

SUBCOMMITTEE REPORT

(Please use one report for each subcommittee recommendation)

Subcommittee Name	Discovery Strategy & Electronic Records Management
Subcommittee Chairperson(s)	Mark A. Johnson, Tara Tighe, & Amanda Rubio
Title of recommendation	Discovery Strategy for the 21 st Century & Electronic Records Management
Describe the recommendation	See attached description
Is this an immediate or long term recommendation?	This recommendation should be implemented as immediately as possible to ensure that the City of Pittsburgh is on the cutting edge of litigation and discovery strategy.
How will this address our challenges or reach our goals?	This will make the City Law Department more efficient and cost effective by resolving cases faster with better informed negotiations.
What are the obstacles to implementation?	Applying this recommendation requires consistency and dedication to utilizing discovery strategy to make litigation more efficient.
Who needs to be involved?	The City Law Department needs to take the lead in unifying all City departments in document retention and discovery strategy.
What city resources need to be invested?	The Law Department will need to invest time and financial resources into training and also negotiating with opposing counsel as litigation develops.
What will be different if the recommendation is adopted?	The City Law Department will increase efficiency and reduce costs in litigation by developing a consistent, effective approach to records management and discovery.
Describe any background materials that you consulted	General case law as cited in the attached recommendation, City of Berkeley records retention schedules.
Have other cities implemented	

this recommendation?

The discovery strategy is original, the records retention is based, in part, on the City of Berkeley records retention schedule with original recommendations tailored to the City of Pittsburgh.

Are there any other considerations?

No

We request that each recommendation be submitted by the subcommittee Chairperson to Kevin Acklin and your Committee Chair by **5:00 pm on Friday, December 27**.

A. Discovery Strategy for the 21st Century

Active discovery management is fundamental to uncovering the critical issues and evidence at the heart of the case. Under the direction of Mayor-Elect Peduto and Solicitor Sanchez Ridge, the Law Department can become a leader in using discovery strategy to efficiently and cost-effectively resolve litigation involving the City of Pittsburgh.

General Considerations

1. Actively Negotiate the Scope of Discovery. Early in any litigation, the Law Department should actively negotiate the scope of information it will collect as a producing party or demand as a requesting party. Discovery should not be so narrow that it excludes relevant information or so broad that it causes unreasonable burden or expense. Pa. R.C.P. 4011. The Law Department should set the tone in discovery negotiations by developing recommendations to reasonably narrow the scope of discovery using criteria, including but not limited to the following:
 - a. Case themes and issues,
 - b. Specific keywords, phrases, and concepts,
 - c. Custodians,
 - d. Date ranges,
 - e. File types.

Collection

2. Sources of Discoverable Information. In discovery, a party is only required to produce material within its possession, custody, or control. Pa. R.C.P. 4009.1(a). Instead of relying on City employees to identify sources of potentially discoverable information, the Law Department should develop a comprehensive inventory of potential sources of discoverable information within the City's possession, custody, or control, including but not limited to:
 - a. City-issued desktop and/or laptop computers,
 - b. Email and document servers,
 - c. Document management systems,
 - d. Cloud storage systems,
 - e. Physical document storage systems,
 - f. Shared databases and storage systems.

Further, the Law Department should develop policies to proactively manage what types of information and devices are within the City's possession, custody, or control. Recent case law suggests that an employee's personal mobile device may be within the employer's possession, custody, or control where the employer knows that such mobile devices are used for work, especially where the employer expressly sanctions such use. Therefore, an employer may be expected to collect and produce information from a device it does not own or control. The Law Department should understand how the law is responding to modern technology and develop clear policies governing what devices may and may not be used for City business.

3. Forensic Imaging of Selected Custodians. The Law Department should not rely on City employees to self-collect data to be produced in litigation. The City cannot merely tell employees to "save relevant documents." *Samsung Electronics Co., Ltd. v. Rambus, Inc.*, 439 F.Supp.2d 524, 565 (E.D. Va. 2006). Instead, the Law Department should encourage the City to take forensic images of the devices containing records that may be produced in litigation.

Crafting Effective Document Production Requests

A party requesting electronically stored information may specify the format in which it is to be produced. Pa. R.C.P. 4009.1(b). The Law Department should ensure that the City requests useable and functional records.

4. Searchable Text Files. The Law Department should demand that all documents produced to the City in litigation be accompanied by a searchable text file. This will ensure effective case preparation and

research, saving document review time and expense. For electronic documents, the Law Department should demand native, electronic text wherever possible. The Law Department should demand that physical documents be scanned and processed using Optical Character Recognition (OCR) software.

5. Spreadsheets, Databases, and Other Searchable File Types. The Law Department should demand that spreadsheets and other searchable files be produced in their native file format, as they are used and maintained in the ordinary course of business, to maintain the formulas and searchable information contained in these files. *Williams v. Sprint United Mgmt. Co.*, 230 F.R.D. 640 (D. Kan, Sep. 29, 2005). With respect to databases, the Law Depart should not accept database reports in lieu of the native, searchable database.
6. Email Attachment Relationships. The Law Department should demand that the producing party clearly maintain the association between a parent document and its attachment(s).
7. Deduplication. Deduplication of produced documents can be achieved either within a particular custodial file (i.e. removing a duplicate document if the custodian has multiple copies) or across the entire document collection (i.e. removing all duplicate documents regardless of which custodian(s) possessed the document(s)). If the City agrees to deduplication across the entire document collection, the Law Department should require the producing party to generate a log of any documents removed from the collection so that the Law Department can easily determine which custodian(s) actually possessed the documents.
8. Metadata. Metadata, generically described as “data about data,” is information used to describe, structure, and organize data files. This information such as custodian, date created, file type, document extension, and source file path, can be extremely useful in litigation. The Law Department should demand that opposing parties produce all electronic documents with their metadata intact. *Williams v. Sprint/United Mgmt Co.*, 230 F.R.D. 640 (D. Kan. 2005).

