that time, OAG employees report that the attorneys had never envisioned dealing with issues of employee misconduct. Instead, the committee deliberated on

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**Current OAG ethics reporting and review processes are insufficient to address employee misconduct.**

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outside employment issues for OAG attorneys or requests from employees to seek sanction of external attorneys for inappropriate practices.

As discussed in the next two sections, the Association of Certified Fraud Examiners (ACFE) suggests that, for ethics programs to be effective, they should include an ethics help and fraud reporting telephone line. The ACFE also recommends a comprehensive system to monitor and track ethics data with periodic evaluation of the data and ethics efforts.

### **Anonymous Reporting Mechanisms Are Important to Effective Ethics Programs**

Currently, OAG policy only lists ethics reporting options within the chain of command. Fraud prevention best practices suggest fraud report lines or other anonymous reporting mechanisms that protect reporting individuals' identities. Fraud tip lines are currently used by the office but not for internal complaints.

While the OAG provides a committee for deliberating ethics issues, the policy states that employees should essentially follow a chain of command when reporting any ethics concerns. Policy also requires a chief deputy or a designated staff person to attend any ethics committee meeting. As currently defined, the policy could discourage any employee from reporting misconduct by agency leadership because leadership must be involved in ethics issue deliberations.

Both the ACFE and the Journal of Accountancy have identified fraud lines as vital in fraud prevention. A Journal of Accountancy article on fraud tip lines reported that tip lines are one of the most effective tools organizations possess for detecting and preventing fraud.

The U.S. DOJ identifies three avenues for its employees to report misconduct. They are the following:

- The employee's supervisor
- The DOJ's Office of Professional Responsibility (OPR)
- The DOJ's Office of the Inspector General (OIG)

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**Fraud lines or other anonymous reporting mechanisms are vital to fraud prevention.**

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If the employee is confused about where to refer an allegation of misconduct, the employee is welcome to contact OPR or OIG to identify the appropriate action to take.

The OAG is accustomed to fraud lines. The office currently operates six tip lines for the public to report different kinds of criminal activity. Done correctly, a fraud line for reporting internal employee misconduct could be an effective component of the OAG's ethics policy.

We recommend the OAG develop an anonymous reporting mechanism and educate employees on its use to increase the office's likelihood of preventing employee misconduct and/or fraud.

### **Ethics Record Keeping And Analysis Are Important**

Comprehensive ethics data collection and tracking were identified by the ACFE as necessary elements of a comprehensive ethics program. Periodic ethics data evaluation was another component cited. While the ethics committee has been in operation for years, no records have been kept of ethics issues discussed by the committee. Without records of ethics issues being deliberated over the years, we cannot review the effectiveness of the committee's decisions or the seriousness of repeated ethics concerns.

Overall, OAG ethics and fraud reporting processes have significant flaws. Those flaws may have perpetuated the feeling of powerlessness expressed by employees cited in the House Special Investigative Commission's report. Sharing the results of the commission's investigation of the then AG, the report stated:

Over a period of months, many courageous current and former employees of the Office affirmatively sought out the Committee's investigators, and welcomed them in their homes, to share their deep anger and frustration about what occurred during Mr. Swallow's tenure. Not infrequently, these individuals became highly emotional when describing what they had seen. These loyal public servants had known for years that what was happening

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**Ethics issue data collection and analysis are also important for effective ethics programs.**

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**The House Special Investigative Commission reported receiving many employee complaints of wrongdoing.**

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in the Office was wrong, yet they felt powerless to stop the wrongdoing because it came directly from the top.<sup>8</sup>

To provide employees with effective avenues for reporting ethics concerns, ethics data should be kept and periodically analyzed. We recommend the OAG develop processes for the record keeping and analysis of ethics issues being deliberated by its ethics committee.

## **Recommendations**

1. We recommend the OAG develop performance management processes and performance measures by which the office and each division will measure progress in reaching priorities and its overall mission.
2. We recommend the OAG include feedback from client agencies in performance measures for divisions where clients are served.
3. We recommend the OAG designate an individual as a performance officer responsible for the performance management and training of the agency and that this performance officer report directly to senior management.
4. We recommend the OAG produce annual reports, including performance information, to provide the public and lawmakers with information on the OAG's activities and office efficiency and effectiveness.
5. We recommend the Legislature consider making the OAG annual performance reports a statutory requirement.
6. We recommend the OAG modify whistleblower processes to include anonymous reporting of some kind, issue deliberation outside the chain of command regarding misconduct, and the tracking and periodic evaluation of issues addressed by the ethics committee and whistleblower processes.

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<sup>8</sup> Report of the Special Investigative Committee. Utah House of Representatives. 2014. 3.

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## **Chapter III**

# **Comprehensive Employee Evaluation System Needed**

Under the previous Attorney General's (AG) administration, the employee performance program, known as the Performance Improvement Program (PIP),<sup>9</sup> suffered from poor documentation and inconsistent implementation. Inconsistent implementation appears to be caused by gaps in policy regarding management oversight and document retention. By comparison, peer law offices we contacted reported that they had sufficient documentation and management oversight as standard practices in their performance evaluations.

Leadership for the Office of the Utah Attorney General (OAG) reported to us that prior to initiating our audit, they began developing a new performance evaluation program to address the deficiencies we report herein. In January 2015, the OAG rolled out the program, but because the program is still in development, we cannot say whether the program will meet the audit recommendations put forth in this chapter. However, in its current form, the program appears promising.

### **Implementation of OAG's Performance Improvement Program Lacked Documentation**

While most division directors informally reported a 100 percent PIP evaluation rate to OAG leadership, we were only able to document 164 of the 402 evaluations we tested (see Figure 3.1). Of those 164 evaluations documented, only 11 (7 percent) contained any actual evaluation of employee progress.

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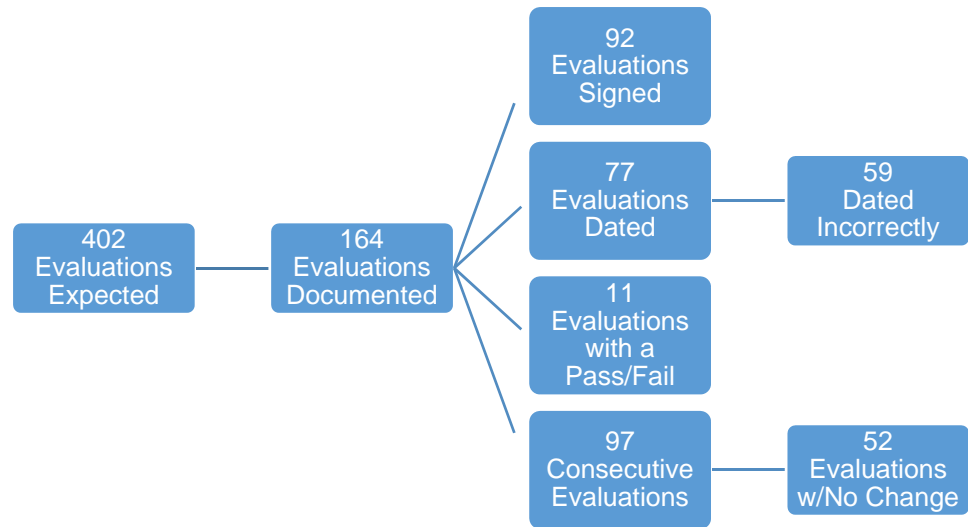
<sup>9</sup> The OAG does not consider the Performance Improvement Program to be a performance evaluation program. However, we term it as such because it was the only performance evaluation program the prior AG had in place. It also provides comparison to peer law offices in this chapter.

