



A REPORT
TO THE
MONTANA
LEGISLATURE

LEGISLATIVE AUDIT
DIVISION

14P-08

PERFORMANCE AUDIT

Protecting Montana Consumers

*Department of Justice
Office of Consumer Protection*

JANUARY 2016

PERFORMANCE AUDITS

LEGISLATIVE AUDIT COMMITTEE

REPRESENTATIVES

RANDY BRODEHL, CHAIR
Randybrodehl57@gmail.com

TOM BURNETT
Burnett.tom@gmail.com

VIRGINIA COURT
virginacourt@yahoo.com

DENISE HAYMAN
Rep.Denise.Hayman@mt.gov

KENNETH HOLMLUND
rep.ken.holmlund@mt.gov

MITCH TROPILA
tropila@mt.net

SENATORS

DEE BROWN
senatordee@yahoo.com

TAYLOR BROWN
taylor@northernbroadcasting.com

MARY McNALLY
McNally4MTLeg@gmail.com

J.P. POMNICHOWSKI
pomnicho@montanadsl.net

BRUCE TUTVEDT
tutvedt@montanasky.us

GENE VUCKOVICH
Sen.Gene.Vuckovich@mt.gov

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Performance audits conducted by the Legislative Audit Division are designed to assess state government operations. From the audit work, a determination is made as to whether agencies and programs are accomplishing their purposes, and whether they can do so with greater efficiency and economy.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Members of the performance audit staff hold degrees in disciplines appropriate to the audit process.

Performance audits are performed at the request of the Legislative Audit Committee which is a bicameral and bipartisan standing committee of the Montana Legislature. The committee consists of six members of the Senate and six members of the House of Representatives.

AUDIT STAFF

SARAH A. CARLSON

JOE MURRAY

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LEGISLATIVE AUDIT DIVISION

Tori Hunthausen, Legislative Auditor
Deborah F. Butler, Legal Counsel



Deputy Legislative Auditors:
Cindy Jorgenson
Angus Maciver

January 2016

The Legislative Audit Committee
of the Montana State Legislature:

This is our performance audit of the Office of Consumer Protection (OCP) in the Legal Services Division at the Department of Justice. This report provides the Legislature information about the processes OCP uses to protect consumers against unfair and deceptive business practices, and how information related to consumer interactions with OCP is gathered.

This report includes recommendations for enhancing OCP's strategic plan and control environment. Specifically, we recommend OCP finalize a mission statement and accompanying goals and objectives. We also recommend OCP further develop policies and procedures, and training, related to interactions with consumers. Increased supervisory involvement and the gathering of comprehensive and reliable information related to consumer interactions is also recommended. A written response from the department is included at the end of the report.

We wish to express our appreciation to OCP personnel for their cooperation and assistance during the audit.

Respectfully submitted,

/s/ Tori Hunthausen

Tori Hunthausen, CPA
Legislative Auditor

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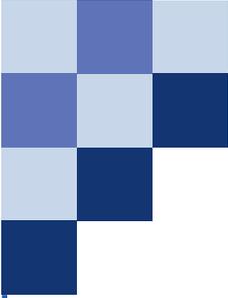
ELECTED, APPOINTED AND ADMINISTRATIVE OFFICIALS

Department of Justice Tim Fox, Attorney General

Mike Milburn, Deputy Chief of Staff

Ed Eck, Deputy Attorney General and Office of Consumer Protection
Chief

Matt Dale, Director, Office of Consumer Protection and Victim Services



MONTANA LEGISLATIVE AUDIT DIVISION

PERFORMANCE AUDIT

Protecting Montana Consumers

Department of Justice-Office of Consumer Protection

JANUARY 2016

14P-08

REPORT SUMMARY

The Office of Consumer Protection has engaged in some strategic planning and monitoring of program activities, but improvements are needed in these, and other fundamental organizational development areas, to ensure work to protect Montana's consumers is being accomplished efficiently, effectively, and consistently. Additional improvements are also needed to ensure program accomplishments reported by the OCP, such as money refunded to consumers, is based on accurate data.

Context

Office of Consumer Protection (OCP) is located in the Department of Justice (department) and is responsible for overseeing consumer protection activities. As part of the Office of Consumer Protection and Victims Services Bureau, OCP is located in the department's Legal Services Division. OCP's entire \$1.2 million annual operating budget comes from special revenue sources, specifically settlement money from lawsuits pursued by OCP on behalf of the state. OCP has 10.75 FTE positions. In fiscal year 2014, OCP reports recouping \$5.4 million from businesses consumers felt had treated them unfairly or deceptively. OCP also indicates that it stopped Montanans from spending \$405,000 on "scams" or fraudulent business deals.

OCP has numerous and varied responsibilities, including answering consumer questions and investigating situations in which a consumer believes a business has treated them unfairly or in a deceptive manner. This was the focus of our audit. We reviewed the processes OCP used to respond to consumers seeking information and assistance in fiscal year 2014.

Results

Audit work found OCP needs to enhance their efforts in fundamental organizational development areas to ensure Montana consumers are being protected from businesses engaged in unfair and deceptive business practices. We found OCP is limited in the following areas: policies and procedures related to consumer interactions, staff training on consumer interactions, and supervisory oversight of program operations associated with responding to consumers. In addition, audit work found OCP needs to finalize its strategic planning and determine a process for gathering reliable information regarding consumer interactions.

The completion of a strategic plan, including a mission statement, goals, and detailed measurable objectives, would give OCP the opportunity to clearly determine: 1) what it is they do, 2) for whom they do it, and 3) how they will get it done. It will allow OCP to mature into a more defined program with more clearly defined measurable accomplishments and a stronger organization with the risks of

inefficiency, ineffectiveness, inconsistencies, and data inaccuracies minimized.

Recommendation Concurrence	
Concur	5
Partially Concur	1
Do Not Concur	0
Source: Agency audit response included in final report.	

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Chapter I – Introduction and Background