B. Electronic Records Management

The following comprises a recommended Electronic Records Management Policy for the City of Pittsburgh, to be implemented by the City Law Department. Imperative to the success of this is cooperation between the City Law Department and individual city agencies and departments to cooperate to develop paper retention schedules that will also be incorporated with electronic records management. One such set of citywide retention schedules was developed by the City of Berkeley.

<http://www.ci.berkeley.ca.us/uploadedFiles/Clerk/Level 3 - Records/Records%20Retention%20Schedule%20Nov%2027%202012.pdf>

It is recommended that first the below policy for electronic records management be rolled out within the first sixty (60) days of administration, with a custodian from the Legal Department designated. From that point, by one hundred (100) days each department should be educated on the policy. Then, within the first six (6) months of administration, each department head should designate a person to meet with the Legal Department's designated custodian. This group of custodians will together develop records retention schedules that will be implemented within the below policy.

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Electronic Records Management in the City of Pittsburgh

- I. Introduction
- II. Issues for Managing Electronic Records
- III. Custodian Within Legal Department
- IV. Electronic Records Management Procedural Guidelines
- V. Historic Records
- VI. Conclusion

I. Introduction

Electronic records are records that contain machine readable information. The information may be text, numbers, graphs, line drawings, pictures, images, or sound. Examples of electronic records include word processing files, spreadsheet files, presentation graphics, electronic images, databases, audio or video recordings, voicemail, and e-mail. Electronic records occupy media such as magnetic disks or tapes; audio or video cassettes; and compact or optical disks.

Electronic records comprise a larger and larger part of most departments' information assets.

This policy makes each City department responsible for its own records assets including electronic records and reinforces the City's commitment to provide City departments with leadership in sound records management practices.

Electronic records raise issues not found with paper documents. Their management requires an understanding of systems used to create and retrieve electronic records as well as the media used to store them. This technical leaflet provides guidance to agency personnel responsible for managing their departments' electronic records and presents information helpful to understanding electronic records systems. As explained later in this leaflet, the designated [records custodians] from each agency consult with the City of Pittsburgh Legal Department to clarify records management practices related to electronic, as well as paper-based, public records.

II. Issues for Managing Electronic Records

Personal computer technology has greatly expanded ways to create, edit, maintain, and distribute the records of City government. Unlike early computer systems, which were centrally located and managed by a data processing unit, today's systems are dispersed throughout a department.

Several issues surround the management of electronic records:

Ownership

Personal computer users should not view the electronic records they create as personal files to be stored, discarded, or otherwise managed as they see fit. Electronic records are considered property of the City of Pittsburgh.

Retention

Electronic records are subject to the same retention requirements as paper records and are governed by records retention schedules developed by the City Legal Department. (See attached retention schedules). An important consideration is the relationship of electronic records to the paper documents produced from them and the need to coordinate retention for both paper and electronic versions.

Access and security

Control of access to public electronic records depends on the time frame surrounding those records retention. Some electronic records may be considered vital to continued operations in event of a disaster. These must be regularly backed up with back up copies stored securely off-site. Other electronic records may have historic value and require special handling to ensure preservation. Even routine electronic records with shorter retention periods must be protected from easy access lest they be altered accidentally or by design, thereby changing them forever.

Organization

It makes sense to organize electronic records so that they are easy to maintain. Official records can be lost if they are poorly organized, saved using unintelligible names, or stored improperly. Consistent naming techniques and standard directory structures are helpful in managing electronic records. The Citywide and agency-specific records schedules provide useful classifications for organizing electronic records.

III. Custodian within Legal Department

The Custodian within the Legal Department is responsible for ensuring that electronic records are managed in compliance with City, State, and Federal statutes. Like paper records, electronic records are a public resource that support the mission and operations of the department and City government. Electronic records are subject to the same requirements regarding public access, privacy protection, audits, authenticity, retention, and disposition as paper documents.

The Legal Department, through its Custodian, enforces policies regarding all aspects of electronic records, and issues directives specifying who has the authority to create, name, alter, and delete documents on electronic systems. The Custodian is responsible for consistency of electronic filing techniques, including standardized directory structures and naming conventions.

The Legal Department Custodian, in cooperation with each City department and agency, establishes retention periods for all paper and electronic records to ensure their orderly preservation or destruction according to the City of Pittsburgh's Records Management Program.

The Custodian is responsible for understanding electronic records management requirements, and for communicating them to department staff.

IV. Electronic Records Management Procedural Guidelines

In order to manage electronic records in compliance with the City's Document Retention Policy, each department's custodian is advised to:

1) Create a controlled central repository for electronic records, and require staff to store all official records there. Designating specific drives for electronic records storage can aid this process. Drives are the equivalent of on-line filing cabinets. Within the City of Pittsburgh, some PCs have their own internal storage capacity, called a hard drive, and can save work on the individual computer. Networked PCs may not have internal storage and work is saved on shared storage devices sometimes called network drives. Network drives can be segregated according to the individuals or departments permitted to access them.

2) In a networked setting, one drive can serve as the repository for all official documents, while another serves as personal work space for drafts or working documents. The final version of all documents, as well as any document which has been forwarded for review or transmitted outside the office should be stored on the network drive designated for official documents.

3) Develop standard naming conventions for directories, subdirectories, and documents.

In electronic systems, the directory structure is a way to store items on the hard drive in an organized fashion, just as you would place paper documents into file folders in a filing cabinet. Directories are like electronic file folders. Standard directories can serve the same purpose as file folders that have been designated to hold specific types of material relating to one project, topic or task. For example, the directory PRISPROJ contains only files relating to the Northeast Prison Project. Directories can be subdivided into subdirectories. Subdirectories provide a convenient way to navigate through a directory.