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**The OAG is currently testing a new performance evaluation program.**

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**Figure 3.1 The Performance Improvement Program (PIP) Was Poorly Implemented.** While we expected 402 evaluations from the divisions requested, we received only 164. Of those, many were not signed, many were dated incorrectly, and many were unchanged from one year to the next.



Source: Performance improvement plans from three OAG divisions for fiscal years 2010 through 2014

Figure 3.1 shows the inconsistent implementation of the performance improvement plan program. Many plans were missing, many were unsigned, many were not dated, and many were unchanged from one year to the next.

### Documentation of Evaluations Was Lacking

As shown in Figure 3.1, the three divisions we tested were only able to provide documentation for 41 percent (164 of 402) of the evaluations. But even that documentation provided little evidence of discussions taking place in the appropriate timeframes. For example, many evaluations were dated at the beginning of the period, documenting the beginning of the discussion but not the follow up on goals and progress at the end of the evaluation period. Despite the lack of evidence for evaluation discussions, most division directors reported to agency leadership that they were conducting evaluations with all of their employees.

We asked three division directors to provide us with performance evaluations for all employees in their divisions for the past five years. Of the 164 evaluations available, just over half (92) were signed by the

**Past documentation did not support managers' assertions of full program implementation.**

employee and/or supervisor (see Figure 3.1). Signed evaluations provide evidence that conversations concerning evaluation content actually took place. Without signatures, employees or supervisors may more easily claim that they never discussed the issues documented in the evaluations.

Such an occasion arose for a division director when the director tried to hold an employee accountable for issues discussed in a performance review. The director tried to cite the performance evaluation as evidence of their previous discussions regarding the employee's performance. However, because the evaluation was not signed, the director could not prove such a conversation took place.

Also concerning is that while 77 of the 164 evaluations available were dated, 59 evaluations were dated incorrectly. Forty-seven of those were dated at the *beginning* of the evaluation period, raising the question of whether any final evaluations took place. The remaining evaluations dated incorrectly were either dated years after the fact, or missing any indication of the period in which the evaluation was supposed to have taken place. Ideally, the employee and supervisor would meet to discuss the employee's progress toward pre-established goals at the end of the evaluation period. In this case, program effectiveness is difficult to document when little documentation of the final evaluation or end product is available.

Perhaps most concerning is that, while directors could provide only limited documentation for evaluations in their divisions, many still reported to OAG leadership that they were completing all their evaluations. When asked (without requiring documentation), most divisions reported a 100 percent completion rate to administration.

The lack of document consistency highlights flaws in the OAG's Performance Improvement Program. Related to issues of inconsistent program application, almost all of the evaluations we could document failed to record any assessment of employees' progress, as discussed in the next section.

### **Documentation of Employee Progress Rarely Happened**

Even when directors could produce employee evaluations, only 11 (7 percent) of the 164 evaluations available showed a pass or fail

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**Many evaluations were dated incorrectly, suggesting no follow-up occurred on employee goals.**

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rating (see Figure 3.1), and none followed policy guidelines regarding documenting employees' notable successes or failures.

The lack of final evaluations on employee goals or employee progress raises the question of whether employee mentoring was taking place. Supervisors appear to have been meeting with employees to discuss goals, but without documentation of goal progress at the end of goal periods, it is difficult to ascertain the level of employee progress or supervisor mentoring taking place.

Policy directs that a supervisor should document significant progress in employees' goals on the employees' evaluations. It reads as follows:

At any time when an employee achieves notable success in accomplishing one of the measures of his or her job performance, either the supervisor or employee should document that success in the "Measures" section of the performance plan. Similarly, if an employee ever notably misses the mark in a given job performance situation, that should also be noted in the performance plan.

While policy directs a kind of mentoring feedback to be included in the body of employee evaluations, Figure 3.1 shows that only 11 of the 164 evaluations (7 percent) had anything approaching an evaluative statement for the time we requested. All of those evaluations gave a "pass" without referring to any of the pre-established goals listed in the employees' evaluations.

Such a lack of employee evaluation becomes problematic if the office needs to justify employment decisions related to compensation, promotions, demotions, or terminations. For example, because OAG staff are career status employees, *Utah Code* 67-5-12 lists the only conditions under which they may be terminated. Among the conditions listed are:

- Work performance that is inefficient or incompetent
- Failure to maintain skills and adequate performance levels

Career status employees have the right to appeal any termination decision, after which the OAG must provide adequate evidence for its decision. Performance evaluations done properly provide a timeline of employee performance that allows the agency to better demonstrate its

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**Only 7 percent of employee evaluations had an actual evaluative statement from supervisors.**

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case. Without evaluations, poor performance cannot be documented unless on a case-by-case basis. However, it could be argued that doing so would be discriminatory since other employees would not be receiving the same level of oversight.

## **Poor Employee Evaluation Policy Led to Faulty Implementation**

Two significant gaps in the OAG's performance evaluation policy led to the poor level of program documentation. First, managers were not required to review supervisors' evaluations of employees. Second, evaluations were not to be retained by anyone other than the supervisors and employees involved.

### **Lack of Management Review Led to Inconsistent Implementation**

While peer agencies require management approval/oversight of every evaluation, Utah OAG policy explicitly states that evaluations are only between the employee and the reviewing supervisor. The result has been inconsistent implementation of the program.

Five of the six peer law offices we spoke with required some kind of management review of employee performance evaluations. Colorado's policy provides a good example of clear policy direction stated within the evaluations themselves. It reads as follows:

The attorney evaluation is completed after the supervisor gathers performance data from relevant sources (e.g., annual client survey, attorney self-evaluation, etc.). The performance evaluation is then submitted to the section deputy for review. The section deputy submits all final evaluations to the Chief Deputy Attorney General by May 31st. Upon return of the evaluation, the supervisor meets with the attorney to review the performance evaluation and discuss the plan (goals and objectives) for the upcoming year. The original signed copy of the evaluation is submitted to Human Resources and maintained in the employee's personnel file.

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**While most peers  
require management  
review of evaluations,  
the AG's policy does  
not.**

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While we do not recommend that the Utah OAG emulate this policy completely, we believe it contains some important elements. Among those missing from the Utah OAG's policy are the following:

- Supervisors gather employee performance data
- Supervisors gain management approval for evaluations
- Supervisors submit evaluations by a defined date
- Supervisors submit signed evaluations to Human Resources

As currently written, OAG evaluation policy directs that performance evaluations stay with the supervisor and employee. Policy states: "Performance plans are kept by the employee and supervisor, and plans from previous fiscal years should not be passed on to new supervisors."

We believe the lack of management review is at least partially responsible for the inconsistent implementation and documentation of employee performance evaluations. We also believe it is responsible for the minor variation of employee performance plans between one year and the next. Figure 3.1 shows that, of the 97 instances of documented evaluations for an employee from one year to the next, 52 of those (54 percent) had no detectable change from the previous year.

The OAG is piloting a new employee evaluation program that, in its current form, appears to have some element of review over employee evaluations. However, we cannot say whether that review process will be solidified in OAG policy.

### **Lack of Central Storage Led to Missing Evaluations**

While all peer agencies polled require evaluations to be kept with employee personnel files, Utah OAG policy explicitly directs that evaluations are not to be sent to administration for placement in personnel files. This lack of central storage policy led to some evaluations going missing without division directors being able to produce them even after several months' notice.

All six responding peer offices required evaluations to be stored with employee personnel files. For example, Oregon's Department of Justice reported to us that "The supervisor is responsible for completing the performance appraisal in a timely manner and submitting it to Human Resources for retention in the employee's

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**Where comparison was possible, 54 percent of evaluations had no detectable change from one year to the next.**

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**All responding peer offices reported that they centrally store employee evaluations.**

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official personnel file.” For state agencies in Utah, the Department of Human Resources Management (DHRM) uses a web portal to store evaluations called the Utah Performance Management system.