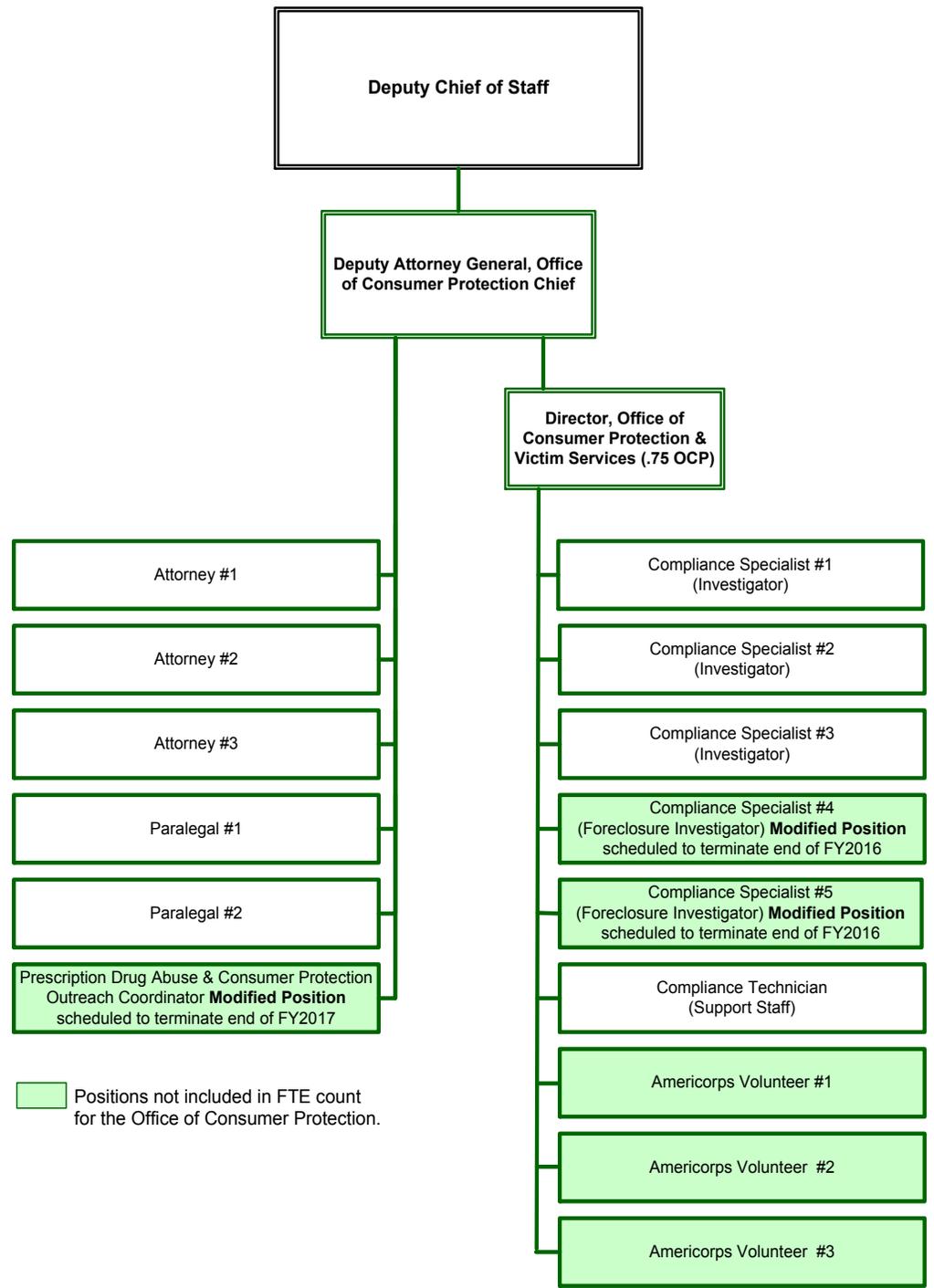
Consumer Protection Assortment of Federal and State Laws

The onset of the twentieth century brought increased government involvement in ensuring safeguards are in place for consumers. Early examples include anti-monopoly laws and the creation of new federal entities such as the Food and Drug Administration focused on the quality of the products purchased by consumers. A more recent example is the Dodd-Frank Wall Street Reform and Consumer Protection Act establishing a new federal consumer protection entity, the Bureau of Consumer Financial Protection. The current consumer protection system is an assortment of federal and state laws generally focused on making sure information in the marketplace is accurate, preventing businesses from engaging in fraud or other unfair practices, and safeguarding the quality and safety of products purchased by consumers. This takes the form of numerous programs across various governmental entities.

Office of Consumer Protection Responsible for Disparate Programs

In Montana, the Office of Consumer Protection (OCP) is located in the Department of Justice (department) and is responsible for overseeing consumer protection activities. As part of the Office of Consumer Protection and Victims Services Bureau, OCP is located in the department's Legal Services Division. OCP's entire \$1.2 million annual operating budget comes from special revenue sources, specifically settlement money from lawsuits pursued by OCP on behalf of the state. OCP has 10.75 FTE positions, with three additional modified positions. Two are scheduled to terminate at the end of fiscal year 2016, and the third at the end of fiscal year 2017. OCP sometimes uses additional staffing support provided through Americorps for consumer protection work. During audit work there were three Americorps volunteers working at OCP. They are generally assigned for one year beginning in the fall. Figure 1 (see page 2) is the organizational chart of OCP.

Figure 1
Office of Consumer Protection Organizational Chart



Source: Compiled by Legislative Audit Division from department records.

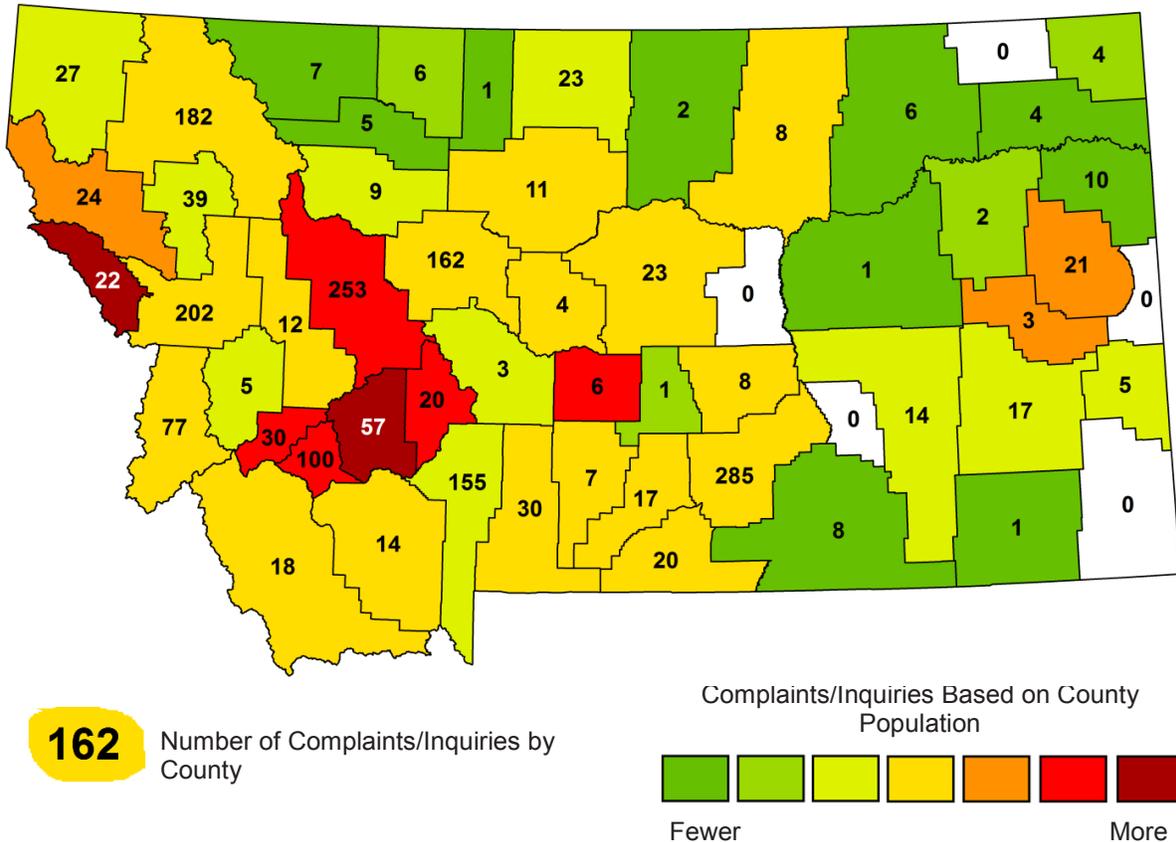
Aside from statutory authority of the Attorney General and the department relative to enforcing the state's consumer protection laws, there is an administrative rule referencing the existence and activities of the OCP specifically. Within the department's organizational rule, information related to OCP is located in ARM 23.1.101 (2)(h)(ii) (C). The activities identified for OCP are listed in Table 1 below, as are additional activities of OCP identified during audit work. The source of the authority for the activities are indicated in parentheses.

