

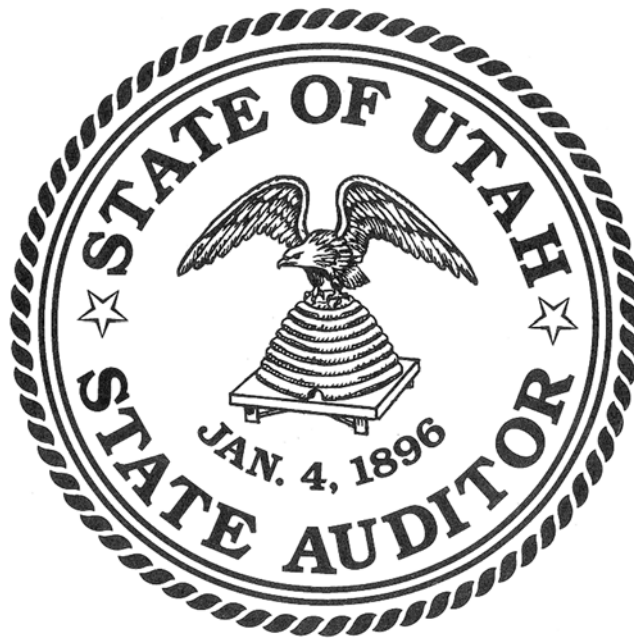
# UNIFIED POLICE DEPARTMENT

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Findings and Recommendations  
For the period August 2015 through August 2017

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Report No. UNPD-18-SP



## OFFICE OF THE STATE AUDITOR

AUDIT LEADERSHIP:

John Dougall, State Auditor  
Julie M. Wrigley, CPA, Audit Manager  
Tyson Plastow, Audit In-Charge

**UNIFIED POLICE DEPARTMENT**  
FOR THE PERIOD AUGUST 2015 THROUGH AUGUST 2017

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OFFICE OF THE  
**STATE AUDITOR**

**REPORT NO. UNPD-18-SP**

July 27, 2018

Jeff Silvestrini, Chair  
Unified Police Department Board of Directors  
3365 South 900 West  
Salt Lake City, Utah 84119

Dear Chair Silvestrini:

We have performed the procedures described below to certain aspects of the internal control and compliance at the Unified Police Department (UPD), a limited-purpose public entity, for the period August 2015 through August 2017. The purpose of these procedures was to assist UPD in evaluating its operations, reporting, and compliance, in accordance with *Utah Code 67-3-1(4)*. We performed the following procedures at UPD:

1. We reviewed UPD's Interlocal Agreement and amendments, policies and procedures, and organizational structure for compliance with state statute, internal control standards, and best-practices.
2. We reviewed a judgmental sample of purchase card activity for compliance with UPD policies.
3. We reviewed the former sheriff's travel expenditures for compliance with UPD policies and state statute.
4. We reviewed compliance with certain state statutes and best practices for transparency for limited-purpose public entities, including:
  - compensation reporting,
  - public notice of meetings and posting of meeting minutes, and
  - board contact information.
5. We reviewed certain cash disbursements for propriety, reasonableness, and compliance with UPD policies.
6. We reviewed journal entries for reasonableness.

Our procedures were more limited than would be necessary to express an audit opinion on compliance or on the effectiveness of UPD's internal control or any part thereof. Accordingly, we do not express such opinions. Alternatively, we have identified the procedures we performed and the findings resulting from those procedures. Had we performed additional procedures or had we made an audit of the effectiveness of UPD's internal control, other matters might have come to our attention that would have been reported to you.

Our findings resulting from the above procedures are included in the attached findings and recommendations section of this report. We feel that findings 1 through 3 are key internal control weaknesses or important compliance issues to the reporting requirements and governance of UPD.

By its nature, this report focuses on exceptions, weaknesses, and problems. This focus should not be understood to mean there are not also various strengths and accomplishments. We appreciate the level of professionalism, courtesy, and assistance extended to us by the personnel of UPD during the course of the engagement, and we look forward to a continuing professional relationship. If you have any questions, please call Tyson Plastow, Audit Senior, at (801) 234-0544.

Sincerely,

A handwritten signature in cursive script that reads "Julie M. Wrigley".

