



# DEPARTMENT OF PUBLIC SAFETY ATTORNEY REQUEST

EXECUTIVE OFFICES AND CRIMINAL JUSTICE APPROPRIATIONS SUBCOMMITTEE  
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ISSUE BRIEF

## SUMMARY

This issue brief provides the Attorney General's response to questions regarding its building block request for new funding to hire an additional attorney to provide legal support in the Department of Public Safety (DPS).

### **a. Can you provide data to help us understand the current time demands on the attorney working with DPS?**

The attorney who is assigned to represent DPS is responsible for providing legal advice to its 11 divisions and bureaus, most of which require assistance on a daily basis. With over 1,200 DPS employees, the attorney frequently speaks with a variety of individuals to discuss legal issues that require the attorney's assistance. These discussions and meetings can last anywhere from 30 minutes to 4 hours, and afterwards require significantly more time to further research the matter and draft an appropriate response that addresses the issues raised in the meeting.

Additionally, the attorney assigned to DPS also provides legal advice to all 11 administrative entities within DPS, consisting of boards, committees, and councils. These administrative bodies meet on a regular basis throughout the year, and at each of these meetings, the attorney is responsible for providing legal counsel regarding the items on the agenda. Because of the potential ethical conflict involved, this often means that if the administrative agency appears before the administrative body, primarily in adjudicative matters such as license or permit suspensions, it is left without legal representation and is at a great disadvantage. A second attorney would alleviate this problem by providing assistance to the agency at these meetings without causing an ethical violation.

In fiscal year 2012, these duties translated into the following time obligations:

- Attendance at 47 board, committee, or council meetings to provide legal advice on matters before the administrative body. These meetings typically last between 1 and 5 hours. These meetings are often difficult to attend due to meetings set at the same time and other scheduling conflicts.
- Litigation of 18 administrative cases at hearings, not already included in the previous 47 meetings, which take anywhere from 4 to 8 hours at a time. This does not include the time required to prepare for the hearing which includes researching legal issues, drafting legal briefs, meeting with witnesses and reviewing evidence.
- Litigation of 16 cases in district court, which requires extensive legal research and briefing, in addition to travel to various courts throughout the state. Although the time for each hearing is usually only 2 to 4 hours, it takes days to complete the work necessary to prepare for the hearing.
- Presenting 11 training sessions on various legal issues for DPS employees. These training sessions usually last anywhere from 1 to 3 hours, but require additional time to research the legal issues and prepare presentations and material.
- Reviewing 35 POST cases prior to filing. This usually takes anywhere from 30 minutes to 1 hour depending on the complexity of the case and the work required to finalize the pleadings for filing.

- Preparation of various other documents for DPS personnel, such as responses to constituent correspondence, requests from other governmental entities, and requests for agency action. These responses can require anywhere from 1 hour to 4 hours depending on the complexity of the legal issues involved.
- Review of 8 purchasing contracts, which took anywhere from 30 minutes to 4 hours depending on the amount of negotiation and redrafting required to complete the contract. The attorney did not review the other 17 contracts DPS entered into because of time constraints. The lack of review of contracts in the past has resulted in some additional legal issues which then require significantly more time to address.
- Review of 6 interlocal agreements or memorandums of understanding between DPS and other governmental entities which requires anywhere from 30 minutes to 4 hours to negotiate and redraft.

A significant part of the attorney's time consists of reviewing, drafting, and revising statutory language, administrative rules, and DPS policies. There are approximately 20 proposed statutory changes for the upcoming 2013 legislative session that the DPS attorney has been involved with. In past year, the DPS attorney also helped draft or revise 26 different administrative rules. Additionally, the attorney also provides continual review and recommends revisions to the DPS policy that is updated every three months.

Although these matters are not cases in the traditional sense, it does require a significant amount of time spanning a period of months and even years to complete the entire process because of the extensive review and redrafting process. Unfortunately, there are other statutes and rules that the attorney has been requested to provide assistance for but has been unable to assist with because of time constraints. A second attorney would enable the attorney to respond to requests for assistance with all of the DPS statutes, rules and policies.

Finally, there are daily matters where DPS personnel need legal advice regarding issues of liability, pending lawsuits and personnel matters. Not only does the attorney assigned to DPS need to be readily available to provide assistance to DPS when these issues arise, but many of these matters require the attorney to work with and provide assistance to other personnel in the Attorney General's Office.