Address debt collection misconduct. (Statute)
Answer general consumer questions. (ARM)
Educate public on consumer issues. (ARM)
Enforce antitrust laws, including price fixing and monopoly abuse of trade. (ARM)
Enforce deceptive and misleading advertising laws. (Statute)
Handle Tobacco Master Settlement Agreement issues. (Statute)
Implement "My Montana Home" program. (Consent Judgement)
Investigate consumer complaints related to unfair/deceptive business practices. (ARM)
Maintain Montana's End of Life Registry. (Statute)
Regulate charities. (ARM)
Regulate telemarketers. (Statute)
Respond to instances of unlicensed practice of law. (S. Ct. order)
Staff Tow Truck Arbitration Board. (ARM)

Source: Compiled by the Legislative Audit Division.

OCP has numerous and varied responsibilities, including answering consumer questions and investigating situations in which a consumer believes a business has treated them unfairly or in a deceptive manner. This was the focus of our audit. We reviewed the processes OCP used to respond to consumers seeking information and assistance in fiscal year 2014. During this time period, OCP recorded approximately 5,180 contacts with the public. This is an average of approximately 23 consumer contacts every work day. Figure 2 (see page 4) illustrates the number of consumers contacting OCP in fiscal year 2014 by county. The colors represent the concentration of complaints/inquiries based on the population of the county. Green represents the fewest complaints/inquiries per 1,000 people in the county; red represents the highest number of complaints/inquiries per 1,000 people in the county.

Figure 2
Office of Consumer Protection Complaints/Inquiries Per County
Fiscal Year 2014

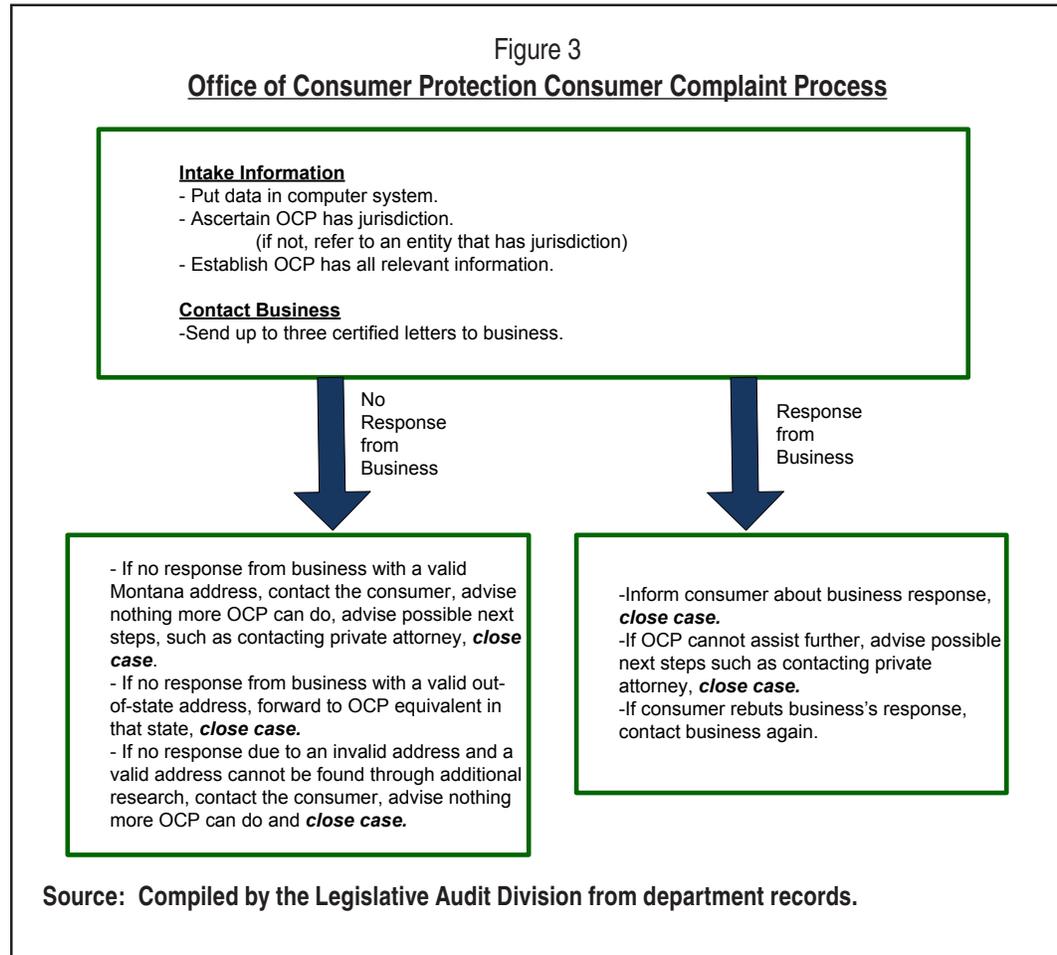


Source: Compiled by the Legislative Audit Division from the Office of Consumer Protection and Census data.

Consumer Assistance Response

In OCP, there are three investigators whose primary responsibility is responding to consumers contacting the office. Consumers primarily contact the OCP via the telephone, but OCP also receives written and electronic correspondence from consumers. The support staff person and Americorps volunteers assist in the consumer response process by taking information from consumers over the phone, entering consumer information into OCP’s computer tracking system, and responding to less complicated consumer issues. Each new consumer contact is entered into the computer tracking system and assigned a unique tracking number and staff person. If the consumer does not file a written complaint, OCP refers to the contact as an “inquiry.” In fiscal year 2014, OCP reports 3,942 (76 percent) of the 5,180 contacts were inquiries. The remaining 1,238 (24 percent) contacts in fiscal year 2014 were the result of consumers completing and submitting complaint forms.

In OCP's process for complaints, consumers fill out a complaint form and submit it via the Internet or mail. Upon receiving the necessary complaint information, staff will begin "informal mediation" on behalf of the customer. This involves back and forth communication with the business regarding the consumer's concerns, with the goal of a satisfactory result for the consumer. Figure 3 demonstrates the courses of action for a consumer's complaint.