Current OAG policy states explicitly “Performance plans are not sent to administration for placement in the employee’s personnel file.” Issues arose from this policy when we asked division directors for documentation on their evaluations. Lacking plans for many employees, division directors expressed to us that they would have been able to give us more evaluations, but supervisors had left employment with the office, and they no longer had access to the supervisors’ evaluations.

In fulfilling our request for evaluation documents, at least one director turned to division employees, requesting the evaluations they had received. That director estimated that 20 percent of the evaluations he gave us had to be obtained from the employees themselves. Managers should not have to ask employees for their evaluations, especially if the manager needs to follow up on performance issues.

In a program where employee evaluations are not required to be stored or reviewed, compliance with the program becomes difficult, if not impossible, to measure. We believe management review and central storage of evaluations to be essential to an effective performance evaluation program. The OAG’s employee evaluation program pilot, in its current form, does not appear to address the issue of centrally storing employee evaluations.

## **Recommendations**

1. We recommend that the OAG require management review of completed employee evaluations to ensure program compliance.
2. We recommend that the OAG require employee evaluations to be stored in personnel files, including documentation that the appropriate discussions took place.

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**Current OAG policy prevents storing evaluations in the employees’ personnel files.**

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## **Chapter IV**

# **Efficiencies Will Increase with Improved Case and Document Management**

The lack of an office-wide electronic case management and document control system at the Office of the Utah Attorney General (OAG) has contributed to dropped cases, missed deadlines, unnecessary time spent searching through documents, and an inability to gather overall office-wide performance measures. Over the years, multiple case management systems of varying functionality have been developed by different divisions within the office, but half the divisions still have some attorneys individually tracking their own cases. The OAG acknowledges the need for an office-wide electronic case management system and has requested and received \$800,000 in one-time funds from the 2015 Legislature for this purpose. This report gives the OAG specific areas for improvement that such a system can address.

The legal community at large is moving toward electronic case management and document control systems as a way to improve efficiencies by centralizing document and case information storage and increasing automation. These systems provide many benefits, such as the ability to electronically search multiple documents and provide performance information needed for informed decision making. Currently, the OAG's information technology (IT) staff ratios are low, which will make it difficult for current IT staff to support an office-wide case management system. Thus, management has also requested and received \$300,000 in ongoing monies for additional IT staff to support the electronic case and document control systems.

### **Current Electronic Case Management and Document Control Systems Vary in Effectiveness**

Case management is commonly defined as a firm's centralized repository of all cases; in recent years, many of these systems have become computerized. These systems can include electronic document control as well. Electronic document control essentially centralizes all necessary documents in an electronic format. Unfortunately, the OAG has no current office-wide electronic case management or electronic document control system. Because of the varied types of processes and

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**The OAG has received funds to purchase and operate a case management system.**

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workloads, different case management systems have developed over the years in each division. These systems vary from basic to complex. The disparity has led to a number of inefficiencies, from poor case tracking to wasted time spent searching for documents.

### **Lack of Effective Case Management Has Contributed to Inefficiencies**

Because some cases are tracked by individual attorneys, it is not fully known how many deadlines may have been missed. One agency that uses the OAG's legal services has identified cases being dropped or delayed, missed deadlines, and a case closed due to inactivity prior to the statute of limitations being reached. In one instance, a man who had been convicted of battery and lost his professional license in another state should also have lost his license in Utah. Because an assistant attorney general failed to take action over a two-year period, the man was able to renew his license in Utah.

Additionally, under previous administrators, ineffective case management contributed to a client agency's loss of confidence and resulted in the agency establishing work-arounds to maintain sufficient service. These measures included hiring two lawyers as analysts to informally handle some OAG work and requiring monthly meetings with OAG staff to improve accountability and better track cases. The agency even offered to help pay for a case management system. The inability of OAG management to effectively track and monitor the progress of cases contributed to many of these problems.

Our 2012 performance audit of the OAG's Medicaid Fraud Control Unit (MFCU) identified a lack of case management controls that contributed to inadequate investigations. Some cases were closed because investigations were not completed before the statute of limitations was reached. Recommendations were made to improve case management controls by requiring reports that tracked case assignments, statute of limitations information, and case activity. Though it does not appear that all divisions have case management control issues, an office-wide case management system should be designed to provide the necessary data to establish controls. Management also must regularly monitor case progress through reports generated by the system.

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**Poor case management has contributed to client frustration.**

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## Lack of Electronic Document Control System Has Contributed to Inefficiencies

Ninety-three percent of responding division directors reported they do not have an electronic document control system, which would save time searching and sharing documents. Case management systems can include a document control system, which allows documents to be stored electronically in one location to improve organization, access, and searching ability.

Figure 4.1 is a picture of a hallway in the downtown OAG. It provides an example of how a lot of case information is currently stored. The time it takes to search, transport, copy, and share these boxes of case files creates inefficiencies. According to one legal study, the OAG could potentially save 15 to 30 percent of an employee's time that is now spent searching for information.

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**Figure 4.1 Paper Case Files Temporarily Stored in Hallways.** Most divisions still utilize paper case files, which require more time to search, share, and transport than would electronic files.

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Source: Photo of one OAG office location

One agency complaint concerned an attorney who failed to copy and distribute case documents in a timely manner. An electronic document control system could instantly make documents accessible to all relevant parties and create efficiencies by allowing attorneys to quickly do electronic word searches, access files from anywhere, and share files more easily.

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**Electronic storage would improve document organization, access, and searching.**

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Further, when the OAG responds to information requests under the Government Records and Management Act (GRAMA), a significant number of man-hours are required to search the many disparate databases (and paper files) the office uses. By having all documents in one location, the office could save a significant amount of time and resources.

### **Divisions in Attorney General's Office Employ A Range of Case Management Methods**

Divisions manage cases and workload by differing methods, ranging from individual attorneys tracking their own cases to a more robust case management system linked to a client agency's database. In the past, the diversity of functions and large differences in numbers and types of cases each division handles made it difficult for the office to come to a consensus on a single office-wide case management system. Over the years, some divisions were able to acquire more modern case management systems, often with the help of agencies they work with.

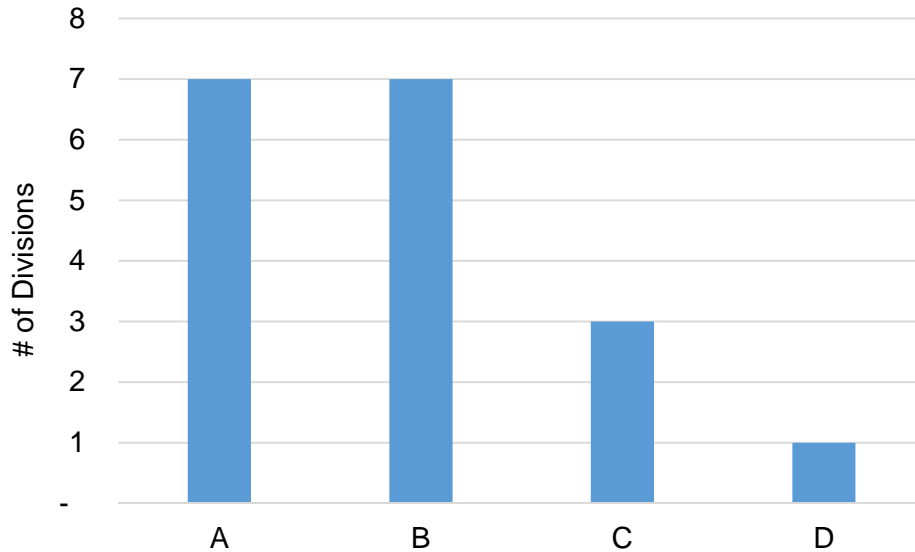
Even within the same division, several different case management systems may be employed. Figure 4.2 shows results of our survey of case management methods employed by divisions. We found that nearly 50 percent of divisions still have at least some individual attorneys separately tracking their own caseloads and hearings.

