

# LEGISLATIVE AUDIT DIVISION

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## MEMORANDUM

**TO:** Legislative Audit Committee Members

**FROM:** Sarah Carlson, Senior Performance Auditor

**CC:** Tim Fox, Attorney General, Department of Justice  
Mike Milburn, Deputy Chief of Staff, Department of Justice  
Matt Mattioli, Deputy Attorney General & Office of Consumer Protection Chief,  
Department of Justice  
Matt Dale, Director, Office of Consumer Protection & Victim Services,  
Department of Justice

**DATE:** November 2017

**RE:** Performance Audit Follow-Up (17SP-17): *Protecting Montana Consumers* (14P-08)

**ATTACHMENTS:** Original Performance Audit Summary

### Introduction

The report *Protecting Montana Consumers* (14P-08) was issued to the Legislative Audit Committee in January 2016. The audit included six recommendations to the Department of Justice (DOJ). We conducted follow-up work to assess implementation of the report recommendations. This memorandum presents background information on how DOJ investigates allegations of unfair business practices or consumer fraud and summarizes the results of our follow-up work.

### Background

In the United States, the government has been involved in ensuring safeguards are in place for consumers for more than 100 years. 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. In Montana, the Office of Consumer Protection (OCP) within DOJ is responsible for overseeing consumer protection activities. It 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.

In fiscal year 2014, OCP staff recorded approximately 5,180 contacts with the public, with contacts divided into two categories, inquiries and complaints. Inquiries can be characterized as general questions regarding the role of OCP or how the complaint process work, and are generally resolved over the phone. Complaints are formal requests for OCP to investigate an alleged case of consumer fraud. Complaints require the consumer to fill out an official complaint form if they would like the office to contact the company on their behalf and work to get a satisfactory solution for the consumer. Seventy-six percent of the 5,180 contacts in fiscal year 2014 were inquiries; the remaining 24 percent were the result of consumers completing and submitting complaint forms. If a staff person successfully urges a business to refund money to the consumer, it is recorded as a "recovered amount." Similarly, if OCP staff prevents a

consumer from spending money on a false product or service, it is recorded as a “preventative savings.” In fiscal year 2014, OCP reports recouping \$5.4 million from businesses that consumers felt had treated them unfairly or deceptively, and stopping Montanans from spending \$405,000 on “scams” or fraudulent business deals.

#### **Overview**

Our audit found improvements were needed in the Office of Consumer Protection (OCP) strategic planning and program monitoring processes. We also found documentation requirements and other changes were needed to ensure program accomplishments reported by OCP, such as money refunded to consumers, is based on accurate data. Follow-up work indicates OCP has improved its management control environment. It has implemented four of our six recommendations, and anticipates the remaining two will be implemented in December 2017. OCP has developed, documented, and implemented a new strategic plan, goals, objectives, and policies and procedures. This work reduces the risk of inefficiency, ineffectiveness, and inconsistencies for OCP. In addition, staff have a clearer idea about what is expected of them and management has better tools to determine if the office is moving in the intended direction.

#### **Audit Follow-Up Results**

As part of follow-up work, we interviewed OCP staff and management as well as reviewed recently developed and approved OCP governance documents such as its strategic plan, mission statement, goals, objectives, policies, and procedures. We also reviewed reports regarding OCP staff performance such as case closed reports. The following sections summarize the DOJ’s progress toward implementation of the report recommendations.

#### **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 statement of expected and measurable accomplishments.**
- D. An annual review of plan to determine if still meeting needs of the program.**

#### **Implementation Status – Implemented**

Due to incomplete organizational development, audit work found OCP was not able 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. Follow-up work found OCP has worked to expand its organizational development work. OCP has a finalized strategic plan that has been approved by DOJ management, and distributed and discussed with OCP staff. Staff shows a general knowledge of the new documents. The plan is scheduled to be discussed at least annually at an all-staff meeting. The strategic plan has a better-defined mission statement, long-term goals, objectives designed to meet those goals, and expected accomplishments related to those goals that are measurable. For example, the plan includes a long-term goal of educating Montana consumers. One of the measurable expectations accompanying the goal is to prepare each month a news release regarding a consumer issue. Management plans to review goals annually to determine if they have been met, and reevaluate if the goal is reasonable or needs to be adjusted in order to better meet the needs of OCP.

In addition to the yearly review of the plan described above, management reported the strategic plan will be discussed at each OCP staff person's performance evaluation. Staff reported they are aware of this new requirement. OCP staff are required to review the plan as well as OCP policies and procedures prior to their evaluations. They are then encouraged to bring up any issues they feel need to be updated in the plan or policies and procedures at their evaluations.

### **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.**

### **Implementation Status – Being Implemented**

Audit work found OCP had limited guidelines for responding to consumers' issues, so it was difficult to determine if staff were responding to consumers properly. Follow-up work found new OCP policies and procedures have been developed, documented, and implemented since the audit. They include policy-driven instruction to staff regarding appropriate responses to consumers. The policy and procedures address "reasonable complaint" and "timely response" definitions, and consumer hesitancy regarding filing a complaint. The policies and procedures are scheduled to be discussed and reviewed at individual employee evaluations and annually at an all-staff meeting.