Naming Documents

Consistent document naming conventions make it easier to find and share documents while they are active and facilitate purging documents from the system when they reach the end of a retention period. All electronic systems require that new files be named in order to save them.

File names consist of:

Document name: usually eight alpha/numeric characters

Delimiter: usually a "." (pronounced "dot")

Extension: usually three additional characters

One common practice in file naming is to use the first two characters of the file name for the initials of the addressee, the next six characters for the subject of the document, and the extension to indicate the document type (e.g. letter - "LTR", memorandum - "MEM", report - "REP", etc.). For example, a document named JSBUDGET.MEM indicates a memo sent to John Smith regarding the budget. Newer office systems permit more information to be captured when the document is saved. For example, Microsoft Word for Windows and WordPerfect routinely allow users to name a document using the 8-dot-3 method shown above, then presents a second screen to record document title, subject, keywords, and comments if desired.

While these are useful for finding documents stored on the system, they are of no help when documents have been saved on diskette, since diskettes capture only the 8-dot-3 name.

4) Develop procedures for managing inactive and obsolete electronic records.

Inactive records are those associated with matters that have reached completion or closure. Too often, inactive records accumulate on the system, cluttering directories and occupying storage space until capacity is reached. A plan for the periodic removal of inactive records from the system, based on the department's records retention schedule, is advised. Note that inactive records may still have legal or historic value and they may still require off-line storage. Off-line storage keeps records available if needed, but usually means that they are not directly accessible.

Obsolete records are those that have reached full retention according to the retention schedule and may be destroyed with proper authorization from the Legal Department.

5) Provide for the security of electronic records.

Sensitive records should be placed in special directories that are not widely accessible. Network directory access can be controlled by the network administrator or by the system administrator who assigns the sign-on password to all users. Access to a PC's own hard drive may be much more difficult to control. It is advisable to copy sensitive records to a flash drive, lock up the flash drive, and delete the electronic record from the hard drive. All sensitive materials should be password protected. Passwords should not consist of anything that is obvious to others, such as birthdates or the names of children, spouses, or pets. Do not keep passwords written down or taped to the underside of the computer keyboard. Flash drives used to back up sensitive materials should be kept

in a locked drawer or cabinet. Keys to such areas should not be kept in desk drawers, pencil cups, or other easily found locations. Special care should be taken when portable PCs are shared by department members. It is possible to create sensitive material on a laptop PC, then save it to the internal drive where it becomes accessible to the next person who borrows the laptop. Instruct users to copy anything created on a laptop PC to a flash drive, then delete the electronic files from the laptop's internal drive.

6) Provide for the management of electronic records on magnetic and other media.

Magnetic Media

Office systems store electronic records on magnetic media, which include hard disks and floppy disks. All of the aforementioned media are often erasable and information recorded on them can be overwritten. Such media can be damaged by temperature extremes, improper handling, dust, and spills. The aforementioned media also suffer wear from interaction between the media itself and the mechanical devices used to access them. These types of media also have implications for records with historic value (see "Historic Records" below).

Media Labeling Guidelines

All magnetic media, including disks, audio, or video tapes must be labeled with their content in order to be useful. The label should also contain the identity of the systems and software used to create them.

Other Media

In addition to magnetic media, electronic records may also be stored on alternative media. These are described briefly below.

Optical Disks

Optical imaging systems store document images on special, non-magnetic disks. An imaging system scans paper documents, then compresses and stores their images in digital form on optical disks. Because the document image is burned into the surface of the optical disk, the image itself is unalterable and uneditable. The system displays document images on desktop screens for processing and reference when necessary, and makes document images available for distribution on standard office networks. Laser printers can produce hard copy of the images on request. Operations handling large volumes of information which require rapid retrieval and simultaneous access by many people to the same records are likely candidates for optical imaging systems. Imaging systems focus on information access and do not guarantee preservation of electronic records.

Other Optical Media

Compact Disk Read Only Memory (CD-ROM) is a cousin of the compact disks used for audio recordings. CD-ROM is a popular media for distributing published information such as directories and reference works.

USB Flash Drives

A USB Flash Drive is a data storage device that includes flash memory with an integrated Universal Serial Bus (USB) interface. USB flash drives are typically removable and rewritable, and physically much smaller than an optical disc.

These forms of media should be stored in accordance with the records retention schedules developed between the Custodian and the City departments.

7) Special Requirements: Vital and Historic Records

Vital records are those needed for reconstructing operations in the event of a disaster. Vital records in this context refers to files that would affect the ability of a City department as an entity to continue operations in the event of a disaster. Electronic vital records may involve computers whose processing and storage capacity are greater than that of ordinary PCs. The goal of vital records management is to be able to restore the system and the data. Therefore, vital records must include the applications software, operating system software, and system documentation, as well as the data. Records identified as vital should be backed up on a regular basis, with back up copies maintained off-site, preferably in a storage facility that is specifically designed to store computer tapes, and output in a protected environment.

Procedures for electronic vital records include:

1. All processing systems should be backed up weekly to magnetic tape using the grandfather, father, and son principle. This means that three separate tapes are kept and rotated. The current week's backup goes onto the grandfather tape. Next week's data go on the father tape. The third week's data occupy the son tape. The fourth week's data begins the cycle again by overwriting the grandfather tape.
2. Hard copy computer output considered vital should either be stored off-site as paper, or as computer output microfiche (COM). This technique converts magnetic tape to indexed microfiche and is done by outside service bureaus. Properly handled and stored, microfilm and microfiche can last at least 100 years. Microfilm storage facilities, such as National Underground Storage, ensure optimal environmental storage conditions for such COM output.
3. Note that the IRS requires one set of computer data containing accounting and tax information plus one copy of the visible output (e.g. printed report or computer output microfilm) be maintained as records.

Historic records form the basis of what future generations will know and understand about the City of Pittsburgh. Historic records have enduring value for legal, historical, public policy, or social science research, and it is essential that they be preserved.