For example, the consumer may be referred to another entity if another office appears to have jurisdiction. OCP may request additional information if something critical to their work on the complaint, such as the business address, is missing on the complaint form. If they believe they have all the necessary information, investigators send up to three certified letters to the business asking for their input on the situation described by the consumer. Depending on the response from the business, the consumer may be instructed the business agrees to "make it right" with the consumer and refund their money, provide additional service, etc. Alternatively, the business may disagree on the facts in the situation as described by the consumer and not be interested in interacting with the customer on the issue any further. OCP will then advise the consumer the

office is unable to do anything more and the consumer's next step is contacting a private attorney. If a business does not respond to any of the three certified letters, the investigators will also advise the consumer OCP is unable to do anything more and remind them of the option of contacting a private attorney. If the business address is out of state and no response is received after the three letters are sent, the investigator will send the information to the OCP's equivalent in the state the business is located. Communications related to all inquiries and complaints are stored in OCP's computer tracking system. Litigation can begin at any point in the process if it is determined the behavior of the business is particularly egregious or affects a large number of consumers.

Preventative Savings and Recovered Amounts

An example of a satisfactory result of OCP work is the refund of money the consumer spent at a business. OCP defines this as a "recovered amount." If OCP staff considers they have recovered money for a consumer, there is a field in the computer tracking system where they record the amount, and a report can be generated totaling the recovered amounts for a certain time period. In fiscal year 2014, OCP reports recouping close to \$5.4 million for consumers.

Similarly, if OCP staff believes they have prevented a consumer from spending money on a false product or service, routinely referred to as a "scam," there is a field for staff to record an amount of "preventative savings." A report can be generated totaling the preventative savings amounts for a certain time period. In fiscal year 2014, OCP reports it prevented consumers from spending more than \$405,000 on potential scams.

Audit Objectives and Scope

The Legislative Audit Committee prioritized an Office of Consumer Protection performance audit for fiscal year 2014. Based on the assessment and early audit work related to OCP activities, we developed two objectives:

1. Evaluate the Department of Justice's process to protect consumers against unfair and deceptive business practices.
2. Determine if the Department of Justice has processes in place to ensure access to accurate information about OCP consumer interactions to effectively manage OCP operations.

We reviewed records from fiscal year 2014; fieldwork was completed in fiscal year 2015.

Audit Methodologies

To address our objectives, we conducted the following audit work:

- ◆ Interviewed staff at the Department of Justice.
- ◆ Interviewed staff at Office of Consumer Protection.
- ◆ Interviewed staff of other state consumer protection programs.
- ◆ Observed staff interactions with consumers.
- ◆ Analyzed consumer files in OCP's computer tracking system to determine how consumer interactions were resolved.
- ◆ Examined reports created by OCP's computer tracking system to evaluate accuracy and completeness.
- ◆ Reviewed federal and state laws and rules related to consumer protection.

Report Contents

The remainder of the report presents audit findings, conclusions, and recommendations to the department to improve OCP operation for protecting Montana consumers:

- ◆ Chapter II discusses our analysis of OCP's process for responding to consumers and recommendations for improving this process.
- ◆ Chapter III discusses the need for OCP to improve information used to track consumer interactions and manage operations.

Chapter II – Improving Management Practices

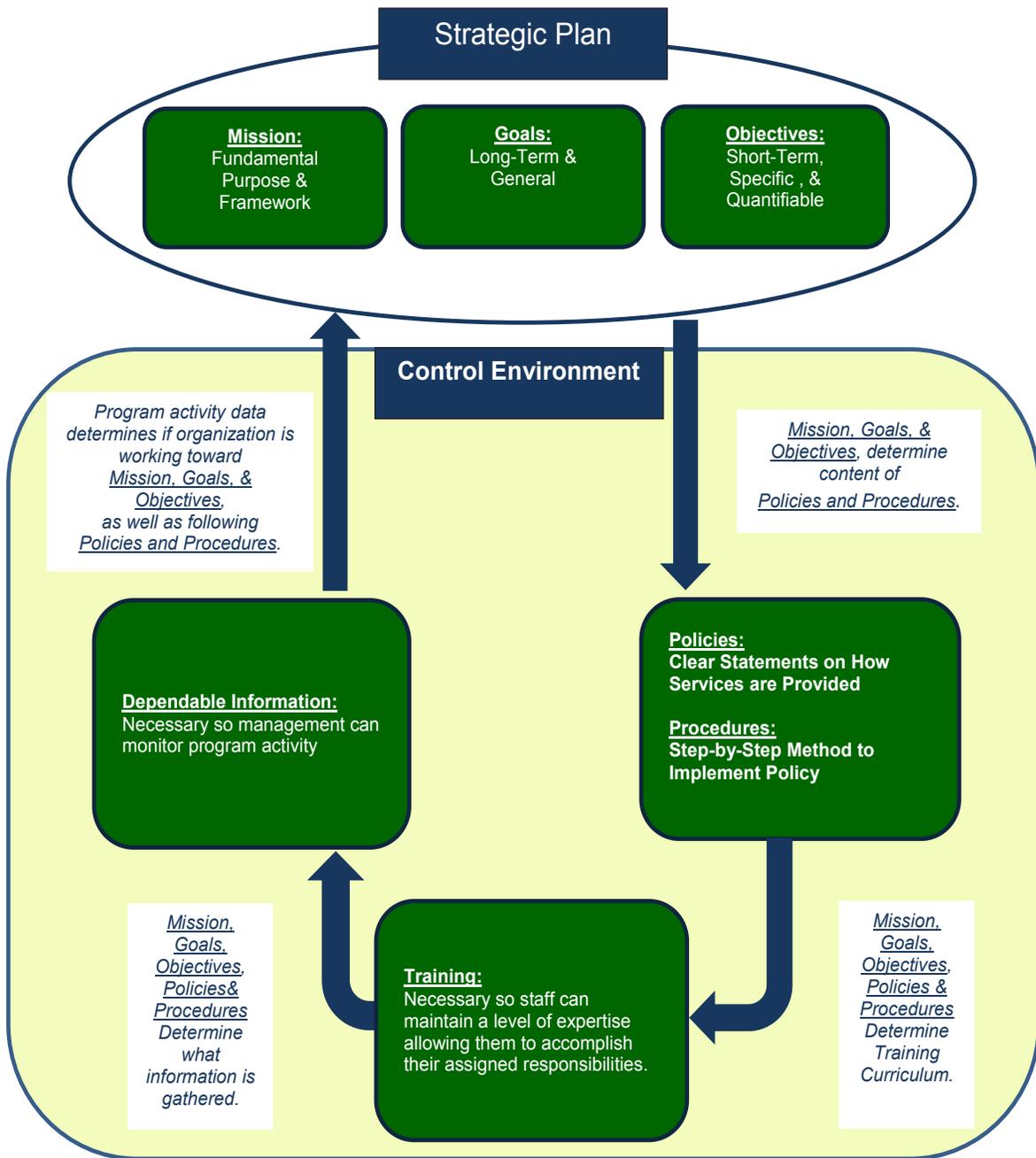
Introduction

This chapter addresses our first audit objective to evaluate the Department of Justice’s (department) process to protect consumers against unfair and deceptive business practices. The department’s Office of Consumer Protection (OCP) is the entity responsible for providing these services. Audit work found that OCP has engaged in some strategic planning and other work related to fundamental organizational development but more is needed. Specifically, the following areas need additional work: policies and procedures related to consumer interactions, supervisory involvement, and staff training. More effort in these areas would contribute to a stronger organization with the risks of inefficiency, ineffectiveness, inconsistencies, and data inaccuracies minimized. The remainder of this chapter discusses these issues in further detail and includes recommendations addressing improvements in management practices to aid the OCP in protecting Montana’s consumers.