Julie Wrigley, CPA  
Special Project Audit Manager

cc: Rosie Rivera, Salt Lake County Sheriff

## BACKGROUND

The Unified Police Department (UPD) is an interlocal entity organized under *Utah Code* 11-13 to provide law enforcement services to its member entities. During our testwork, the member entities were Salt Lake County, Taylorsville, Copperton, White City, Holladay, Herriman, Emigration, Kearns, Magna, Midvale, Millcreek, and Riverton (Members). Prior to the formation of UPD in 2009, many of the Members contracted with the Salt Lake County Sheriff's Office to provide law enforcement services. In an effort to gain more governing control over their law enforcement services, contracting entities worked with Salt Lake County and the Sheriff's Office to establish UPD. The two models of shared law enforcement services—contracting and forming an interlocal—are used around the country. Ultimately, each local government decides which of the two shared-service models better meets its needs.

Under a contractual model, each entity could contract with the Salt Lake County Sheriff's Office or another law enforcement agency to provide law enforcement services for that entity's jurisdiction. A contract would typically include a level of service, rates, and performance metrics. A contractual arrangement may provide greater control over services provided.

Under the interlocal model, the Members still receive law enforcement services under the direction of the Salt Lake County Sheriff, but they appoint the UPD Board, a design meant to give the Members more governing control. As described in Finding 1, it appears the Members did not achieve the desired control. Instead of paying for a contract, Members pay fees either directly or indirectly to UPD for baseline services established by the UPD Board (Board). The Board is made up of elected officials from each of the respective Members.

*Utah Code* 11-13-202(4) requires law enforcement services be provided, "by or under the direction of the county sheriff" since UPD's service area includes an unincorporated area of Salt Lake County. The Interlocal Agreement (Agreement) specifies that the Salt Lake County Sheriff is the de facto Chief Executive Officer (CEO) and Administrative Officer of UPD. The Agreement also allows the elected sheriff to veto policies unless they are approved by a two-thirds majority of the Board.

The former sheriff (Former CEO) resigned from his position in July 2017. The Salt Lake County Council selected a new sheriff (Current CEO) to fulfill the remainder of the former sheriff's term.

Our test period was August 2015 through August 2017 unless otherwise noted.

## FINDINGS AND RECOMMENDATIONS

### 1. **INTERLOCAL AGREEMENT ESTABLISHED WEAK GOVERNANCE STRUCTURE**

The Interlocal Agreement created weaknesses in the governance structure of UPD as follows:

- a. *The Board does not control the selection of the CEO and the CEO is not directly accountable to the Board* – The Board has no ability to appoint, remove, or set compensation for this position. As such, the Board and the Members would be unable to remove or discipline the CEO in the event that performance is unsatisfactory.
- b. *The CEO can veto Board policy* – Unless Board policy is approved by a two-thirds majority of the Board, the CEO may veto the policy. This authority is generally reserved for one branch of government to provide a check against the other (e.g., the Governor being able to veto legislative action). In UPD’s circumstance, the CEO provides a check for the Board; however, as noted in a. above, the Board has no power to provide a check on the CEO. We fail to see why the CEO should have veto power over the Board.
- c. *Voters served by UPD are outnumbered by voters outside of UPD’s service area* – All registered voters in Salt Lake County may vote for the sheriff. The voters’ selection then becomes the CEO of UPD rather than the Board selecting the CEO. Based on 2016 Census Bureau estimates, less than half the voters in Salt Lake County live within UPD’s jurisdiction. Therefore, the voters served by UPD are unable to hold the CEO accountable for UPD’s operations through the election process.

In the case of UPD, *Utah Code 11-13-202(4)* indicates that law enforcement services for the unincorporated portion of the county must, “be provided by or under the direction of the county sheriff.” “Under the direction” is not defined by statute and could be interpreted broadly. However, the Board, acting as the governing body of UPD, should be accountable to its Members, and UPD management should be accountable to the Board.

The Board and the Sheriff should consider ways to ensure that management is fully accountable to the Board and to ensure the Board is directly accountable to its Members and the voters these Members represent. We recognize that it may be beneficial for the Board to appoint the sheriff as CEO. We also recognize that it may be beneficial for the sheriff to represent Salt Lake County on the Board; however, the sheriff should not serve as a Board member and the CEO simultaneously.