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**Currently, case management varies significantly across divisions.**

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**Figure 4.2 Distribution of Case Management Systems Used by Divisions.** Several different methods to track cases can be employed within a division; thus, half the divisions report having at least some attorneys tracking their own cases.



- A: *Individual attorneys track their own cases/assignments and give feedback to management.*
- B: *Basic case information is tracked on a spreadsheet, Access database, or Word document for the division.*
- C: *Basic Case Management System: A dedicated case management computer program tracks a number of aspects of a case (open, closed, hearing dates, contacts, others) and provides reminders and performance measures.*
- D: *Robust Case Management System: A dedicated computer program is linked with a client agency's database, providing all necessary case information as well as reminders and performance measures.*

Source: Auditor Survey of 15 OAG Division Directors.

Nearly half of the divisions use an Access database, spreadsheets, or word processors to track case information. These custom-developed systems result in isolated pockets of data that make staff training, conflict checking, and tech support more difficult. These simple systems often track only basic case information and do not provide the automation, calendaring, reminders, and prompts that a more sophisticated dedicated case management system can provide.

Four of the fifteen divisions report having dedicated electronic case management systems classified as either basic or robust. A basic case management system is a dedicated tracking system that keeps basic information about the case and allows for some reporting. For example, the Investigations Division uses the Versadex system hosted

**Nearly half of divisions use custom-developed systems significantly lacking in functionality.**

by Salt Lake City Police Department, which allows them to access information from local law enforcement and track OAG investigations. A robust case management system is a dedicated system linked with an agency database that provides reminders and individual performance measures. The Division of Child and Family Support has such a case management system (created by the Office of Recovery Services [ORS]) that is linked with the agency's database, thus avoiding double entry of data and populating forms.

### **Case and Document Management Systems Will Provide Valuable Management Information**

Use of electronic case management and document control software systems is increasing in the legal services industry. These systems provide management with performance measures needed to make informed decisions and provide a host of other benefits to improve productivity and efficiency. An electronic case management and electronic document control system(s) will enhance management's ability to oversee the performance of the OAG, as discussed in Chapter II of this report. A survey of OAG division directors found that 71 percent said their current system does not provide the statistics and performance measures they need. In the 2015 Legislative General Session, the OAG asked for and received funding for an office-wide case management system. Because of the low number of IT personnel, the office also asked for ongoing funding for additional IT positions to support the new system.

According to a 2010 University of Florida study, 80 percent of large law firms report having an electronic document control system. The study also says that the need for increased efficiency has led the profession to be more dependent on electronic case and document management. States' attorney general offices are also seeking to be more efficient by purchasing these systems. Our research shows at least seven states' attorney general offices have issued requests for proposals (RFP) for case management systems since 2012. A review of western states shows that the Colorado office is currently rolling out an office-wide case management product. Washington and Idaho offices use purchased products for an office-wide electronic case management and document control systems. Oregon's office uses case management systems developed in-house and a proprietary electronic document control system.

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**A case management system will improve directors' ability to oversee office performance.**

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## **Electronic Case Management Systems Will Provide Better Information for Planning and Decision Making**

In our survey of division directors, 71 percent of respondents say their current case management system does not provide the statistics and performance measures they need. An office-wide electronic case management system would allow instant access to case-level details as well as overall trends and other productivity metrics. Most OAG divisions track some measures, but those divisions with more sophisticated case management systems are able to quickly produce more useful up-to-date measures such as timeliness and measures at an individual level.

The OAG's Child and Family Support Division has an electronic case management system created by ORS that allows management to instantly view performance measures for the overall division as well as for individual attorneys. These measures include timeliness, caseloads, and referrals, among others. Unfortunately, most divisions do not yet have this capability.

With an office-wide case management system, the OAG will be able to collect and produce performance measures that will give management a more complete picture of how divisions and individuals are performing. As mentioned in Chapter II, management should regularly monitor these measures to ensure cases are progressing satisfactorily, workloads are adjusted, and individuals and divisions are meeting goals. These systems can provide instant performance reporting that improves staff accountability and transparency to management and interested parties. In addition to these measures, electronic systems provide other benefits.

## **Studies Show Efficiencies from Electronic Case Management And Document Control Systems**

Our research identified many benefits from modern electronic case and document management systems for legal work. Case management systems provide benefits for legal services that include:

- Automatically generating documents using information from the file
- Automating routine tasks like information entry
- Integrating cases with accounting and billing

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**A case management system will improve the OAG's ability to implement audit recommendations.**

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- Being more organized and being able to handle more cases with less time and sometimes fewer staff

As an example of the final bullet above, one manager says the Division of Child and Family Support reduced from six to two paralegals after they implemented an automated case management system. The automated system allowed clerks to handle many functions previously done by paralegals.

All sources reviewed say document accessibility is enhanced with electronic document control systems. Some of the other benefits are:

- Time saved searching documents
- Ease of access
- Sharing of documents
- Ability to work from remote locations

One OAG division director noted that a central office-wide electronic document control system could save them a lot of man-hours when responding to GRAMA requests. In the past year, as much as the equivalent of one full-time employee (FTE) in IT time has been spent searching through multiple databases to comply with these requests.

Computerized case management systems create efficiencies in a number of ways. One way is by helping to manage deadlines and appointments by tracking key dates, checking conflicts, providing reminders, and informing all pertinent parties. These systems also create uniform processes that reduce the opportunity for human error. The electronic systems also make it easier to train new people.

### **OAG Recently Received Appropriation for Office-Wide Case Management System**

In the 2015 Legislative General Session, the OAG requested and received \$800,000 in one-time funds to issue an RFP for an office-wide case management system. The office was also appropriated \$300,000 in ongoing funds to be used for IT support for the system. Management plans on having an RFP out by the end of fiscal year 2015 and a fully functioning system within the next year. An electronic document control component will most likely be part of that system.

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**Electronic documents would speed responses to GRAMA requests and free up strained personnel.**

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Current management reported that previous administrators considered an office-wide system. Unfortunately, the complex needs of different divisions, the fear of losing functionality, and the added cost during a recession hampered efforts to seek funding for a system until recently.

**Attorney General’s Office IT Staff Ratio Is Low**

The OAG currently has four IT staff positions, which would be insufficient to support the addition of an office-wide case management system. Ratios of IT staff to total FTEs in other state attorney general offices suggest that the Utah OAG has a high number of end users per IT staff person, as Figure 4.3 shows.

**Figure 4.3 Ratios of Total FTEs Per IT Staff Member.** Utah has the highest number of end users per IT staff person when compared to three other western states we spoke with.

State	Number of End Users Per IT Staff
Utah	106
Colorado	31
Idaho	32
Washington	33

*Source: Other state OAG offices and FINET*

We note that IT staff perform diverse functions like desktop and help-desk support, server and hardware maintenance, software programming, database and website maintenance as well as other functions, making it difficult to compare the IT staffing needs of different organizations. However, one legal industry source suggests that, typically, there should be one IT support staff for every 20 to 35 end users.