Department of Justice’s Goals and Objectives for OCP Need Improvement

Management practices in the public sector have evolved over the years to reference standards, best practices and guidance developed to implement effective systems of internal control. Whether developed at the federal level, or adopted and instituted by states, standards for internal control typically focus on continually seeking ways to improve accountability in achieving an entity’s mission through strategic planning and other practices. Managers of government programs are increasingly called upon to use limited resources in the most efficient and effective way possible when implementing programs. This can only be accomplished with deliberative long-term goal setting with shorter-term quantifiable objectives designed to meet those goals. Strategic planning, and the resulting strategic plan, is the beginning point of this process. An organization’s strategic plan should articulate its fundamental mission and describe its long-term general goals for implementing that mission. It should then detail objectives designed to reach those goals with specific statements of expected and measurable accomplishments. Figure 4 (see page 10) illustrates strategic planning and implementation of the strategy, including strong organizational components, discussed through the rest of the report.

Figure 4
Strategic Plan and Organizational Control Environment Relationships



Source: Compiled by the Legislative Audit Division.

When an organization engages in successful strategic planning, a resulting plan is developed that includes three important elements; they are 1) the organization’s mission/purpose, 2) long-term goals designed to meet that mission, and 3) specific and quantifiable objectives to reach each goal. The department has done some strategic

planning but more comprehensive planning is needed to better define how OCP will effectively protect Montana consumers. The department has identified goals and objectives, including some related to OCP, but the goals and objectives reviewed during audit work generally lack specificity on what the department wants OCP to accomplish or how it will do so. In addition to being unclear, the goals and objectives reviewed do not provide the department with means of determining if Montana consumers are being protected. Examples of these broad-based goals are listed in Table 2 below.

Table 2
Department of Justice Office of Consumer Protection
Goals & Objectives Examples

Goal	Promote public policy that is in the best interests of the citizens we serve.
Objective	Expand the services provided by the Office of Consumer Protection to better protect consumers, including seniors, and to assist Montana's farmers and ranchers.
Measurement	Where appropriate, protect Montana's agricultural producers by filing anti-trust actions to prevent further consolidation in the agriculture and transportation industries.
Goal	Provide quality legal services on all levels of representation that fall within the authority and jurisdiction of the Attorney General.
Objective	Enforce state laws pertaining to consumer protection and anti-trust violations, including cases which harm Montana's agricultural producers.
Measurement	Track developing consumer protection issues statewide and nationally and provide education and outreach as appropriate.

Source: Compiled by Legislative Audit Division from department records.

These examples, and other goals and objectives reviewed during the audit related to OCP in the department-wide strategic plan, are not specific enough to meet strategic planning goals of setting the organization's fundamental purpose or helping staff determine priorities, nor are the objectives measurable. They are not sufficient to meet the OCP's need for a strategic plan.

OCP Plan Requires Finalization

OCP has developed a Mission Statement. It is:

“Seek to protect consumers from unlawful, deceptive and unfair practices in the market place by educating Montana citizens about consumer issues and enforcing the laws administered by the Office of Consumer Protection.”

Accompanying this statement is a brief plan identifying various resources needed by OCP and what efficiencies can be expected from taking the actions in the plan. This is a start to the work necessary for OCP, but additional effort is required. Some OCP staff, including those most directly interacting with consumers, were unaware of it until summer 2015. OCP has been making progress in this area, including expanding documents reviewed during audit fieldwork, additional communication with individual staff regarding strategic planning, and development of specific metrics related to the strategic plan. However, the plan continues to be a work in progress and should be finalized and the final version should be communicated to staff.

OCP Strategic Planning Prioritization

OCP management indicates there has not historically been a “road map” or “blueprint” for OCP, theorizing this is attributable in part to the nomadic nature of the program. The office has been moved between different state agencies several times. Prior to 2001, the program was located in the Department of Commerce. In 2001, OCP was moved to the Department of Administration where it remained until being relocated to the Department of Justice in 2005. OCP management indicated this lack of stability has not been conducive to creating a long-term vision for the program, mission, or goals and objectives related to protecting Montana consumers. Without a sufficiently detailed strategic plan, it is not possible to determine if the decisions made by staff observed during the audit were appropriate to the circumstances because there are limited guidelines for comparison. Audit work found department management has limited tools to assess if OCP is providing a quality service to Montana consumers. OCP has been assigned disparate and varied activities, and OCP receives a high volume of consumer requests for information and assistance, an average of 23 contacts every work day. Both emphasize the need for strategic planning.

A finalized strategic plan, including a mission statement, goals, and detailed measurable objectives, would give OCP the opportunity to clearly determine and communicate to staff: 1) what it is they do, 2) for whom they do it, and 3) how they will get it done. A strategic plan should be reviewed at least annually to determine if changes are needed to better reflect the mission and goals of the program.

RECOMMENDATION #1

We recommend the Department of Justice finalize and communicate to staff the Office of Consumer Protection Strategic Plan, including:

- A. *A well-defined mission statement.*
 - B. *Long-term general goals for implementing the mission.*
 - C. *Objectives designed to reach goals with specific statements of expected and measurable accomplishments.*
 - D. *An annual review of plan to determine if still meeting the needs of the program.*
-

OCP Needs to Improve Management Practices to Meet its Mission

The ultimate value of establishing organizational mission, goals and objectives can only be realized through effective implementation. For OCP, this means going further to address specific issues we identified during fieldwork. We found the program lacks an overall effective organizational control philosophy. Consequently, many of the basic features of a strong organizational control environment are either missing or need further development. Specifically, we found the program needs to make efforts to improve its operations in the following areas:

- ◆ Improving policies and procedures for staff to follow during interactions with consumers.
- ◆ Enhancing the staff training program.
- ◆ Addressing its ability to measure the success of its activities.
- ◆ Increasing supervisory review of day-to-day activities.

The remainder of this chapter includes findings and recommendations addressing each of these issues.

More Policy-Based Direction Needed for Staff

Organizations need to clearly define the specific way they plan to achieve their goals and objectives. Translating strategic plan and strong organizational control environment elements into day-to-day work activity requires OCP management to further develop a series of specific policies and procedures related to consumer interaction. These would include descriptions of how OCP staff should respond to consumers and provide guidelines to help with staff every day decision-making. Additional policies

and procedures related to consumer interactions are also necessary to create a strong organizational control environment. Observations and interviews found OCP staff unsure at times how to respond to some incoming requests for assistance and ultimately having to make subjective decisions on what advice to provide. Additional policies and procedures could minimize these situations. OCP does provide limited guidance to staff via a referral list for consumers contacting OCP for assistance on issues not in the purview of OCP, and audit work found this list is used by staff. For example, issues related to an insurance claim are generally the jurisdiction of the State Insurance Commissioner, known in Montana as the State Auditor. Consequently, if a call comes in regarding an insurance claim, OCP staff should refer the caller to the State Auditor and this is reflected on the referral list. However, beyond this guidance related to how to refer consumers to a different office for assistance, there are limited policies or procedures all staff are directed to follow.