#### **Recommendation:**

**We recommend the Board amend the Agreement with the Members of the interlocal to:**

- **Ensure the Board can hold management accountable through means such as appointment, removal, and setting compensation;**
- **Ensure compliance with *Utah Code 11-13-202(4)* which may include the sheriff serving on the Board or the appointment of the sheriff as CEO at the Board’s discretion (but never both positions simultaneously).**

**We also recommend that UPD consider seeking to change state statute if necessary for UPD to reasonably implement this recommendation.**

**2. UPD PROVIDED INADEQUATE REPORTING OF SERVICE LEVELS TO ITS MEMBERS**

We reviewed the Agreement, interviewed Board members, the Current CEO, the Former CEO, senior staff, and UPD reports and communication with the Board. As specified by the Agreement, UPD provides reports on crime statistics, total number of calls for services, training, and use of pooled services; however, this information cannot be used to verify that Members receive the service levels for which they paid. Without adequate information, neither the Board, its Members, nor the citizens which UPD serves can hold UPD accountable for effective and efficient operations.

We conducted a survey of similar entities, both in-state and out-of-state, and noted an entity which prepares a report detailing the services provided, which we consider a best practice. Reports of services provided should detail information including:

- Time period
- Type and quantity of service provided (i.e.: vehicle patrol hours, school resource officer hours, investigative hours etc.)
- Rates
- Costs of pooled services
- Other fixed costs

The Agreement allows the Board to request information it considers reasonable. Therefore, the Board should request routine periodic reports from UPD which contain the information suggested above. The Board should review the information to determine that UPD has adequately provided the required service levels.

**Recommendation:**

**We recommend the Board clearly establish the information that UPD management must report to the Board and its Members. This information should include sufficient details to enable Members to review the adequacy of service levels provided by UPD.**

**3. PREVIOUS UPD ADMINISTRATION FAILED TO COMPLY WITH UTAH PUBLIC FINANCE WEBSITE REQUIREMENTS**

We reviewed UPD's compensation reporting to the Utah Public Finance Website (UPFW) and found UPD did not post the names or gender of any of its sworn officers. *Utah Code 63A-3-405(3)(a)* requires UPD to post public financial information to the UPFW, which according to UPFW policy 01-01.02 includes employees' names, genders, and compensation information unless such information is protected.

*Utah Code* 63G-2-301 exempts information that would identify undercover officers and certain investigative personnel, but does not exempt UPD from disclosing the information it excluded. The Former CEO elected not to disclose identifying information for any sworn officer due to his concern that it could jeopardize their safety. It appears the Former CEO likely sought, but did not obtain, proper legal counsel regarding the nondisclosure from the Salt Lake County Attorney's Office. According to the Former CEO, he did not consult UPD's own former legal counsel. Had the Former CEO obtained such counsel, it is likely UPD would have complied with UPFW requirements.

The disclosure laws are intended to improve accountability. The lack of transparency weakened public accountability.

**Recommendation:**

**We recommend the Board ensure all public financial information is disclosed on the Utah Public Finance Website as required by *Utah Code* and Utah Public Finance Website policy.**

**4. PREVIOUS UPD ADMINISTRATION FAILED TO ENSURE REIMBURSEMENT OF IMPROPER PURCHASE CARD EXPENDITURE**

We reviewed the purchase card activity for certain individuals and noted an improper purchase of \$44 on the purchase card of one senior staff member. It appears the purchase card holder recognized and self-reported the improper purchase, and we determined the purchase card holder likely intended to reimburse the purchase. However, the purchase occurred in September 2015, and as of March 2018 the purchase card holder had not yet reimbursed UPD for the improper expense.

The purchase card holder and other senior staff believed the card holder had reimbursed UPD but no one verified the reimbursement. We reviewed documentation provided by UPD and verified the card holder reimbursed the full amount of the improper purchase March 14, 2018 after we brought the error to UPD's attention.

**Recommendation:**

**We recommend the Board ensure purchase card holders reimburse UPD for any improper expenditures in a timely manner.**

**5. UPD SECONDARY EMPLOYMENT PRACTICES MAY CREATE PUBLIC CONFUSION AND FOSTER MIXED LOYALTIES**

UPD currently allows officers to earn additional income through outside employment. Such employment may consist of regular outside employment which does not require the use of law enforcement authority, and extra-duty secondary employment (Secondary Employment) which requires the use of law enforcement authority by a sworn officer.