Utah currently has 106 end users for every IT staff person, which is far from industry standards. OAG management plans to hire two full-time IT positions with the ongoing appropriation. The added staff will lower the ratio to an IT staff person for every 71 end users. Even with the additional resources, the OAG would still have IT staff supporting more end users than our review of industry standards and other states suggests. We therefore recommend that OAG management continue to review their IT needs as new electronic

**The OAG end user to IT staff ratio is far outside average peer levels.**

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**Case management and document control systems would increase efficiency, accountability, and transparency.**

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systems are deployed and work with the Legislature to determine if additional support is needed in the future.

Office-wide electronic case management and document control systems should help the OAG move towards greater efficiency. The ability to gather office-wide performance measures from these systems should also provide management with better information and improve the organization's transparency.

## **Recommendations**

1. We recommend that the OAG promptly seek to establish a modern office-wide electronic case management and electronic document control systems.
2. We recommend that the OAG establish case management controls and measures to be regularly monitored once office-wide electronic case management and electronic document control systems are functional.
3. We recommend that the OAG closely monitor and evaluate IT staffing needs as the new system(s) are deployed and work with the Legislature if additional resources are necessary.

## **Appendices**

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## **Appendix A**

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## **Appendix A**

### **Attorney General Statutory Duties**

#### **67-5-1. General duties.**

The attorney general shall:

- (1) perform all duties in a manner consistent with the attorney-client relationship under Section 67-5-17;
- (2) except as provided in Sections 10-3-928 and 17-18a-403, attend the Supreme Court and the Court of Appeals of this state, and all courts of the United States, and prosecute or defend all causes to which the state or any officer, board, or commission of the state in an official capacity is a party, and take charge, as attorney, of all civil legal matters in which the state is interested;
- (3) after judgment on any cause referred to in Subsection (2), direct the issuance of process as necessary to execute the judgment;
- (4) account for, and pay over to the proper officer, all money that comes into the attorney general's possession that belongs to the state;
- (5) keep a file of all cases in which the attorney general is required to appear, including any documents and papers showing the court in which the cases have been instituted and tried, and whether they are civil or criminal, and:
  - (a) if civil, the nature of the demand, the stage of proceedings, and, when prosecuted to judgment, a memorandum of the judgment and of any process issued if satisfied, and if not satisfied, documentation of the return of the sheriff;
  - (b) if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution, if the sentence has been executed, and, if not executed, the reason for the delay or prevention; and
  - (c) deliver this information to the attorney general's successor in office;
- (6) exercise supervisory powers over the district and county attorneys of the state in all matters pertaining to the duties of their offices, and from time to time require of them reports of the condition of public business entrusted to their charge;
- (7) give the attorney general's opinion in writing and without fee to the Legislature or either house and to any state officer, board, or commission, and to any county attorney or district attorney, when required, upon any question of law relating to their respective offices;
- (8) when required by the public service or directed by the governor, assist any county, district, or city attorney in the discharge of his duties;
- (9) purchase in the name of the state, under the direction of the state Board of Examiners, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and enter satisfaction in whole or in part of the judgments as the consideration of the purchases;
- (10) when the property of a judgment debtor in any judgment mentioned in Subsection (9) has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, redeem the property, under the direction of the state Board of Examiners, from the prior judgment, lien, or encumbrance, and pay all money necessary for the redemption, upon the order of the state Board of Examiners, out of any money appropriated for these

purposes;

(11) when in the attorney general's opinion it is necessary for the collection or enforcement of any judgment, institute and prosecute on behalf of the state any action or proceeding necessary to set aside and annul all conveyances fraudulently made by the judgment debtors, and pay the cost necessary to the prosecution, when allowed by the state Board of Examiners, out of any money not otherwise appropriated;

(12) discharge the duties of a member of all official boards of which the attorney general is or may be made a member by the Utah Constitution or by the laws of the state, and other duties prescribed by law;

(13) institute and prosecute proper proceedings in any court of the state or of the United States to restrain and enjoin corporations organized under the laws of this or any other state or territory from acting illegally or in excess of their corporate powers or contrary to public policy, and in proper cases forfeit their corporate franchises, dissolve the corporations, and wind up their affairs;

(14) institute investigations for the recovery of all real or personal property that may have escheated or should escheat to the state, and for that purpose, subpoena any persons before any of the district courts to answer inquiries and render accounts concerning any property, examine all books and papers of any corporations, and when any real or personal property is discovered that should escheat to the state, institute suit in the district court of the county where the property is situated for its recovery, and escheat that property to the state;

(15) administer the Children's Justice Center as a program to be implemented in various counties pursuant to Sections 67-5b-101 through 67-5b-107;

(16) assist the Constitutional Defense Council as provided in Title 63C, Chapter 4a, Constitutional and Federalism Defense Act;

(17) pursue any appropriate legal action to implement the state's public lands policy established in Section 63C-4a-103;

(18) investigate and prosecute violations of all applicable state laws relating to fraud in connection with the state Medicaid program and any other medical assistance program administered by the state, including violations of Title 26, Chapter 20, Utah False Claims Act;

(19) investigate and prosecute complaints of abuse, neglect, or exploitation of patients at:

(a) health care facilities that receive payments under the state Medicaid program; and

(b) board and care facilities, as defined in the federal Social Security Act, 42 U.S.C. Sec. 1396b(q)(4)(B), regardless of the source of payment to the board and care facility; and

(20) (a) report at least twice per year to the Legislative Management Committee on any pending or anticipated lawsuits, other than eminent domain lawsuits, that might:

(i) cost the state more than \$500,000; or

(ii) require the state to take legally binding action that would cost more than \$500,000 to implement; and

(b) if the meeting is closed, include an estimate of the state's potential financial or other legal exposure in that report.



## **Attorney General Special Duties**

### **67-5-1.5. Special duties -- Employment of staff.**

- (1) The attorney general may undertake special duties and projects as follows:
  - (a) employment of child protection services investigators under Section 67-5-16;
  - (b) employment of an Obscenity and Pornography Complaints Ombudsman under Section 67-5-18;
  - (c) administration of the Internet Crimes Against Children Task Force under Section 67-5-20;
  - (d) administration of the Internet Crimes Against Children (ICAC) Unit under Section 67-5-21;
  - (e) administration of the Identity Theft Reporting Information System (IRIS) Program under Section 67-5-22;
  - (f) administration of the Attorney General Crime and Violence Prevention Fund under Section 67-5-24;
  - (g) administration of the Safety Net Initiative as provided under Section 67-5-26; and
  - (h) administration of the Mortgage and Financial Fraud Unit under Section 67-5-30.
- (2) As permitted by the provisions of this chapter, the attorney general may employ or contract with investigators, prosecutors, and necessary support staff to fulfill the special duties undertaken under this section.

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## **Appendix B**

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## **Appendix B National Performance Management Advisory Commission Performance Management Framework**

The criteria for an effective performance management framework, as identified by the National Performance Advisory Commission, is one where:

- A results focus permeates strategies, processes, the organizational culture, and decisions.
- Information, measures, goals, priorities, and activities are relevant to the priorities and well-being of the government and the community.
- Information related to performance, decisions, regulations, and processes is transparent — easy to access, use, and understand.
- Goals, programs, activities, and resources are aligned with priorities and desired results.
- Decisions and processes are driven by timely, accurate, and meaningful data.
- Practices are sustainable over time and across organizational changes.
- Performance management transforms the organization, its management, and the policymaking process.<sup>10</sup>

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<sup>10</sup> *A Performance Management Framework for State and Local Government*. National Performance Management Advisory Commission. 2010. 8.