Increased Risk of Inconsistent Responses

As each staff person has significant discretion in their responses to consumers, OCP's limited policies and procedures also increases the possibility of inconsistencies in how consumers with the same or similar situations receive assistance from OCP. For example, during audit work we observed a conversation between staff discussing what to do if a consumer has contacted the office with a concern but is uncomfortable filing a complaint against a business because the consumer believes the business-owner might retaliate personally against the consumer. One staff member indicated they try to convince the consumer to file a complaint in those kinds of situations. In contrast, another staff member stated they would never encourage filing a complaint if the person was afraid of what might happen if they did. Audit work also found staff have independently determined their own guidelines in dealing with consumer issues, including only assisting consumers if they had a "reasonable complaint." There is no definition of "reasonable" and other staff may not share this exact view, increasing the risk of inconsistent responses. It is not possible to determine which approach is appropriate in these situations as there are limited policies to compare them. Audit work found informal information sharing among staff regarding potential consumer responses was common but there is little documented nor formalized, keeping the risk of inconsistent assistance for consumers high. Developing additional policies and procedures designed to ensure OCP delivers consistent assistance to consumers with similar issues is necessary.

Policies and procedures should be related to priorities identified in the organization's strategic plan. For example, if one of the priorities identified is timely response to consumers, the department could develop a policy specifying timely consumer responses including the maximum number of days a consumer complaint may be

open and the maximum amount of time a caller may wait on the phone before a staff member answers the call. Given the unique nature of some consumer issues, the policy may include a qualifier, such as stating 95 percent of complaints must be resolved in a certain time frame. This maintains the priority of OCP timely responses but accommodates unique situations. Procedures, like policies, are based on the priorities of the organization. They are specific steps that are to be followed the same way whenever the activity is performed. This allows the repetitive nature of the steps to ensure results are comparable. Continuing to use the timely response priority as an example, a procedure OCP might develop related to this priority could be detailed step-by-step instructions on the specific actions necessary to run a report indicating all consumer complaints older than the maximum days identified in their policies. The procedure could also indicate who is to generate the report, when it is to be run, who is to receive it, and how soon after it is run management will discuss its results with staff.

OCP has limited guidelines for responding to consumer issues, so it is difficult to determine if staff are responding to consumers properly.

RECOMMENDATION #2

We recommend the Department of Justice develop, document, and implement additional policies and procedures related to the Office of Consumer Protection response to consumers, including policies and procedures:

- A. *Defining “reasonable complaint.”*
 - B. *Providing guidance to staff regarding consumers reluctant to file a complaint.*
 - C. *Defining a “timely” response.*
-

Additional Training Would Help Assure Consistency, Efficiency, and Effectiveness

An organization needs to train staff regarding the specific way it plans to achieve its goals and objectives. OCP has done some work in this area but audit work found the training limited and needs to be enhanced, especially because of the high number of new staff responding to consumers at OCP. New Americorps volunteers are usually added every fall and serve in the office for one year. A significant amount of their responsibilities includes interacting with consumers. Management feels these volunteers receive additional information that help them perform their consumer interaction duties, and audit work found they do but it falls short of a comprehensive training plan.

The volunteers receive a three-ring binder with various kinds of information related to whom to transfer calls and background on OCP, but it is not used consistently by the volunteers nor is it provided to all staff. Limited training also creates inefficiencies in new staff's ability to get up to speed in a timely manner and accomplish their assigned responsibilities, increasing the risk of errors.

Further Training Would Assist Consumer Service

Audit work found the limited training impedes OCP staff service to consumers. For example, audit work found expectations of new staff to perform numerous tasks almost immediately with scant training on how to achieve them. This resulted in numerous errors affecting both efficiency and effectiveness of OCP's response to consumers such as lost mail, missing data in the computer tracking system, and correspondence being sent to incorrect recipients. Dependence on single staff members to perform tasks is another example. A request for information related to consumer protection activities resulted in management requesting a staff member on leave to come into the office to run a report no one else had the ability to complete.

With a limited training plan, management has few ways to systematically and consistently pass along new and necessary information to staff. This lack of direction also increases the possibility of inconsistencies in how consumers with the same or similar situations receive assistance from OCP. A documented, comprehensive training plan is necessary for OCP to reach its objectives efficiently and effectively and reduce inconsistent assistance to consumers. Enhancement of the training plan for OCP staff could help provide assurance the public's concerns are being properly addressed, because the staff will have been trained regarding how management intends for staff to respond to consumers. An enhanced training component at the OCP will reduce the need for staff to make subjective decisions on what advice to provide Montana's consumers.

RECOMMENDATION #3

We recommend the Department of Justice enhance and document its staff training plan to improve the Office of Consumer Protection's ability to provide consistent and appropriate responses to consumers needing assistance.

Reporting Preventative Savings and Recovered Amounts

An example of a satisfactory result is the refund of consumer money spent at the business they feel has treated them unfairly or deceptively. OCP defines this as a "recovered

amount.” If OCP staff considers they have recovered money for a consumer, there is a field in the computer tracking system where they record the amount. Similarly, if OCP staff believe they have prevented a consumer from spending money on a false product or service, routinely referred to as a “scam,” there is a field for staff to record an amount of “preventative savings.”

Accuracy of Reported Preventative Savings for Consumers Not Assured

Organizations need to clearly define the specific way to document work related to their program to ensure accuracy and consistency. OCP has not developed policies and procedures related to documentation requirements of preventative savings and recovered amounts; staff have discretion in the amounts they record in the computer tracking system. For fiscal year 2014, OCP reports recouping close to \$5.4 million for consumers and preventing consumers from spending more than \$405,000. As there are no established guidelines for documenting preventative savings or recovered amounts, it is not possible to determine if staff are reporting the quantities properly. Specific direction is needed regarding when a preventative savings or recovered amount should be recorded and what kind of documentation is required to support that decision. Audit work found these kinds of decisions are made by individual staff members with limited involvement or review by OCP management. OCP has made progress defining preventative savings and recovered amounts but work remains on documentation requirements.

Lack of Policies and Procedures Results in Inconsistent Documentation

We reviewed all consumer files related to preventative savings in fiscal year 2014 from the computer database used for tracking consumer contacts. Few of the 189 files reviewed were documented the same way; many provided seemingly incomplete and conflicting information. There were 20 cases, amounting to approximately \$43,000, with documentation appearing to indicate they should not be included in the preventative savings report, with phrases in the consumer’s file such as, “consumer knew it was a scam but wanted the office to know about it.” We found 13 cases, amounting to approximately \$23,000, with documentation appearing to indicate they should be included in the preventative savings report. They include phrases in the documentation such as, “The consumer received a call from a man claiming to be her grandson. He states he was arrested in Mexico for a DUI and he needs her to wire \$1,500. The consumer said the boy sounded like her grandson.” The remaining 156 cases, amounting to \$339,000 did not have sufficient documentation in the “Inquiry Description” field to indicate if they should be identified as preventative savings or not.