Electronic records that have historic value present two main problems: First, there is no guarantee that the equipment and software used to create them will exist in the future. Second, all electronic storage media, such as disks and tapes, can begin to lose bits of what has been recorded on them over time.

VI. Conclusion

Automation of City offices increases productivity, efficiency, and creativity. The transition from paper to electronic records requires individual departments' custodians to be aware of the human and technical issues associated with electronic recordkeeping.



THE OFFICE OF THE MAYOR-ELECT
BUILDING A NEW PITTSBURGH

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Delimiter: usually a "." (pronounced "dot")

Extension: usually three additional characters

One common practice in file naming is to use the first two characters of the file name for the initials of the addressee, the next six characters for the subject of the document, and the extension to indicate the document type (e.g. letter - "LTR", memorandum - "MEM", report - "REP", etc.). For example, a document named JSBUDGET.MEM indicates a memo sent to John Smith regarding the budget. Newer office systems permit more information to be captured when the document is saved. For example, Microsoft Word for Windows and WordPerfect routinely allow users to name a document using the 8-dot-3 method shown above, then presents a second screen to record document title, subject, keywords, and comments if desired.

While these are useful for finding documents stored on the system, they are of no help when documents have been saved on diskette, since diskettes capture only the 8-dot-3 name.

4) Develop procedures for managing inactive and obsolete electronic records.

Inactive records are those associated with matters that have reached completion or closure. Too often, inactive records accumulate on the system, cluttering directories and occupying storage space until capacity is reached. A plan for the periodic removal of inactive records from the system, based on the department's records retention schedule, is advised. Note that inactive records may still have legal or historic value and they may still require off-line storage. Off-line storage keeps records available if needed, but usually means that they are not directly accessible.

Obsolete records are those that have reached full retention according to the retention schedule and may be destroyed with proper authorization from the Legal Department.

5) Provide for the security of electronic records.

Sensitive records should be placed in special directories that are not widely accessible. Network directory access can be controlled by the network administrator or by the system administrator who assigns the sign-on password to all users. Access to a PC's own hard drive may be much more difficult to control. It is advisable to copy sensitive records to a flash drive, lock up the flash drive, and delete the electronic record from the hard drive. All sensitive materials should be password protected. Passwords should not consist of anything that is obvious to others, such as birthdates or the names of children, spouses, or pets. Do not keep passwords written down or taped to the underside of the computer keyboard. Flash drives used to back up sensitive materials should be kept

in a locked drawer or cabinet. Keys to such areas should not be kept in desk drawers, pencil cups, or other easily found locations. Special care should be taken when portable PCs are shared by department members. It is possible to create sensitive material on a laptop PC, then save it to the internal drive where it becomes accessible to the next person who borrows the laptop. Instruct users to copy anything created on a laptop PC to a flash drive, then delete the electronic files from the laptop's internal drive.

6) Provide for the management of electronic records on magnetic and other media.

Magnetic Media

Office systems store electronic records on magnetic media, which include hard disks and floppy disks. All of the aforementioned media are often erasable and information recorded on them can be overwritten. Such media can be damaged by temperature extremes, improper handling, dust, and spills. The aforementioned media also suffer wear from interaction between the media itself and the mechanical devices used to access them. These types of media also have implications for records with historic value (see "Historic Records" below).

Media Labeling Guidelines

All magnetic media, including disks, audio, or video tapes must be labeled with their content in order to be useful. The label should also contain the identity of the systems and software used to create them.

Other Media

In addition to magnetic media, electronic records may also be stored on alternative media. These are described briefly below.

Optical Disks

Optical imaging systems store document images on special, non-magnetic disks. An imaging system scans paper documents, then compresses and stores their images in digital form on optical disks. Because the document image is burned into the surface of the optical disk, the image itself is unalterable and uneditable. The system displays document images on desktop screens for processing and reference when necessary, and makes document images available for distribution on standard office networks. Laser printers can produce hard copy of the images on request. Operations handling large volumes of information which require rapid retrieval and simultaneous access by many people to the same records are likely candidates for optical imaging systems. Imaging systems focus on information access and do not guarantee preservation of electronic records.

Other Optical Media

Compact Disk Read Only Memory (CD-ROM) is a cousin of the compact disks used for audio recordings. CD-ROM is a popular media for distributing published information such as directories and reference works.

USB Flash Drives

A USB Flash Drive is a data storage device that includes flash memory with an integrated Universal Serial Bus (USB) interface. USB flash drives are typically removable and rewritable, and physically much smaller than an optical disc.

These forms of media should be stored in accordance with the records retention schedules developed between the Custodian and the City departments.

7) Special Requirements: Vital and Historic Records

Vital records are those needed for reconstructing operations in the event of a disaster. Vital records in this context refers to files that would affect the ability of a City department as an entity to continue operations in the event of a disaster. Electronic vital records may involve computers whose processing and storage capacity are greater than that of ordinary PCs. The goal of vital records management is to be able to restore the system and the data. Therefore, vital records must include the applications software, operating system software, and system documentation, as well as the data. Records identified as vital should be backed up on a regular basis, with back up copies maintained off-site, preferably in a storage facility that is specifically designed to store computer tapes, and output in a protected environment.

Procedures for electronic vital records include:

1. All processing systems should be backed up weekly to magnetic tape using the grandfather, father, and son principle. This means that three separate tapes are kept and rotated. The current week's backup goes onto the grandfather tape. Next week's data go on the father tape. The third week's data occupy the son tape. The fourth week's data begins the cycle again by overwriting the grandfather tape.
2. Hard copy computer output considered vital should either be stored off-site as paper, or as computer output microfiche (COM). This technique converts magnetic tape to indexed microfiche and is done by outside service bureaus. Properly handled and stored, microfilm and microfiche can last at least 100 years. Microfilm storage facilities, such as National Underground Storage, ensure optimal environmental storage conditions for such COM output.
3. Note that the IRS requires one set of computer data containing accounting and tax information plus one copy of the visible output (e.g. printed report or computer output microfilm) be maintained as records.