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## **Agency Response**

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STATE OF UTAH  
OFFICE OF THE ATTORNEY GENERAL



SEAN D. REYES  
ATTORNEY GENERAL

SPENCER E. AUSTIN  
Chief Criminal Deputy

PARKER DOUGLAS  
Federal Solicitor & Chief of Staff

BRIDGET K. ROMANO  
Solicitor General

BRIAN L. TARBET  
Chief Civil Deputy

Wednesday, June 10, 2015

Mr. John M. Schaff, CIA  
Auditor General  
State of Utah - Office of the Legislative Auditor General  
W315 Utah State Capitol Complex  
Salt Lake City, UT 84114-5315

RE: Report No. 2015-05

Dear Mr. Schaff,

Thank you for the in-depth analysis of your reports regarding the Utah Office of the Attorney General ("OAG"). My team appreciates the work and timing of this audit as it addresses long-standing issues my administration inherited and has been working tirelessly to correct over the past 18 months. Further, it validates the areas of significant improvement in the office we have prioritized and the legislature has supported. Your recommendations will assist us in making lasting changes to the OAG that will benefit our joint constituents, the people of Utah.

By our inviting this audit, as was the case with other audits our team invited from both in-state and out-of-state entities, we hoped to increase transparency, help establish benchmarks from which we can measure our continued improvement and gain additional perspectives on methods to improve the office.

Please communicate my personal thanks to each member of the Office of the Legislative Auditor General team ("Auditor Team") for their professionalism and many long hours dedicated to this process. As you noted in the reports, the OAG recognized before this audit, and continues to acknowledge, that outside review is essential and we are continuing to make day-to-day changes towards many of your recommendations as you will find in the following OAG's response to Legislative Audit No. 2015-05.

## RESPONSE

### Auditor Recommendations Are Not Ordered or Ranked in Terms of Issues Most Critical to the Office.

As a preliminary matter, we understand from conversations with the Audit Team that the order of issues presented in their reports is not reflective of an opinion or attempt to substantively rate or rank issues in terms of highest importance or value to the office. Rather, the Audit Team reports always address first those areas that seem to have the most room for improvement, even though they may be less critical or urgently needed as issues mentioned later in the reports that are receiving more attention.

For example, the most pressing needs for the long-term stability of the OAG were determined by management to include: technology improvements, increasing under-market public sector compensation and establishing written and objective performance evaluations. This was reflected in OAG funding requests to the legislature in the past two legislative sessions. In the Performance Audit, these issues are highlighted in Section III and IV, ostensibly because they are critical but are currently and actively being addressed. Some recommendations outlined in Section II, such as an Annual Report, may be important but not more so than those in Sections III and IV. In fact, had the OAG not put so many resources already into the issues covered by Sections III and IV, those issues would likely be the first ones addressed in Section II. Succinctly put, order does not indicate level of importance.

### Unique Challenges Confronted the OAG from the Outset of the New Administration.

From our first day as a new AG administration in December of 2013, and in the midst of alleged scandal, manpower-intensive constitutional cases of national import and the accompanying media attention, we were faced with the following: major areas of neglect; a history of inadequate compensation and funding of essential initiatives; lack of resources; insufficient controls; wanting protocols; a demoralized workforce; dissatisfied clients; and archaic or non-existent technology, to name just a few challenges.

In spite of those obstacles, we convened our entire office to solicit input on the issues of most urgent concern to our employees and management and followed up with an office-wide survey to acquire further information regarding the most critical issues confronting us. Only after exhaustive review, discussion and analysis, our office prioritized the most pressing needs as follows: (1) Restoring Trust through Inviting Outside Audits and Investigations of the OAG; Greater Ethics and Conflict-of-Interest Protocols and Resources; (2) Under Market Compensation relative to other public sector employees; (3) Technology Modernization; (4) Creating Performance Evaluations and Measures; (5) Personnel Needs; and (6) Mid-Level Management Restructuring.

## **Over the Past 18 Months, the OAG First Addressed Issues it Felt Were Most Critical to Both the Immediate and Long Term Stability and Strength of the Office.**

As a management team, we recognized that some of the significant inherited dysfunction could be addressed immediately and resolved right away. For example, we straightaway implemented protocols to separate the policy team within the office from the AG campaign team outside the office to avoid as much conflicts or perception of conflicts.

Another set of inherited problems might be addressed right away but could take months or years to adequately resolve. For example, we commissioned an audit immediately on the proper use of vehicles by OAG employees and then over a period of time adjusted use and reporting protocols consistent with the outcomes. Similarly, we asked the National Association of Attorneys General to send us a team from another state, at no cost to Utah, to perform a technology audit. Some of their recommendations (validating our own concerns), such as having case management and document management systems were addressed immediately by legislative appropriations but will take months or years to properly investigate, bid, select, implement, refine and support.

And some issues, due to their complexity; resource requirements or subordination to more pressing needs might have to wait to be addressed. For example, we have discussed the possibility of preparing a comprehensive annual report but given the lack of manpower currently available for such an undertaking and the dire need for personnel in other areas of the OAG, this laudable aspiration may remain that unless the legislature requires and funds such an endeavor.

## **Additional Improvements, Innovations and**

To provide the legislature context, attached as Exhibit A, is a non-exhaustive list of additional areas the OAG has improved structure, protocols, practices and performance within the office over the past 18 months not covered in depth or at all by the audits. From that list, a few select areas are highlighted below.

### **Organization**

- Restructured and recruited entire Executive Team with the exception of Chief Civil Deputy Brian Tarbet, who remained from prior administration.
- Elevated Bridget Romano as Solicitor General to position on Executive Team and combined Civil Appellate Director functions at no additional cost.
- Added without extra pay differential the duties of Federal Solicitor to Chief of Staff Parker Douglas's duties in order to properly and efficiently handle constitutional defense of state laws.

- Restructured 16 Divisions and 53 Sections for maximum efficiency in sharing resources and expertise.
- Relieved all Division and Section Directors from leadership and opened interviews for all such positions to any in the office.
- Conducted over 120 interviews as an executive team and over a 6 month period, re-appointed certain leaders, permanently relieved some and newly appointed others.
- Major internal audit and re-haul of policy manual.

### Outreach

- Created Internal Transition Team to advise on issues related to morale, management and office priorities.
- Created External Transition Team to advise on broader policy issues, PR issues and expertise from diverse backgrounds; represent the office to their various spheres of influence.
- Visited with each Division and Section.
- Immediate and ongoing visits with Governor's team, legislative leadership, various caucuses, cabinet members and staff, law enforcement leaders individually and at Sherriff's and Police Chiefs Conference, county attorneys, business leaders, non-profits, community organizations, education leaders, federal agencies, state agencies, public officials at federal, state, county, city and town level to discuss legal, policy, law enforcement, health/safety issues.

### Ethics

- Reorganized Internal OAG Ethics Committee.
- Evaluated and empower Civil Review Committee.
- Created Public Corruption Investigation Unit.
- Drew lines of demarcation between office and campaign personnel and functions.
- Implemented sign-in, two-person rule, conflict wall and other protections.

### Audits

- Commissioned audit of vehicle usage by Office of State Auditor of Utah.
- Invited DHRM investigation into important personnel matters.
- Invited outside investigation into OAG handling of Marc Jenson case.
- Commissioned audit by National Association of Attorneys General regarding Information Technology and Systems.
- Commissioned Client Satisfaction Survey by Office of State Auditor of Utah.

## IT

- Evaluated and interviewed vendors for Document Database System to calculate estimated cost and understand capabilities available.
- Evaluated and interviewed vendors for Case Management System to calculate estimated cost and understand capabilities available.
- Upgraded OAG Intranet Portal for better internal communication.
- Upgraded OAG Internet Website.