Accurate Information Required

The legislature needs accurate and valid information on program outcomes to enable effective decision making and to monitor performance. OCP's budget is currently \$1.2 million annually. OCP reports recouping close to \$5.4 million for consumers and preventing consumers from spending more than \$405,000 in fiscal year 2014. However, audit work found there is no assurance the more than \$5.8 million figure for preventive savings and recovered amounts is accurate. The lack of policies and procedures regarding how management wants staff to document preventative savings and recovered amounts provides no assurance the amounts reported by the OCP to department management, legislators, the media, and the public is accurate.

RECOMMENDATION #4

We recommend the Department of Justice develop, document, and implement policies and procedures related to the Office of Consumer Protection's documentation of preventive savings and recovered amounts.

More Supervisory Involvement and Oversight Needed

Audit work found the culture at OCP has not fostered a strong role for supervisors; instead, staff independence has been the emphasis. Supervisors are available to answer questions and provide assistance when asked but there is limited active management. During audit work, this aspect of the culture appeared to be changing. More focus on a stronger role for supervisors and using management tools such as performance evaluations, staff meetings, and program metrics has developed. However, a formal process to ensure supervisory involvement and oversight in the consumer protection process was limited. Supervisory involvement and oversight is necessary for an organization's control structure to be strong. Supervisors need to review staff work to ensure quality and consistent assistance is given to consumers seeking help from the OCP. Audit work found little formal guidance for staff regarding their work. There are few policies requiring supervisors be involved in the consumer protection process. Policies should specify what a supervisor's role is, including the level of review that should be completed of OCP staff work, and the frequency at which these reviews should be completed.

Limited Supervisory Involvement the Cause of Many Issues

Many of the issues identified during the audit can be attributable to this limited supervisory involvement; including:

- ◆ Staff, including new staff and Americorps volunteers, being assigned responsibilities prior to receiving suitable levels of training.
- ◆ Limited policies and procedures for consumer interactions.
- ◆ Varying processes used in responding to consumers.
- ◆ Inconsistent/insufficient levels of documentation regarding consumer interactions.

Audit work found OCP management has few tools to determine if investigators, whom interacted with more than 5,000 Montana consumers in fiscal year 2014, are working efficiently, effectively, and providing consistent, correct, and complete advice. Given the volume of consumer contacts, a review of all contacts is not feasible. However, for example, a monthly review of a percentage of each investigator's work would give management an idea regarding the efficiency, effectiveness, and consistency of their work as well as whether the work of the office is lining up with OCP's strategic plan described in Chapter II and strong organizational control environment described in this chapter.

RECOMMENDATION #5

We recommend the Department of Justice enhance, document, and implement policy defining supervisory involvement in the Office of Consumer Protection's consumer interaction process, including:

- A. *The level of review Office of Consumer Protection staff work that should be completed.*
 - B. *Frequency of staff work reviews.*
-

Chapter III – Accurate OCP Information Needed

Introduction

This chapter addresses our second audit objective to determine if the Department of Justice (department) has processes in place to ensure access to accurate information about Office of Consumer Protection (OCP) consumer interactions for the effective management of OCP operations. Audit work found OCP produces limited data to manage its operations and cannot ensure the accuracy of the limited data it currently has. The remainder of this chapter discusses these findings.

OCP Information Difficult to Produce

Organizations need accurate information regarding program operations for many reasons. Program data is critical for OCP to have strong organizational control structure; without it, it is generally impossible to know if any of the control structure elements in place are working as intended. Information related to program activities is necessary to determine if progress is being made toward the goals and objectives identified in strategic planning. OCP has a computer tracking system for consumer interaction information but it lacks functionality. Other than a few basic reports, such as preventative savings or top complaint categories recorded during a certain time period, OCP staff is largely unable to produce comprehensive information about consumers requesting assistance. OCP management has no information readily available that could be used to prioritize complaint work such as the age and status of complaints, complaints' time-sensitivity, and any businesses with disproportionate numbers of complaints. The lack of access to comprehensive information about consumers requesting assistance impedes management's meaningful evaluation of staff, issues, or timelines related to program performance.

Trending Information Not Possible

There is no documentation regarding how the reports are to be produced and there is no set schedule for running them. This impedes the development of trending information, which is an important and helpful management tool. Trend information could help management determine new areas of concern, waning issues, and other indications to base the allocation of resources and additional training needs.

OCP Information Accuracy Cannot be Assured

Not only is OCP information difficult to generate, there are no policies and procedures in place to protect its accuracy. The current process for running reports is not documented nor is staff who were responsible for writing the queries still with the department. No

one knows how the system gathers the information, nor do they compare it to raw data from the system to determine if the reports are running correctly. The reports based on data in this computer tracking system is the only way OCP can provide information to department management, legislators, the media and the public regarding the work OCP does for consumers and its accuracy cannot be assured.

Documentation Requirements Would Increase Data Accuracy

OCP's computer tracking system has numerous fields to enter information regarding the consumer and their concerns. There are no policies or procedures related to what information must be included in specific fields. Similar situations are not guaranteed to be reported in the same way in the same fields, making information pulled for comprehensive reports erratic and generally unreliable. For example, audit work found inconsistent data entries in the following categories:

- ◆ Referrals to other entities
- ◆ Opening a consumer interaction file
- ◆ Business contact information
- ◆ Closing a consumer interaction file

There is currently no readily available way to determine program information with assured accuracy. Requirements related to which fields are to be used to record certain aspects of consumer interactions would increase the accuracy of the data. It is impossible for management to be aware of the operational status of OCP without access to accurate information. Without enhancing the current computer system, management will be unable to determine if progress is being made related to the implementation of the strategic plan or the necessary elements of a strong control environment, both of which are discussed in Chapter II. The system must be enhanced to allow for data accuracy and collection of additional information necessary for program management.

OCP management is aware of the deficiencies of the current system and have been waiting for improved functionality. The department's plan is to place consumer interaction tracking on an entirely new department-wide system they are developing. When asked about a timeline, Justice Information Services Technology Department staff reported there were other systems ahead of those needed for OCP and they were unable to estimate a time frame. In order to effectively manage the OCP, management needs to be able to run aggregate reports related to program activities beyond what is currently possible, and needs to know the data in those reports is reliable.

RECOMMENDATION #6

We recommend the Department of Justice develop, document, and implement a process for obtaining comprehensive, consistently gathered, and reliable management information related to the Office of Consumer Protection response to consumers.

DEPARTMENT OF JUSTICE

DEPARTMENT RESPONSE

ATTORNEY GENERAL STATE OF MONTANA

Tim Fox
Attorney General



Department of Justice
Joseph P. Mazurek Justice Bldg.
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

January 11, 2016

Tori Hunthausen
Legislative Auditor
Legislative Audit Division
PO Box 201705
Helena, MT 59620-1705

RECEIVED
JAN 11 2016
LEGISLATIVE AUDIT DIV.