Historic records form the basis of what future generations will know and understand about the City of Pittsburgh. Historic records have enduring value for legal, historical, public policy, or social science research, and it is essential that they be preserved.

Electronic records that have historic value present two main problems: First, there is no guarantee that the equipment and software used to create them will exist in the future. Second, all electronic storage media, such as disks and tapes, can begin to lose bits of what has been recorded on them over time.

VI. Conclusion

Automation of City offices increases productivity, efficiency, and creativity. The transition from paper to electronic records requires individual departments' custodians to be aware of the human and technical issues associated with electronic recordkeeping.

SUBCOMMITTEE REPORT

(Please use one report for each subcommittee recommendation)

Subcommittee Name	Law Department
Subcommittee Chairperson(s)	Mark A. Johnson, Brian Bevan, Lisa Porter, Beth Weinstein, & Emily Martino
Title of recommendation	Early Settlement of Civil Rights Claims
Describe the recommendation	<p>In the first 30 days, research should be done on:</p> <ol style="list-style-type: none"> 1. The Department of Law's current early settlement procedures, taking into consideration early assessment of non-meritorious and meritorious cases, and early discovery 2. Other cities' success rates in similar pro-litigation strategies for non-meritorious cases 3. The continuing success of Chicago's initiative <p>In the first 100 days, assuming its research supports our Recommendation, the Department of Law should:</p> <ul style="list-style-type: none"> • Quickly assess the merits of claims brought against the city • Implement a plan to settle the meritorious claims early on, and litigate the claims that lack merit, while keeping in mind the federal court's mandatory ADR program • Focus on effective defense strategies that will result in successful litigation for the meritorious claims brought against the city <p>In the first year, the Department of Law should:</p> <ul style="list-style-type: none"> • Compare the amount of claims brought against the city in the year 2013 to 2014 • Assess the effectiveness of the early assessment of cases • Review the defense litigation success rate, and make any changes accordingly

Is this an immediate or long term recommendation?	Immediate recommendation
How will this address our challenges or reach our goals?	It will decrease the total number of 1983 claims brought against the city, and save the Law Department's resources by resolving cases that are brought sooner and more effectively
What are the obstacles to implementation?	-Accessing the current data on the claims brought against the city -Determining the probability of success in Pittsburgh compared to Chicago
Who needs to be involved?	-Law Department -Lourdes Sanchez-Ridge -Pittsburgh Police Dept (training) -City's Attorneys
What city resources need to be invested?	Law Dept's online records, Pittsburgh Law Dept's performance audit; other city's law department audits
What will be different if the recommendation is adopted?	The way the city's Legal Department approaches cases brought against the city in the beginning of the lawsuit
Describe any background materials that you consulted	Chicago Law Department 2011 Audit Report http://www.cityofchicago.org/content/dam/city/depts/dol/Budget_Statements/FY2012DepartmentofLawBudgetStatement.pdf
Have other cities implemented this recommendation?	Yes, Chicago
Are there any other considerations?	-Western District's mandatory ADR program

Pittsburgh Mayor-Elect Bill Peduto's Transition Committee
Law and Ethics Team –chaired by Lourdes Sanchez Ridge
Law Department Subcommittee

I. Recommendation:

The City of Pittsburgh Department of Law's current practice of early settlement in civil rights claims brought against the city pursuant to 42 U.S.C. § 1983 should be reversed in exchange for a more pro-active policy of litigating non-meritorious civil rights claims (even the ones that could be settled for nominal amounts), in order to reduce the amount the City pays in judgments and settlements.

In order to reduce civil rights litigation costs, the city of Pittsburgh should consider the early assessment approach used in Chicago. The Chicago Department of Law utilizes early assessment to evaluate whether civil rights cases are meritorious and should be on a settlement track or non-meritorious (even if the projected settlement value is nominal) and should be on a litigation track.

II. Background Information

A. The Department of Law

The City of Pittsburgh Department of Law is responsible for the legal affairs of the City of Pittsburgh. The City Solicitor heads the Department of Law and acts as attorney for the City as a municipal corporation, for the Mayor, for City Council, and for any City unit of government unless otherwise provided for pursuant to the City of Pittsburgh Home Rule Charter.

Attorneys represent the City of Pittsburgh on affirmative and defensive civil litigation, legislative and legal issues, and code enforcement proceedings. The Department of Law handles an active caseload of over 2,000 lawsuits and legal matters each year. For each type of lawsuit brought against the City, there are seven Practice Groups to handle the claims: Labor & Employment; Municipal; Real Estate; Tax; Zoning, Planning, & Environmental; Claims; Administration; and Litigation.

The Litigation Group represents the City of Pittsburgh, including its elected officials and employees, in various legal proceedings before courts and administrative tribunals. The practice areas of the Litigation Group are General, Federal, Tort, and Appeals. This Recommendation focuses on the Federal Litigation group.

The Federal Litigation group is comprised of Attorneys who defend the City, and its elected officials and employees, in lawsuits filed in the U.S. District Court for the Western District of Pennsylvania, where the opposing party contends, among other things, that a City employee, in the performance of his or her duties, and/or the implementation of a City policy, violated an individual's or group's civil rights. Although there are other types of claims that the Federal Litigation Group handles, this Recommendation looks to the claims filed against the City under 42 U.S.C. § 1983 *et. al.*, also known as Federal civil rights claims.

B. Federal Civil Rights Claims and the 2012 Audit Report

In order to avoid a timely and expensive trial, both parties usually try to come to an agreement outside of court, and if that is unsuccessful, they attempt to resolve the dispute through arbitration. If an agreement is still not reached, the plaintiff then files a claim in the U.S. District Court for the Western District of Pennsylvania. There, all parties are required to participate in the court's mandatory Alternative Dispute Resolution program. If this still does not reach an agreement, the case is then taken to court to be decided by the judge or jury.