## CHAPTER II

### Recommendation 1

**We recommend the OAG develop performance management processes and performance measures by which the office and each division will measure progress in reaching priorities and its overall mission.**

#### Response:

Measuring and marking performance standards was an immediate and high priority of General Reyes. To this end, the OAG implemented an employee performance evaluation system with performance measures and performance management processes beginning 1 January 2015. The first rating period will close 30 June 2015, at which point the OAG will assess the initial effectiveness of this evaluation system, and will make modifications as needed. Performance management will continue to be emphasized by leadership, with an expectation of performance management in each division tied to measurable goals where feasible.

### Recommendation 2

**We recommend the OAG include feedback from client agencies in performance measures for division where clients are served.**

#### Response:

A key component to the new evaluation system requires that input from client agencies, where applicable, be considered in rendering an employee evaluation. But even apart from that measure, AG Reyes and his chief deputies routinely meet with client agencies to ensure quality legal services to its client agencies and to all the citizens of Utah.

In fact, the Office of the State Auditor, at the request of General Reyes, conducted A Limited Review of the Office of the Attorney General (OAG) Client Satisfaction and presented its findings in September 2014. The review consisted primarily of a 15-question survey of OAG clients. In addition to other questions, the survey asked

OAG clients to compare level of service provided in 2014 with service provided in previous years. The report showed that 90 percent of OAG clients are equally or more satisfied with OAG services in 2014 compared to previous years.

Immediate changes were highly effective, and the OAG has since implemented additional communication standards between our Office and our client agencies.

### **Recommendation 3**

**We recommend the OAG designate an individual as a performance officer responsible for the performance management and training of the agency and that this performance officer report directly to senior management.**

#### **Response:**

The OAG agrees. As noted in the Performance Audit, other agencies have hired outside experts and consultants for this responsibility. Should the legislature authorize such expenditure, the OAG will seek to hire outside experts to train and manage office performance. In the absence of outside expertise and help, the responsibility will be borne by the chief civil and chief criminal deputies.

### **Recommendation 4**

**We recommend the OAG produce annual reports, including performance information, to provide the public and lawmakers with information on the OAG's activities and the office's efficiency and effectiveness.**

#### **Response:**

The OAG is confident that the implementation of the new case management/information management system will greatly assist the OAG's overall efficiency and effectiveness. As noted by the audit report, the OAG is not presently under a legislative directive to publish annual reports, nor at present, would the OAG's budget facilitate broad scale implementation of the annual reporting system that the audit report envisions. The OAG will accommodate any additional reporting the Legislature may deem necessary, provided, however that the Legislature also supplies the OAG with funding and staffing that will be required to generate these desired reports.

### **Recommendation 5**

**We recommend the Legislature consider making the OAG annual performance reports a statutory requirement.**

**Response:** The OAG will fully comply with any legislatively-mandated requirement.

### **Recommendation 6**

**We recommend the OAG modify ethics processes to include anonymous reporting of some kind, ethics issue deliberation outside the chain of command, and the tracking and periodic evaluation of ethics issue data.**

#### **Response:**

Taking seriously and constructing a mechanism by which employees can raise these types of concerns has also been one of AG Reyes' highest priorities. To be clear, as the Performance Audit indicates, there are ample mechanisms in place to receive, investigate and prosecute claims of fraud or other malfeasance allegedly taking place outside the office. The civil review committee and special investigations/government corruption unit are primary channels for such complaints. Additionally, the internal ethics committee in the OAG reviews and advises potential conflicts and other issues involving the ethical rules governing attorneys and legal professionals.

There are also channels in place for those inside and outside the office to make complaints against employees or contractors of the OAG generally. The Investigations Division and Human Resources Section address such complaints. The OAG acknowledges that, at present, the office lacks a process that enables its employees to anonymously and confidentially make complaints against management concerning fraud, waste and abuse, or malfeasance in office.

AG Reyes undertook initial efforts to craft such a program soon after taking office. Those included studying other AG Offices, other prosecutorial offices, interviewing outside agencies like DHRM and a County Attorney Office to see if they could be a conduit for such complaints. The AG also evaluated several "Internal Affairs" models with one option contemplating the assignment of an IA officer who reports only to the AG on complaints about any others in the office but has no obligation to report to the AG should the complaint involve the AG him/herself. Alternatively, the AG considered a model involving an IA Officer who is entirely outside the chain

of command. Issues such as how far an attorney receiving a complaint can represent the complainant against the OAG complicated immediate implementation.

Exploratory efforts toward an internal affairs model or external agency model were temporarily suspended during the last legislative session in light of a measure that would have established a statewide Office of the Inspector General to assume such investigative responsibilities. That measure failed, though, and the OAG is once again in the process of adopting a confidential, secure reporting system.

### **CHAPTER III**

#### **Recommendation 1**

**We recommend that the OAG require management review of completed employee evaluations to ensure program compliance.**

#### **Response:**

The OAG agrees. This validates one of the OAG's top and immediate priorities from 2014-15.

#### **Recommendation 2**

**We recommend that the OAG require employee evaluations to be stored in personnel files, including documentation that the appropriate discussions took place.**

#### **Response:**

The OAG agrees. This validates one of the OAG's top and immediate priorities from 2014-15. Evaluations will become a permanent part of the rated employee's personnel file.

### **CHAPTER IV**

#### **Recommendation 1**

**We recommend that the OAG promptly seek to establish (a) modern office-wide electronic case management and electronic document control systems.**



**Response:**

This validates one of the OAG's top and immediate priorities from 2014-15. OAG has already obtained an appropriation from the 2015 Legislature to acquire a case management and document control system, together with 2 FTE's to aid the implementation. RFI's have been reviewed and an RFP will be issued 10 July 2015. This is a culmination of a two-year effort by the OAG to secure funding and authorization for this initiative.

**Recommendation 2**

**We recommend that the OAG establish case management controls and measures to be regularly monitored once office-wide electronic case management and electronic document control systems are functional.**

**Response:**

The OAG agrees. This validates one of the OAG's top and immediate priorities from 2014-15.

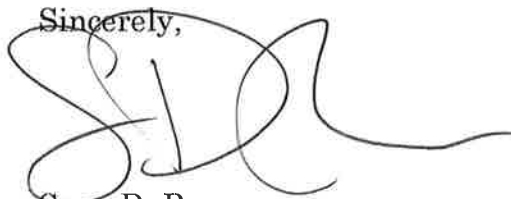
**Recommendation 3**

**We recommend that the OAG closely monitor and evaluate IT staffing needs as the new system(s) are deployed and work with the Legislature if additional resources are necessary.**

**Response:**

This validates one of the OAG's top and immediate priorities from 2014-15. This audit finding magnifies the scope of what the OAG previously recognized about its IT staff. Namely, this finding highlights that its IT staff is woefully understaffed. The OAG will bring this critical fact to the attention of appropriate legislative committees and the EAC.

Again, thank you for your work and service to the State of Utah.

Sincerely,  
  
Sean D. Reyes  
Utah Attorney General

# Exhibit A

As stated in the Performance Audit, “Areas of concern identified in this report have been long standing issues that preceded the current AG.” The following highlights key progress of the Utah Office of the Attorney General (OAG) under the direction of Attorney General Sean D. Reyes, since taking office in late December 2013.