Re: Office of Consumer Protection

Dear Ms. Hunthausen:

The Department of Justice and the Office of Consumer Protection thank you and your audit team for the professionalism displayed while conducting this performance audit. The audit provides valuable and timely information for us to evaluate our program practices.

Please accept the attached as our response to the audit recommendations presented in the report.

Sincerely,

MIKE MILBURN
Deputy Chief of Staff

Enc.

MEMORANDUM

TO: Angus Maciver, Deputy Legislative Auditor

FROM: E. Edwin Eck, Deputy Attorney General

COPY: Mike Milburn, Deputy Chief of Staff
Matthew Dale, Director, Office of Consumer Protection

SUBJECT: Performance Audit, Department of Justice, Office of Consumer Protection,
December 2015 Draft

DATE: January 7, 2016

The Department of Justice responds below to each of the six recommendations found in the above-referenced Performance Audit.

Recommendation # 1. Concur. OCP has adopted a mission statement, goals, and measurable objectives, all of which have been approved by the Department of Justice. These documents continue to evolve as consumer issues, and the law, evolve. The strategic plan has been regularly reviewed (more frequently than annually) and changes have been made. OCP anticipates that additional changes will be made in the future.

OCP agrees with the Auditor that some OCP staff were unaware of the strategic plan prior to the summer of 2015. Other staff members were very much aware of the strategic plan in 2014, and perhaps earlier. OCP intends to communicate more regularly on the mission statement, goals, measurable objectives and strategic plan to all staff members.

Recommendation # 2. Partially Concur. Prior to the audit, OCP had developed written policies on how to respond to consumer inquiries. OCP is considering developing additional written policies appropriate for the limited number of compliance specialists and AmeriCorps volunteers who handle consumer complaints.

- A. OCP responds to every complaint that is within OCP's jurisdiction. Thus, a definition of a "reasonable complaint" seems unnecessary. However, if in some other context there is a need to define "reasonable", such will be accomplished in accordance with Montana law. Obviously, the term "reasonable" contemplates some flexibility.
- B. OCP will provide written guidance to staff members regarding consumers reluctant to file a complaint.
- C. The majority of consumer inquiries are made by telephone. OCP currently tracks the length of time consumers wait on the phone and has set a goal for timely answering the phone. As to

complaints, OCP will define a “timely” response. It is likely that the definition will focus on the time OCP takes to respond to consumers and affected businesses. Because the resolution of a complaint is dependent upon the timeliness of three parties (namely businesses, consumers, and OCP staff), it is unlikely that the time of complaint resolution would constitute a meaningful measure of the performance of only one of the three parties. OCP cannot mandate timely responses by businesses and consumers. The timeliness of OCP responses will be tracked on the more comprehensive computer data-tracking system when it is in place. See response to Recommendation # 6.

Recommendation # 3. Concur. We will document our staff training program, including staff participation in the program. The discussion draft makes numerous references to a lack of formal staff training. Currently, each new employee undergoes a five-step training program.

1. Each new employee must read the contents of a three-ring binder that covers the most common questions raised by Montana consumers.
2. Each new employee receives hands-on, individualized training on OCP’s computer program that tracks consumer inquiries and complaints.
3. Each new employee listens to an experienced employee handle consumer phone calls. The calls are placed on speakerphone so that the new employee can hear both the consumer and the experienced employee. When the call terminates, the experienced and new employee discuss the call.
4. After the new employee indicates that s/he is comfortable answering consumer questions, the new employee answers the phone, again on speakerphone, in the presence of an experienced employee. The experienced employee offers advice during the call. When the call terminates, the experienced employee offers further advice to the new employee.
5. After the new employee indicates s/he is comfortable responding to consumer phone calls without an experienced employee present, s/he does so. The new employee and the experienced employee regularly check in with, and consult with, each other.

Also, OCP will enhance the training of existing employees with regular staff meetings of compliance specialists, AmeriCorps volunteers, the Director, and OCP attorneys. These OCP staff meetings will focus on challenging cases and learning from one another. The meetings will also emphasize OCP’s strategic plan and existing policies, as well as modifications and additions that will be made to these governing documents in the future.

Recommendation # 4. Concur. We will further develop additional policies. OCP’s existing policy defines “preventative savings” and “recovered amount” as follows:

Preventative Savings represent the amount of money that OCP prevents the consumer from losing. These savings are the result of OCP advice given in response to telephone call inquiries (not complaints).

Example: OCP receives a call from a consumer stating s/he received a call that s/he won \$50,000 plus a car. The consumer is advised to purchase a Green Dot Card in the amount of

\$299 in order to collect the prize. OCP informs the consumer that the transaction is a scam and prevents the consumer from sending the \$299. That \$299 is reported in OCP's computer program as Preventative loss/Preventative savings.

Recovered amount (or "Recoveries") is the amount of money that was recovered for the consumer through the OCP complaint process (not call inquiries).

Example: A consumer files a complaint about a company that is billing the consumer \$300 for early termination of a contract. OCP processes the complaint and the complained-of company waives the early termination fee of \$300. The complaint is closed and the \$300 recovery is recorded in OCP's computer program. Either the consumer did not have to pay the \$300 or the company refunded \$300 to the consumer.

OCP intends to add a third category, namely "**potential loss reported**," when a consumer advises OCP that s/he was contacted by a scammer, s/he recognized the scam, and s/he wanted to notify OCP of the scam. OCP intends to communicate this third category to OCP staff so that OCP staff members will document the three categories consistently.

Recommendation # 5. Concur. OCP believes that empowered employees are engaged and serve the public well. As noted by the auditors, supervisors have been available to answer questions and to provide assistance. Also, as indicated in our response to Recommendation # 3, supervisors have overseen a staff training program. Further, prior to the audit, OCP supervisors responded to occasional consumer comments about the performance of OCP staff. In those rare circumstances when the comments were negative, OCP supervisors took corrective action. Although OCP believes that currently there is very adequate supervisor involvement, OCP welcomes this recommendation for additional policies that reflect more involvement and documentation. Those policies will require regular staff meetings of compliance specialists, AmeriCorps volunteers, the Director, and OCP attorneys. Further, the policies will require the Director to evaluate a specified portion of each employee's work monthly. The new policy will augment and formalize the existing annual performance evaluations. OCP anticipates enhanced staff efficiency, effectiveness, and consistency.

Recommendation # 6. Concur. OCP agrees that improvements should be made to provide a more comprehensive data tracking system. Although OCP would characterize the existing system's operations slightly differently than characterized by the Auditor, there clearly is a need for a new system and there are plans for such. The new system developed by Journal Technologies has been implemented by the Attorney General's Office (AGO) in its civil, appellate, and prosecution offices. After it is implemented in AGO's agency legal service bureau and crime victim services bureau, it will be implemented in OCP. The tentative schedule would commence OCP implementation in late 2016, with full implementation completed by mid-2017. The new system will give OCP the ability to track inquiries, complaints, and cases at a much more comprehensive level. Reporting capability will also be enhanced, including

mechanisms for validating reported data and communicating it to others within the Department of Justice and media inquiries, as appropriate.