A May 2012 Report by the Office of City Controller for the Department of Law conducted a Performance Audit beginning January 1st, 2009 through June 30th, 2011. The findings of that Report show that the costliest litigation cases filed against the City usually involve Federal Civil Rights violations. These claims allege discrimination or violations of Constitutional rights by the police. Actions alleging § 1983 violations allow the recovery of attorney fees and expenses from the City if the plaintiff prevails. These actions may result in more money being paid for legal fees than was awarded for the alleged violation.

During the 2009-2011 audit period, the Report stated that 772 litigation actions were filed against the City, totaling over 6 million dollars in settlements or awards. There were 40 Civil Rights violation claims, which resulted in the City paying a total of \$4,959,679 in awards¹ or settlements. Of the 40 claims, 17 resulted in a settlement. The Law Department spent \$25,645.26 in litigation fees on Civil Rights claims, and \$170,444.14 in total litigation fees for all claims that were litigated.

III. The Chicago Initiative in Reducing Settlements and Judgments

In 2009, the city of Chicago's Department of Law began a new initiative to reduce the amount the city of Chicago pays each year in judgments and settlements. This initiative included trying --and winning--more cases, specifically police cases. In particular, the city pursued a strategy of litigating the non-meritorious police cases, even where such cases could be settled for relatively small amounts. The city's prior policy was similar to Pittsburgh's in that it would quickly settle the non-meritorious, low-paying cases in order to reduce litigation costs. This resulted in an increase in the number of suits filed against the city of Chicago in the hope of a quick and easy settlement.

The pro-litigation strategy aims to deter future non-meritorious cases from being filed, thus saving the city money in small payouts that eventually add up, as well as unnecessary legal fees. In 2008, Chicago settled 360 cases, 63% of which were police cases. After the litigation initiative, the percentage of cases settled dropped from 70% in 2009 to 24% in 2010. The date the September 2011 report was published, the percentage continued to decrease. In addition, the Chicago Department of Law also increased the percentage of cases that it litigated and won.

1

□ In late 2009, the plaintiff and attorneys in one civil rights suit for a due process/cruel & unusual punishment violation against the Bureau of Pittsburgh Police were awarded a judgment of \$3,775,000. This award represents 63% of the total litigation settlement of the audit period.

IV. Application of the Litigation Initiative to Pittsburgh's Department of Law

Although it admits that the ultimate results of this initiative won't be completely measurable for a number of years, the Chicago report shows that this new approach has saved the city's Department of Law important resources –namely, time and money. In determining whether similar results would be reached if Pittsburgh's Department of Law began the same initiative, it is important to note a few factors, and to research further on certain information.

Firstly, the pro-litigation method should only be implemented for non-meritorious cases. In cases that show merit and have a high probability of success, the Chicago Department of Law quickly settled the case before it went to trial. To achieve this, resources need to be expended early on in the assessment and investigation of claims and lawsuits. A comprehensive early assessment of each case is necessary to ensure cases with merit are settled quickly, if possible. This not only decreases costs, but also provides a fairer, better administration of justice.

Secondly, in order to fully understand if the Chicago method would benefit the City of Pittsburgh, the current litigation strategies of the Department of Law regarding civil rights claims needs to be examined. It is important to determine the current practices involved in early assessment of the merits of the case, as well as discovery procedures. Once this is known, it will be easier to determine if this strategy would benefit the city of Pittsburgh.

Thirdly, the U.S. District Court for the Western District of Pennsylvania's mandatory ADR program is unique to this district, and may affect the outcome of the Chicago plan. Research needs to be done as to how many civil rights claims against the city are successfully settled in this program.

Finally, beyond the Chicago example, more information is needed on other cities that are similar to Pittsburgh to determine whether similar strategies have been effective.

V. Conclusion and Recommendation

Based on the foregoing, this Law and Ethics Transition Team recommends the Department of Law's current practice of early settlement in civil rights claims brought against the city pursuant to 42 U.S.C. § 1983 should be reversed in exchange for a more pro-active policy of litigating non-meritorious civil rights claims (even the ones that could be settled for nominal amounts), in order to reduce the amount the City pays in judgments and settlements. This Sub-Committee expects that if implemented, this new strategy will result in less frivolous claims filed against the City, better administration of justice for the claims that do have merit, and a more efficient way of utilizing the City's limited resources. Our recommendations are as follows –

In the first 30 days, research should be done on:

- The Department of Law's current early settlement procedures, taking into consideration early assessment of non-meritorious and meritorious cases, and early discovery
- Other cities' success rates in similar pro-litigation strategies for non-meritorious cases
- The continuing success of Chicago's initiative

In the first 100 days, assuming its research supports our Recommendation, the Department of Law should:

- Quickly assess the merits of claims brought against the city
- Implement a plan to settle the meritorious claims early on, and litigate the claims that lack merit, while keeping in mind the federal court's mandatory ADR program
- Focus on effective defense strategies that will result in successful litigation for the meritorious claims brought against the city

In the first year, the Department of Law should:

- Compare the amount of claims brought against the city in the year 2013 to 2014
- Assess the effectiveness of the early assessment of cases
- Review the defense litigation success rate, and make any changes accordingly



SUBCOMMITTEE REPORT

(Please use one report for each subcommittee recommendation)