Based on information gathered from other police departments within the state and across the country, it appears there are at least three different methods by which the payment for Secondary Employment is administered.

- a. *Officers are always considered employees of their department:* The secondary employer pays the full cost directly to the department. The department assigns an officer to perform the work, and the department pays the officer for the additional work (which may include overtime). The cost to the secondary employer may be greater due to overtime expenses. Officers are clearly still under the command and control of their department.
- b. *Officers work as independent contractors:* The secondary employer contracts with the department to provide police officers and generally pays a small administrative fee but pays the officers directly as independent contractors. Costs to both parties may be lower than the first method as the officers are not paid overtime and the department may not have to provide general liability insurance. The officers are not clearly still under the command and control of the department.
- c. *Officers are employees of the secondary employer:* The secondary employer places the officers on its payroll and pays the officers directly as employees. The secondary employer still contracts with the department, ensuring officers are bound by their duties as police officers and that the secondary employer provides all necessary liability insurance. Costs may be lower than the first method as the officers are not paid overtime and the department should not have to provide general liability insurance. The officers are not clearly still under the command and control of the department.

During our test period from August 2015 through August 2017 Secondary Employment accounted for more than \$2.4 million in officer compensation to UPD officers. In most cases, UPD allows outside entities to directly pay officers. We acknowledge the general benefits of Secondary Employment for the community and the officers; however, we are concerned the method most commonly used by UPD may create confusion for the public and mixed loyalties for the involved officers. Direct payment from the secondary employer poses the potential for officers to be inappropriately influenced by the desires or demands of the secondary employer rather than the policies and requirements of UPD. Additionally, members of the community may be confused as to the officers' actual employer and loyalties.

We consider the first method, where departments pay officers directly, to be the best practice. We recognize that the best practice may increase costs for secondary employers and that sworn officers from other departments which do not follow the best practice may provide a competitive cost advantage. Effectively, an officer from another department could fill a secondary employment opportunity previously held by a UPD officer, eliminating a considerable benefit for extra pay for UPD officers unless UPD subsidizes the additional costs to secondary employers. Therefore, state statute may need to change to provide uniform regulation across all police jurisdictions to (1) eliminate possible confusion, (2) avoid the risk of mixed loyalties, and (3) unify police secondary employment policies which could undermine best practice through riskier methods.

**Recommendation:**

**We recommend the Board consider establishing policies and procedures over Secondary Employment to ensure that officers may only work as sworn officers when paid directly by UPD. We also recommend that UPD consider seeking to change state statute if necessary for UPD to reasonably implement this recommendation.**

**6. BOARD COULD IMPROVE TRANSPARENCY BY FOLLOWING BEST PRACTICES**

UPD has not posted contact information for Board members online. In addition, the Board does not publish the approved minutes to UPD's website or to the Utah Public Notice Website.

State laws do not require interlocal entities, such as UPD, to provide contact information for their board members. However, *Utah Code 17B-1-303* requires local districts to post the name, email address, and phone number of each board member, and *Utah Code 17D-1-106* applies the same requirement to special service districts. We consider it best practice to make board contact information readily available to the public.

*Utah Code 52-4-203* requires interlocal entities to keep written minutes and audio recordings, but does not require them to be posted online. Given the advancements in technology and increased access to audio and visual recording devices, we consider it best practice to make both the approved minutes and audio recordings of board meetings available online. The increased transparency could improve the oversight and accountability of UPD.

**Recommendation:**

**We recommend the Board institute policies and procedures to increase its transparency by:**

- **Publishing Board member contact information, including name, email address, and phone numbers.**
- **Publishing to its own website and/or the Utah Public Notice Website approved meeting minutes.**
- **Making the audio recordings of its Board meetings available online.**



OFFICE OF THE  
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UNIFIED POLICE DEPARTMENT  
Findings and Recommendations  
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**Auditor's Concluding Remark to Finding No. 1**

In its response to Finding No. 1, the Board cited *Utah Code* 17-22-3(2)(b) as requiring the Sheriff to serve as the CEO of the UPD Interlocal. However, we remind the Board that according to *Utah Code* 17-22-2(3)(c), when a police interlocal agreement includes a public agency (as defined by Utah Code section 11-13-103), the Sheriff does not serve as the CEO of the interlocal entity unless provided in the interlocal agreement. Therefore, when structured accordingly, the statute allows for the appointment of the Sheriff as CEO but does not require it.