**OAG Leadership:**

- Appointed a well-balanced Executive team with varied experience and perspectives
  - Chief Deputy of Civil - Brian Tarbet (retained from previous AG leadership)
  - Chief Deputy of Criminal - Spencer Austin (from private practice)
  - Chief of Staff/Federal Solicitor - Parker Douglas (from federal public defenders)
  - Solicitor General - Bridget Romano (retained in position)
  - Chief Communications Officer - Missy Larsen (from private practice)
  - Executive Secretary - Shelley Exeter (retained from previous AG)
  
- Restructured and Reorganized OAG Divisional Leadership
  - Hired and restructured Executive team
  - Added additional checks and balances through reorganization and training
  - Asked for office-wide Division Chief resignation
  - Interviewed over 120 for Division Director positions
  - Reorganization, reappointment, and new appointments to division leadership
  - New department organization to Civil, Criminal and Appellate Departments
  - New Constitutional Defense attorney
  - New GRAMA attorney
  - Combined Environment and Health divisions for connective resources and leadership
  - New Markets and Financial Fraud division
  
- Leadership Availability
  - AG Reyes met with all employees who requested personal meetings
  - AG Reyes and leaders from Exec meet with office wide divisions to hear complaints generated under previous leadership, understand scope of work and assess needs
  - Responded to personnel needs on an ongoing basis
  - Internal complaint protocol implemented

**Internal Performance Management:**

- Immediate attention to OAG performance measurements and standards
- Implementation of employee performance measures and processes beginning 1 January 2015
- Currently in process, to be reviewed at first rating period closing after 30 June 2015

### **Refocused Procedures, Committees and Sections for Ethics Review:**

- Civil Review Committee  
*Established to deal with complaints or questions from political subdivisions of the state and from private citizens regarding whether certain actions of the political subdivision(s) and/or their officers and agencies were in compliance with the law.*
- Ethics Committee  
*The Ethics Committee consists of the Division Director of each Division in the Office, or the Division Director's designee, and the Attorney General's Civil Chief Deputy. The Chief Civil Deputy selects a chair of the Committee who is responsible for calling and chairing meetings and handling ethics inquiries from Division Chiefs. The Chief Civil Deputy must be present and participate in any recommendation or decision the Ethics Committee makes.*
- Public Corruption Unit added to the Special Investigations Unit  
*The Public Corruption Unit is an added section with our Special Investigations unit, now the Special Investigations and Public Corruption Unit (SIPCU).*
- New meeting policies for greater transparency and to safeguard against unethical behavior
- Screenings and sign-ins for all AG meetings
- AG has staff in all meetings, does not meet alone
- Issue shareholders and division leaders included in meetings
- Procedures and policies for meetings are established by division leadership involved in area of concern

### **External Audits & Reviews:**

- In addition to supporting and initiating content in the attached legislative audits, the OAG has Initiated and supported the following outside audits and reviews since AG Reyes took office:
  - *An Inquiry and Analysis of Vehicle Usage in the Office of the Attorney General* by the Office of the Utah State Auditor, February 2014
  - *Report to the Utah Attorney General Regarding Issues Raised in the Rule 65 Petition for Relief Filed by Marc Jensen*, by Paul G. Cassell, Esq., and Francis M. Wikstrom, Esq., April 2014
  - *A Limited Review of the Office of the Attorney General (OAG) Client Satisfaction* by the Office of the Utah State Auditor, September 2014
  - DHRM investigations into personnel complaints

### **Transition Support & OAG Outreach:**

- Established Transition Teams
  - Internal Transition Team consisted of staff and attorneys from each division to offer office perspective on key personnel issues and how to regain the trust of OAG personnel clients and constituents

- External Transition Team consists of leaders from business, government, law enforcement, legal community and higher education to offer support, connection and guidance of how to regain trust in the OAG
- Built and repaired key relationships with state leaders and client agencies
  - Immediately met with key State leaders to gain perspective and build relationships for change in OAG
  - Immediately assessed client agency relationships
  - Changed focus to client driven representation protocols
  - Made amends by addressing complaints as quickly and completely as possible

## **Legal**

- Immediate and in-depth attention to key federal and state legal cases that demand exceptional legal expertise throughout every division in the OAG
- Numerous nationally focused cases influencing policy in ways that protect Utah's interests
- New Constitutional Law section with Chief of Staff taking on additional work as Federal Solicitor

## **Legislative Efforts**

- Continuous response to inquiries and issues from legislators
- Brought legislators on office tours to assess case workloads, office space, facilities, etc.
- Met with Leg Counsel regularly to discuss legal impact of proposed legislation
- Participated in SWAPLAC and CIVLAC
- Worked with legislature to explore and fund centralized case tracking system software for OAG
  - Currently in progress: RFP stage
- Assessed employee compensation schedules in connection with other government agencies and received funding for increases and bonus structures
- Initiated and passed White Collar Crime Registry (First in Nation)
- Passed Safety Crisis and Tip line to be run through State commission, chaired through OAG, and serviced by University of Utah Neuropsychiatric Institute and Hospital

## **Technology**

- Centralized Material and Technology
  - Case Tracking System Software is currently being implemented with legislative funding from 2015 Legislative Session (in RFP stage)
  - New Constituent Tracking has been implemented for office use
  - New Intranet site launched for OAG
  - New constituent focused AG Website launched

## **Communications**

- Communications Protocols and Advancements
  - Implemented media policy
  - Attorneys and key staff as voices for specific cases/issues
  - Ongoing communication with attorneys and staff on key office functions
  - Internal Transition Committee

## **Children's Justice Centers Expansion**

- Renewed focus and expansion of statewide CJs
  - Opened additional centers with 22 centers running by Summer 2015

## **Program Management**

- Assessing how private donations can be utilized to enrich programs
- Initiated improved clerk and intern program
- Program Review and Assessment
  - ICAC Preventive Education (NetSmartz)
  - ID Theft Central
  - Utah Prosecution Council
  - Trafficking Task Force
  - Safety Net

*In addition to the areas of concern that were addressed, the following information may be helpful in understanding the overall current state of the OAG:*

#### **OAG Priorities with Attorney General Reyes**

- Protect citizens, particularly children, from violent crime and drugs
- Protect businesses and consumers, particularly Seniors, from white collar frauds and scams
- Defend Utah's laws and our state against overreach from the federal government in areas such as public lands, healthcare, Endangered Species Act, business regulation and the Second Amendment
- Restore public trust by focusing the office on ethics and excellent legal work

#### **Key achievements not addressed in document**

- Returned focus of the Attorney General's Office to a law office
- Built and repaired key relationships with state leaders and client agencies
- Restructured government ethics committees
- Reestablished the investigations unit for criminal allegations into public corruption
- Protected civil liberties by abolishing administrative subpoenas and tightened search and seizure procedures
- Implemented and executing Community Outreach program and initiatives
- Training on many key issues including human trafficking and child abuse awareness
- Renewed attention to Commercial Enforcement prosecution
- Teamed with DEA on largest spice and heroin busts in Utah history
- Shut down multiple human trafficking rings and identity theft document mills through the SECURE Strike Force
- Added additional checks and balances through reorganization and training
- Redesigned Compensation and Incentives Program
- One With Courage to build awareness about child sexual abuse campaign launch with DCFS
- New ID Theft Central Website launched

## **Awards**

- 2015 BEST OF STATE BOSS Award for Community Development
- 2015 BEST STATE AGENCY/OFFICE: Community Development Category – Public Sector Division
- 2015 BEST PUBLIC SAFETY: Community Development Category – Public Sector Division
- 2015 BEST WEB-BASED COMMUNITY RESOURCE: Community Development Category – Public Sector Division
- 2015 BEST ELECTED OFFICIAL: Community Development Category – Public Sector Division
- Governor’s Award for Excellence for OUTSTANDING PUBLIC SERVICE awarded to Utah Attorney General Child Protection Division
- Utah State Bar Pro Bono Commission LAW FIRM OF THE YEAR Award