Subcommittee Name	Law Department
Subcommittee Chairperson(s)	Mark A. Johnson
Title of recommendation	Risk Management Plan
Describe the recommendation	Development and implementation of a city departments wide, uniform risk management plan and strategy to reduce claims against the city, reduce pay-outs for any remaining claims and to make efficient use of resources, minimizing overhead.
Is this an immediate or long term recommendation?	Long Term
How will this address our challenges or reach our goals?	Potential major reduction in budget impact for avoidable suits as well as efficiency increases. Further impacts should be felt in the reduction of department resources necessary to battle avoidable suits as well as a payout methodology that should reduce unnecessary litigation. Lastly, avoidance of suits should create a better, safer, less injured Pittsburgh.
What are the obstacles to implementation?	Multi-department coordination. Initial increase in cost as training methods are created and implemented.
Who needs to be involved?	The Law Department as well as management from other city departments.
What city resources need to be invested?	Identifying the specific resources to be used should be one of the goals of this project, but ultimately the risk management plan should require some staffing resources from the law department.
What will be different if the	Some law department resources should be expected to

recommendation is adopted?	funnel towards this risk management plan continually, with training rotating continuously, involving other departments. The other most notable difference should be a marked reduction in law suits brought against the city.
Describe any background materials that you consulted	The 2012 Audit Report conducted by Michael Lamb, City Controller. Risk Management plans of other major cities were consulted as a secondary source.
Have other cities implemented this recommendation?	Risk Management Plans have become common in other cities to the point of being the standard. A lack of a robust risk management plan is, at this point, a liability for a city to do without.
Are there any other considerations?	

Subcommittee Name	Law Department
Subcommittee Chairperson(s)	Mark A. Johnson
Title of recommendation	Risk Management Plan
Describe the recommendation	Development and implementation of a city departments wide, uniform risk management plan and strategy to reduce claims against the city, reduce pay-outs for any remaining claims and to make efficient use of resources, minimizing overhead.
Is this an immediate or long term recommendation?	Long Term
How will this address our challenges or reach our goals?	Potential major reduction in budget impact for avoidable suits as well as efficiency increases. Further impacts should be felt in the reduction of department resources necessary to battle avoidable suits as well as a payout methodology that should reduce unnecessary litigation. Lastly, avoidance of suits should create a better, safer, less injured Pittsburgh.
What are the obstacles to implementation?	Multi-department coordination. Initial increase in cost as training methods are created and implemented.

Who needs to be involved?	The Law Department as well as management from other city departments.
What city resources need to be invested?	Identifying the specific resources to be used should be one of the goals of this project, but ultimately the risk management plan should require some staffing resources from the law department.
What will be different if the recommendation is adopted?	Some law department resources should be expected to funnel towards this risk management plan continually, with training rotating continuously, involving other departments. The other most notable difference should be a marked reduction in law suits brought against the city.
Describe any background materials that you consulted	The 2012 Audit Report conducted by Michael Lamb, City Controller. Risk Management plans of other major cities were consulted as a secondary source.
Have other cities implemented this recommendation?	Risk Management Plans have become common in other cities to the point of being the standard. A lack of a robust risk management plan is, at this point, a liability for a city to do without.
Are there any other considerations?	

We request that each recommendation be submitted by the subcommittee Chairperson to Kevin Acklin and your Committee Chair by **5:00 pm on Friday, December 27.**

Development of a Risk Management Plan

Advisory Opinions - One job of the law department is to give legal opinions, when requested, to city clients. This includes the Mayor, City Council, and Department Heads. Advisory Opinions are the perfect way to consult with the legal department BEFORE there's a problem. We should refocus on this area of risk management in the following ways:

- Encourage and make department heads aware of these opinions in advance of potentially risky actions. The legal department can do nothing if they are not aware of the concerns of the various departments.

- Make the Advisory Opinions public, or at least accessible by all other department heads. We should be striving in the creation of every advisory opinion to create a catalog of legal resources that city clients can rely on and access readily in the future. This also makes the creation of advisory reports more efficient, the effort put into one advisory opinion could be utilized repeatedly as they are reviewed over the years by others with similar questions.

30 days

Assemble a campaign to put advisory opinions on the radar of Department Heads. Also allow Law Department to form methodology for handling advisory opinion requests.

60 days

Roll out campaign, finalize methodology for advisory opinions.

100 days

Finalize archive format. Publish opinions by this date at the latest.

Driver Safety/Vehicle Maintenance - In looking at the most recent Audit Report (Table #3 p 18) we see that a large portion (50%) of the claims brought against the city are for vehicle damage, and at a very high success rate against the city. Recommendation Number 7 from the 2012 Audit Report (p. 19) specifically recommended the development of a training program to reduce vehicular accidents, as well as tree related damage.

What is the status of that recommendation? Has it been implemented?

If so, how and what have the results been? If not, why?

(Note that the city is also self (not) insured. Meaning it carries no indemnity insurance for these payout or for large payouts. Perhaps a review of that policy is in order.

30 days

Report due to the Solicitor General as to the status of the previous recommendations

60 days

Report due to the SG as to how to improve training program, as well as a review/audit of the current state of the insurance program and recommendation as to whether or not to buy insurance.

100 days

Implementation of new training program.

Civil Rights Cases (employment focus)- In the most recent audit reporting period, there were 40 cases during an audit period to be quite high and the pay out for these types of cases can be SUBSTANTIAL (In 2009 one case alone got a \$3,700,000 verdict)(Audit 19-20).

- Review the current training methodology and hierarchy for people with hiring and firing authority. Who currently is identified as getting this training?

Who is giving it?

What is the content?

How often is it refreshed?

What document or resources are made available to departments on this issue?

- Consider a hiring 'policy'. I note that the Peduto Administration for instance, has articulated one for their new hires that is very open and objective, it would be very hard to bring a suit in that environment. Perhaps reducing the amount individual discretion for hires is a way to reduce suits.

30 days

Report due to the SG as to the status of the current training program for liability reduction in employment matters/civil rights matters.

60 days

Report due to the SG with recommendations on how to improve training program, as well as individuals in within the government which could benefit from this training. Additionally report should contain recommendations as to whether or not a hiring 'policy' should be instituted.

100 days

Implement training program. Set schedule that includes all department heads and those members of the city identified as needing training.