July 25, 2018

Utah State Auditor John Dougall  
Utah State Capitol Complex  
East Office Building, Suite E310  
Salt Lake City, Utah 84114-2310  
[jdougall@utah.gov](mailto:jdougall@utah.gov)

**VIA ELECTRONIC MAIL AND US MAIL**

**Re: Unified Police Department Board and Sheriff Rivera's Response to Limited Performance Audit**

Dear Auditor Dougall,

The UPD Board and Sheriff Rivera appreciate the time and effort that has gone into this audit by State Auditor John Dougall and his staff, and are proud of the fact that its Board Members, Sheriff Rivera, and UPD senior staff have cooperated in this audit.

**1. INTERLOCAL AGREEMENT ESTABLISHED WEAK GOVERNANCE STRUCTURE**

UPD Board and Sheriff agree that the governance structure of the UPD could be improved. UPD has matured since its initial formation period. The UPD Board has already considered and will continue to consider changes to the governance structure to better serve those citizens who are protected by the UPD and its fine officers. However, there are statutory barriers to one of the recommendations. The UPD Board supports changes to these statutes to give members more discretion regarding the selection of the CEO.

**a. UPD currently has no discretion on the choice of the CEO under Utah law.**

UPD concurs that the Board does not select the UPD CEO. This is because Utah law mandates that the CEO is the County Sheriff. In addition to Utah Code Annotated Section 11-13-202(4), quoted in the report, another section of the Utah code mandates that the Sheriff is the CEO of a law enforcement interlocal.

Utah Code Section 17-22-2(3)(b) provides:

(b) A sheriff in a county which includes within its boundary a police local district or police interlocal entity, or both:

- (i) serves as the chief executive officer of each police local district and police interlocal entity within the county with respect to the provision of law enforcement service within the boundary of the police local district or police interlocal entity, respectively; and
- (ii) is subject to the direction of the police local district board of trustees or police interlocal entity governing body, as the case may be, as and to the extent provided by agreement between the police local district or police interlocal entity, respectively, and the sheriff.

UPD believes that the provision cited in the Report, U.C.A. Section 11-13-202(4), and the provision contained in U.C.A. Section 17-22-3(2)(b) quoted above, require that the Sheriff serve as the CEO of the UPD Interlocal. The UPD Interlocal also specifically designates the Sheriff as CEO, but this could be amended if the statute changes.

In 2017, The UPD board voted to support legislation that would remove the requirement from Utah law that a law enforcement Interlocal be under the control of the sheriff. House Bill 374 was introduced with the backing of the UPD Board. The bill passed by the Utah House but failed to pass in the Senate. Therefore, until the law is changed, the UPD members do not have the discretion to change the provision in the Interlocal that mandates that the Sheriff serving as the UPD CEO. The UPD board supports the Auditor's call to support legislation that leaves the choice of the CEO to the Interlocal members.

The UPD Board also disputes that it has no control over the Sheriff. While it is true that the Board cannot fire the sheriff or cut the compensation because the compensation is set by Salt Lake County, the UPD Board can nonetheless control the budget. The Board also participates in the selection process and approves the hiring of the Chief of Police and deputy chiefs for the precincts. In addition, the Chief of Police and appointed civilian directors, which include the CLO, CFO and HRD, all require approval of the board for their removal.

The UPD Interlocal also gives the board the authority to override the Sheriff's veto of any policy and the Board can override that veto with a 2/3 majority. In the eight years of the existence of the UPD, the Sheriff has never vetoed any vote of the Board. The UPD Board believes this never used veto is not an issue for the organization and could be overridden by a vote of the board. Finally, the provision regarding the Sheriff's veto could be amended out of the Interlocal, if the veto is abused.

Even if there is a legislative change, the question of whether the organization would benefit from a separation from the Sheriff's Office has not been studied and the UPD Board has taken no position whether the UPD should separate from the Sheriff's Office command structure. Thus, the recommendation is both premature and will require further study, assuming a statutory change is made that allows the UPD to choose its CEO.