OCP did not specifically define "reasonable complaint" in its new policies and procedures. Rather, the office addresses the issue by making it clear in policy that OCP responds to every complaint under its jurisdiction, making such a definition unnecessary because essentially there is no such thing as an unreasonable complaint. When asked if this is clearly communicated to staff, management noted it has been discussed with staff numerous times. When asked about it, staff indicated jurisdiction would be the only reason not to assist a consumer that has contacted the office. OCP policies indicate the first thing to do when someone calls the office is to determine if OCP has jurisdiction and, if it does, staff should proceed with assisting that person. There is no step to determine if the complaint is reasonable. After OCP jurisdiction is determined, there is no language in its policies indicating circumstances in which a complaint would not receive assistance from OCP. During the audit, the concern was limited policy-driven direction given to staff and the concept that only "reasonable" complaints should receive responses was being considered. New policies and procedures provide more guidance for the staff and are designed to make sure OCP staff understands all complaints the office receives under OCP jurisdiction are to receive assistance.

OCP policies and procedures now provide guidance to staff interacting with a consumer reluctant to file a complaint. The audit found staff responses to consumer hesitancy varied widely and was inconsistent between staff. OCP policies and procedures now state staff should explain the complaint process to the consumer, and if applicable, describe any similar complaints about the business and how they generally were resolved. The policy and procedures also clearly require the specific details that must be recorded about the consumer and why they proceeded with filing a complaint or why they did not. Interviews with OCP staff during our follow-up work determined OCP staff are following the newly established procedures for these situations.

OCP's new policies and procedures indicate complaints should be responded to within two days. This is a measurable goal indicating what the office defines as a "timely response." However, OCP management is currently unable to directly measure whether this occurs now as its antiquated computer systems is not capable of producing that kind of detailed information. The office anticipates the new system, planned to be operational in December 2017, will have this kind of functionality. In the meantime, OCP developed an alternative way to measure timeliness that assesses the length of time a case is open. The office has developed a new report not available during the audit called, the "case closed" report. Follow-up work determined this is useful management information for OCP because it lists the open and closed dates for all cases closed in one month. Management reviews this information monthly and can determine the average length a case was open. For example, in July 2017 the average length a case was open was 35 days. OCP now has policies and procedures stating the details that must be recorded on each complaint and in which field; this can improve the quality of the data now as the office continues to use its current computer system.

### **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.**

#### **Implementation Status – Implemented**

During audit work, we found OCP had a limited training plan and few ways to systematically and consistently pass along new and necessary information to staff, increasing the risk of inconsistent responses to the public. OCP now has a five-step training program for new employees. Management must document each new employee's participation in each of the steps. They include reading the new governance documents and other OCP materials regarding appropriate responses to consumers needing assistance. New employees also receive hands-on computer tracking system training. They also observe experienced staff interaction via telephone with consumers and then work up to answering phone calls independently. The new policies and procedures enhance the training program because they are essentially instructions for new staff regarding appropriate responses to consumers. In addition to initial new staff training described, OCP governance documents including policies and procedures, will be discussed annually at an all-staff meeting as well as each OCP staff person's annual performance evaluation.

### **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 preventative savings and recovered amounts.**

#### **Implementation Status – Implemented**

Audit work found accuracy could not be assured of OCP's reporting of money the office staff believed they had prevented consumers from spending, known as "preventative savings." Nor could accuracy be assured regarding the reported amounts OCP staff considered they had recovered from businesses for consumers, known as "recovered amounts." OCP had not developed policies or procedures related to the documentation requirements for these figures; staff were making decisions independently regarding the amounts with limited involvement or review by OCP management. During follow-up work, we found OCP has developed, documented, and implemented policies and procedures related to the documentation of preventative savings and recovered amounts. OCP has developed specific definitions of the terms, identified detailed examples of what the terms mean, and precisely where/how information is to be recorded in the computer tracking system. In addition, the preventative savings and recovered amounts recorded in the computer system each month are discussed at a monthly staff meeting. During follow-up

interviews, staff stated these amounts are listed as agenda items and are discussed each month. The statistics are to be reviewed to ensure the monetary amounts are accurate and appropriately categorized. Any amount over \$10,000 must be approved by OCP management.

#### **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.**

#### **Implementation Status – Implemented**

During audit work, we found the culture at OCP had not fostered a strong role for supervisors or active management. OCP management had few tools to determine if staff, whom interacted with more than 5,000 Montana consumers in fiscal year 2014, were working efficiently, effectively, and providing consistent, correct, and complete advice. Follow-up work found OCP’s new policies and procedures define supervisory review of staff work, including the level and frequency of review. OCP staff interacting with consumers such as compliance specialists and AmeriCorps service members are supervised by the Office of Consumer Protection and Victim Services Director (director). Each month the director evaluates five percent of each staff person’s consumer interaction work. The director does this by accessing a new report generated by OCP’s current computer system that randomly selects five percent of consumer interaction work done by each staff person each month. The director reviews the information to determine if policies and procedures and other OCP guidance is being followed. If needed, the director will provide feedback to employees regarding particular cases reviewed. These reviews are also documented and provided by the director to the Office of Consumer Protection Chief as part of a larger monthly report. This monthly report includes all the metrics set forth in the strategic plan and policies and procedures.

#### **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’s response to consumers.**

#### **Implementation Status – Being Implemented**

Audit work found there is no readily available way to determine OCP program information with assured accuracy. Without enhancing the current computer system, management will be unable to determine if progress is being made related to the implementation of its strategic plan or the other necessary elements of a strong control environment. OCP management is aware of the deficiencies of the current system and is waiting for improved functionality. The Department of Justice is going to replace OCP tracking on an entirely new department-wide system currently under development. The addition of new reports such as the “cases closed” is increasing the management information used by OCP but significant improvements will only be achieved with the switch over to the new computer system. OCP staff agrees, noting the new Case Management System will give OCP staff and managers the ability to track inquires, complaints, cases, and compliance with strategic plan elements and policies at a much more comprehensive level. The current timeline is for the new computer system to be operational in December 2017.