**i. How many cases is he/she working on right now?**

There are 82 matters which the attorney is currently working on, including cases and other matters that are not cases in the traditional sense.

**ii. Are there any cases backlogged? How many? How long have they been backlogged for?**

As a result of being understaffed, the attorney assigned to DPS is obligated to prioritize her workload even though this sometimes means that statutory deadlines go unmet. As a result, there have been multiple occasions where GRAMA requests that require legal assistance are delayed, and a response has not been issued within the time frame required by law. This has resulted in public reprimands and general frustration by the public.

Those matters without a statutory or rule deadline generally take a back seat to more pressing matters and may take months or years to complete. For example, one instance of administrative rulemaking took over two years to complete because of the lack of time the attorney had to devote to the project. Another example is responding to inquiries from the public, which often takes a few months to accomplish.

### iii. Performance measures to illustrate the potential impact a new attorney would have on DPS cases?

*Goal: Have legal counsel present at every scheduled board, committee, or council hearing without having to miss other meetings where legal counsel has been requested to provide advice on issues.*

*Performance measure: Decrease in meetings where legal counsel is requested but not present.*

*Goal: Quick response time to legal questions from DPS employees.*

*Performance measure: Higher percentage of requests that receive a response within 24 hours, or at least within the deadline that is set by the requesting employee.*

*Goal: Compliance with filing deadlines.*

*Performance measure: All responses that legal counsel submits meet the due date set by statute and rule.*

*Goal: Decrease in administrative and court decisions that are adverse to DPS.*

*Performance Measure: Reduced percentage of litigation cases, both administrative and court, where DPS does not prevail or settles on unfavorable terms.*

*Goal: Review and assistance on all revisions to the DPS statutes and administrative rules.*

*Performance Measure: Reduced need to revise statutes and rules after they have gone into effect.*

*Goal: Review of all purchasing contracts entered into by DPS and an participation in the negotiation of the contracts.*

*Performance Measure: Reduced percentage of legal issues created by contract issues.*

Given the workload of the current attorney assigned to DPS, a second attorney is needed to achieve these goals and performance measures.

Another impact that a second attorney would have is the elimination of conflicts of interest, especially on POST matters. A second attorney would be able to handle cases where the current attorney has a conflict of interest that prevents her from working on a case.

### **b. One performance measure mentioned in the request is the “decrease in the number of cases where it is alleged that the Department failed to comply with a statutory mandate.”**

#### **i. What is this number right now?**

There are two cases this week alone where the attorney’s time constraints have delayed a response to a GRAMA request. One of those was nearly a month late.

#### **ii. Are there any on the docket? How many?**

The attorney has generally tried to prioritize court cases first since failure to comply with court deadlines can result in an adverse judgment. Consequently, this means that other matters take much longer to generate a response.

#### **iii. It would really help if you could provide additional measures to frame the issue for us.**

In 2012, there were 42 GRAMA matters to which the attorney drafted a response on behalf of DPS; 11 of those matters included responses that were past the statutorily-mandated response time. As mentioned in 1(a)(ii), one DPS agency exceeded the required time limit to enact administrative rules to a new statute, which could have been avoided with additional legal assistance.

As a result of this position having been sorely understaffed in the past, DPS has not always had the benefit of legal counsel when making policy decisions. This has resulted in claims for money judgments, some of which were settled with the payment of money by DPS or Risk Management, including the payment of attorney's fees to one party because DPS had not engaged in rulemaking when it was required by statute.

**Performance Measure: Elimination of delay in providing assistance to DPS employees who need legal counsel to carry out their law enforcement and administrative duties.**

**Performance Measure: Elimination of matters where DPS personnel requested legal review, but none was given at the time of the request due to time constraints.**

**c. Why did the AG put this request as the #2 request, over all of the other requests?**

With only one attorney assigned to advise DPS, the agency is severely understaffed compared to other state agencies. The addition of a second attorney will assist with the elimination of scheduling conflicts for meetings and court appearances, a reduction in time needed to review, revise and draft statutory language, administrative rules, and DPS policy, a reduction in time needed to respond to legal questions from DPS personnel, and a decrease in administrative and court cases which may result in an adverse ruling for DPS. A second attorney would also increase the quality of work product that the AG's Office provides by allowing more time to focus on legal issues and be more proactive in legal counsel instead of simply reacting to legal needs as they arise.