## **2. UPD PROVIDED INADEQUATE REPORTING OF SERVICE LEVELS TO ITS MEMBERS**

The UPD Board and Sheriff Rivera concur with and support the recommendation that members are entitled to adequate reporting of service levels. UPD regularly reports officer precinct staffing to mayors and council members through its precinct chiefs. The UPD Board will seek more detail on shared service staffing and services as it seeks to improve information access to the Board and its members.

UPD also recognizes the need to bring more budgeting detail and transparency to its members and is working with member mayors, council members and staff to create a more transparent budgeting system. To this end, Sheriff Rivera and senior staff have convened a meeting with member representatives, including CFOs of the cities and county to revise the costs exhibit and budget process to make it clear, easier to understand and more in line with other entities of similar size and complexity. This process is ongoing and the UPD Board and administration will continue to support better clarity, transparency and reporting to the UPD Board and members. In addition, the UPD is in the process of hiring a new CFO.

### **3. PREVIOUS UPD ADMINISTRATION FAILED TO COMPLY WITH UTAH PUBLIC FINANCE WEBSITE REQUIREMENTS**

The UPD Board and administration are studying this recommendation to report the names and genders of officers when doing so does not impair their safety or ability to work undercover. UAR 25-10-4 exempts from disclosure information on the public finance website that is protected, private or controlled. It is to be marked not provided if it is protected.

Under the Utah Government Records Act, Utah Code Annotated Section 63G-2-301 provides the following regarding disclosure of names and genders:

2) The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections 63G-2-201(3)(b) and (6)(a): (a) laws;

(b) the name, gender, gross compensation, job title, job description, business address, business email address, business telephone number, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of a current or former employee or officer of the governmental entity, excluding:

(i) undercover law enforcement personnel; and

(ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigation.

Former UPD administration considered that all officers are potentially endangered if their names and genders were disclosed. UPD agrees that this is likely an overbroad reading of this provision of the code. One problem with the way the exemption is listed is that it did not differentiate between active and potential undercover operatives due to the fact that many officers can go undercover in the near future, even if they are not undercover at the time of reporting. Having the name and gender of potential future undercover operatives on a public website could compromise their identity, and thus their safety, should they go undercover at a later date. Nonetheless, UPD does have names of law enforcement officers who will likely not work undercover and should differentiate between the two. UPD concurs that the names and gender of those who are not working undercover or in investigations or likely to in the future, should be disclosed. The UPD Board will act to disclose this information soon.

**4. PREVIOUS UPD ADMINISTRATION FAILED TO ENSURE REIMBURSEMENT OF IMPROPER PURCHASE CARD EXPENDITURE**

The UPD concurs in the recommendation. UPD will continue to monitor and enforce prompt reimbursement going forward.

**5. UPD SECONDARY EMPLOYMENT PRACTICES MAY CREATE PUBLIC CONFUSION AND FOSTER MIXED LOYALTIES**

UPD has been reviewing the secondary employment policy for the last year. The audit finding that officers working secondary employment are subject to public confusion or divided loyalties is disputed. UPD policy states that officers are considered on duty, regardless of whether they are working secondary employment or off duty in the event they take law enforcement action. This provision deals with the concern about confusion. For example, an officer who observes a violation of law is considered on duty in responding to the incident, regardless of the nature of the job.

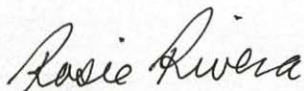
UPD will continue to consider alternatives and move forward after additional study. Secondary employment has also been a topic for repeated legislation and UPD concurs that a statewide standard would remove any competitive disadvantage should there be a requirement of full costing for department hiring by third parties. UPD will continue to consider this recommendation as it works for a solution that preserves secondary employment, protects officers and fully appreciates the additional costs of full costing to the organization.

**6. BOARD COULD IMPROVE TRANSPARENCY BY FOLLOWING BEST PRACTICES**

UPD concurs with Auditor's this best practices recommendation. UPD will be posting its minutes, board meeting recordings and board contact information in the next 30 days.

Thank you for your attention to this response. We appreciate the opportunity to address your concerns.

Sincerely,



Sheriff Rosie Rivera  
Chief Executive Officer  
Unified Police Department



Jeff Silvestrini  
UPD Board Chair