Police Misconduct - 60% of civil cases brought against the city are against the police. (Audit P. 20) and while there was recommendation made (Recommendation 8 p. 20) that police be trained, there is little more.

What is the current status of Police training?

How can it be improved?

Frequency?

Content?

Perhaps outside specialist would be worthwhile?

Perhaps improving public image for the police through some kind of media campaign will reduce hostility and conflict.

Perhaps instituting reasonable conduct policies would also help this.

30 day

Report due to SG as to current status of previous recommendations.

60 days

Report due to SG with recommendations for improving the current training program.

100

Implementation of new training program.

Risk Management Officer - who is this person and what do they currently do? With almost no information on this position the committee cannot make specific recommendations, but obviously this position is important for the larger risk management plan.

30 days

Report due to the SG as to the status of the Risk Management Officer, including prior accomplishments and initiatives over the last 2 years.

60 days

Report due to the SG containing an action plan for the next year, as well as the administrative term.

100 days

Status report, progress of action plan.

Departmental Liability Reports - These were recommend in the previous Audit (Recommendation 9 p. 21)

What is their status?

Was any template or content requirement developed?

Secondary goals:

Attorney Training - In looking at the most recent Audit Report I notice that in both 2009 and 2010 the budget for training was \$17,000, yet in 2010 only \$15,747 was spent and in 2009 only \$12,880. (p. 10) Obviously it's a positive stay under budget, but with sections like personnel salary being more than \$100,000 under budget, perhaps we can encourage the spending of this additional training money. Focusing on more robust, area specific or gap-filling training or CLE sessions for the on staff attorneys could empower them better advise and train department heads and staff before an incident that could lead to a suit occurs.

Tree-Related Damage. A decent amount of payouts occur due to tree related damages (Audit Report p. 18). Not much can be done about pre-existing trees. But perhaps we could direct the Public Works Department to review their tree installation procedure? Would burying them a little deeper solve the problem of paying for cracked concrete across the city? (This is the kind of thing that we shouldn't be having to guess at, and would rather come up naturally through Department Liability Reports mentioned above).

SUBCOMMITTEE REPORT

(Please use one report for each subcommittee recommendation)

Subcommittee Name	Law Department
Subcommittee Chairperson(s)	Mark A. Johnson, Jeffrey Brown & Louis Kroeck
Title of recommendation	Web Page Review
Describe the recommendation	Review and Update of the City's web presences
Is this an immediate or long term recommendation?	Immediate
How will this address our challenges or reach our goals?	Efficiency of use for law department as well as general access by citizenry
What are the obstacles to implementation?	Cost
Who needs to be involved?	Review Team, Technical consultant
What city resources need to be invested?	Internet Technologies, IT management
What will be different if the recommendation is adopted?	Update of web presence
Describe any background materials that you consulted	Other city web resources, listed below
Have other cities implemented this recommendation?	Almost every city in America has and manages a web presences
Are there any other considerations?	

We request that each recommendation be submitted by the subcommittee Chairperson to Kevin Acklin and your Committee Chair by **5:00 pm on Friday, December 27.**

Following our review of the City's Law Department webpage, below are some of the perceived deficiencies/shortcomings we've identified with the site as it currently exists:

- 1) It contains sparse information, especially as compared to other large metropolitan city law department websites;
- 2) It is not optimized for modern internet browsers/it is not user-friendly;
- 3) Its display is aged, which may draw into question the validity of information
- 4) There is no organizational chart or description of personnel beyond naming the Solicitor, and there is no identifier for key employees—pictures, biographies, etc.

We surveyed law department webpages of other major cities across the country, and below are links to ten (10) sites from both western and eastern metropolitan areas. We feel the best approach for the new administration to take with regard to updating the City's Law Department site is to visit each link and browse their individual and collective features, taking note of the sites' functionality, available resources, holistic similarities and differences, etc.

A personal review by the incoming Solicitor, Chief of Staff, Mayor, etc. will allow the administration to better-decide how to design, develop, and implement the City's new Law Department webpage, and form their own conclusions regarding how to craft the City's Law Department site with the goal of providing Pittsburgh citizens a wealth of useful information and user-friendly capabilities that should be offered to the public at large.

1. Denver: http://www.denvergov.org/Default.aspx?alias=www.denvergov.org/City_Attorney
2. Los Angeles: <http://atty.lacity.org/index.htm>
3. San Francisco: <http://www.sfcityattorney.org/>
4. Phoenix: <http://phoenix.gov/LAW/>
5. Salt Lake City: <http://www.slcgov.com/attorney>
6. Philadelphia: <http://www.phila.gov/law/index.html>
7. Boston: <http://www.cityofboston.gov/law/>
8. New York City: <http://www.nyc.gov/html/law/html/home/home.shtml>

9. Chicago: <http://www.cityofchicago.org/city/en/depts/dol.html>
10. Atlanta: <http://www.atlantaga.gov/index.aspx?page=190>

SUBCOMMITTEE REPORT

(Please use one report for each subcommittee recommendation)

Subcommittee Name	Law Department
Subcommittee Chairperson(s)	Mark A. Johnson, & Jill Smith
Title of recommendation	Outside Counsel Review
Describe the recommendation	Re-evaluation of the use of outside counsel
Is this an immediate or long term recommendation?	Immediate
How will this address our challenges or reach our goals?	More efficient and effective use of resources, as well as positive outcomes in trial and settlement
What are the obstacles to implementation?	Cost, coverage of responsibilities where there may currently be short falls
Who needs to be involved?	Law Department
What city resources need to be invested?	Budget resources for outside counsel
What will be different if the recommendation is adopted?	Review could lead to both reduced costs in immediate spending as well as reduced costs through improved outcomes of disputed matters
Describe any background materials that you consulted	2012 Audit Report, Portland's Attorney' Budget Report (see below)
Have other cities implemented this recommendation?	Yes,
Are there any other considerations?	