

INTERNAL AUDIT REPORT

2016-04

Anchorage Equal Rights Commission

Anchorage Assembly

July 14, 2016

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Municipality of Anchorage

Ethan Berkowitz, Mayor

Internal Audit Department

July 14, 2016

Honorable Mayor and Members of the Assembly:

I am pleased to present for your review **Internal Audit Report 2016-04, Anchorage Equal Rights Commission, Anchorage Assembly**. A brief summary of the report is presented below.

In accordance with the 2016 Audit Plan, we have completed an audit of the Anchorage Equal Rights Commission. The objective of this audit was to determine the overall operational effectiveness and efficiency of Anchorage Equal Rights Commission's operations, including personnel resources. However, according to a December 17, 2015, legal opinion issued by the Office of the Municipal Attorney, Internal Audit staff was not permitted access to Anchorage Equal Rights Commission's investigative case files and any records or statistical reports that would disclose the identity of the parties and/or the contents of investigative files. This scope limitation impacted Internal Audit's ability to assess Anchorage Equal Rights Commission's operational effectiveness and efficiency of its operations.

To accomplish our objective, we reviewed Anchorage Equal Rights Commission's past and present staffing levels and budgets to determine if there were any significant changes that would impact its operations. We also reviewed personnel files of the Anchorage Equal Rights Commission's staff to determine if they met the minimum job qualifications. In addition, our audit included a review of meeting minutes, and the appointment and attendance of Anchorage Equal Rights Commission Commissioners. Finally, we reviewed the case statistics reports from Time Matters to determine if cases received by Anchorage Equal Rights Commission were resolved in a timely manner as required by the applicable Anchorage Municipal Code.

Based on our review, some operational improvements are needed at the Anchorage Equal Rights Commission. Specifically, the Anchorage Equal Rights Commission did not always resolve complaints in a timely manner. In addition, two commissioners failed to attend two-thirds of the regular meetings within any 12-month period from January 2014 through March 2016. Finally, our audit revealed transparency issues with some of Anchorage Equal Rights Commission's activities.

There were three findings in connection with this audit. Management was responsive to the findings and recommendations.

Michael Chadwick, CICA
Acting Director, Internal Audit



Municipality of Anchorage

Ethan Berkowitz, Mayor

Internal Audit Department

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Introduction. Anchorage Municipal Charter Section 17.02, *Equal rights commission*, establishes the Anchorage Equal Rights Commission (AERC). The AERC is governed by nine commissioners, appointed by the Mayor and confirmed by the Anchorage Assembly (Assembly), serving three-year terms. According to AERC's website, they are the Municipality of Anchorage's (Municipality) law enforcement agency charged with preventing and eliminating unlawful discrimination under Title 5, *Equal Rights*, of the Anchorage Municipal Code (AMC). The AERC also enforces the Americans with Disabilities Act and Title VII of the Civil Rights Act through a work-share agreement with the Federal Equal Employment Opportunity Commission. According to AERC's current strategic plan, "The Commission also educates the public about anti-discrimination laws and seeks to increase voluntary compliance with such laws and to uphold the vision of equal opportunity for all." The AERC's mission is "... to enforce federal and municipal anti-discrimination laws and provide equal opportunity to all persons in Anchorage."

As of March 2016, the AERC had six full-time positions: an executive director/staff attorney, four investigators (three investigators and one intake and outreach coordinator/investigator), and a docket clerk. In 2014, the AERC implemented and now uses a customized electronic records case management system and database, Time Matters, to manage complaint inquiries and case investigations.

Objective and Scope. The objective of this audit was to determine the overall operational effectiveness and efficiency of AERC's operations, including personnel resources. However, according to a December 17, 2015, legal opinion issued by the Office of the Municipal Attorney,

Internal Audit staff was not permitted access to AERC's investigative case files and any records or statistical reports that would disclose the identity of the parties and/or the contents of investigative files. This scope limitation impacted Internal Audit's ability to assess AERC's operational effectiveness and efficiency of its operations.

To accomplish our objective, we reviewed AERC's past and present staffing levels and budgets to determine if there were any significant changes that would impact its operations. We also reviewed personnel files of the AERC's staff to determine if they met the minimum job qualifications. In addition, our audit included a review of meeting minutes, and the appointment and attendance of AERC Commissioners. Finally, we reviewed the case statistics reports from Time Matters to determine if cases received by AERC were resolved in a timely manner as required by the applicable AMC.

The audit was conducted in accordance with generally accepted government auditing standards, except for the requirement of an external quality control review, and accordingly, included tests of accounting records and such other auditing procedures as we considered necessary in the circumstances. The audit was performed during the period of March 2016 through April 2016. The audit was requested by the Assembly.

Overall Evaluation. Some operational improvements are needed at AERC. Specifically, the Anchorage Equal Rights Commission did not always resolve complaints in a timely manner. In addition, two commissioners failed to attend two-thirds of the regular meetings within any 12-month period from January 2014 through March 2016. Finally, our audit revealed transparency issues with some of AERC's activities.

FINDINGS AND RECOMMENDATIONS

1. Complaints Not Always Timely Resolved.

- a. **Finding.** The Anchorage Equal Rights Commission did not always resolve complaints in a timely manner. Complaints can be filed in areas of employment, housing, public accommodations, financing, educational institutions, and practices of the Municipality. Anchorage Municipal Code 5.50.010, *Investigative overview*, states that “The commission shall in any event issue its determination within 240 days after the filing of the complaint.”

Below we present statistics for all closed complaints in 2014 and 2015.

Closed Complaints 2014-2015		
	<u>2014</u>	<u>2015</u>
<u>All Closed Complaints</u>		
Number of Complaints	105	97
Average Days to Close Complaints	240	293
<u>Complaints Exceeding 240 Days to Close</u>		
Number of Complaints	42	50
Average Days to Close Complaints	434	442
<u>Complaints Closed Within 240 Days</u>		
Number of Complaints	63	47
Average Days to Close Complaints	110	133
Source: Auditor analysis of AERC complaint closure data.		

We noted during our review that in 2014 and 2015 three cases took AERC over 1,500 days to close. Specifically, in 2014, one case took 1,732 days to close and a related companion case took 1,558 days to close. In 2015, one case took 1,749 days to close.

Below we present statistics for closed complaints excluding these three outliers.

Closed Complaints – Excluding Outliers		
2014-2015		
	<u>2014</u>	<u>2015</u>
<u>All Closed Complaints</u>		
Number of Complaints	103	96
Average Days to Close Complaints	213	277
<u>Complaints Exceeding 240 Days to Close</u>		
Number of Complaints	40	49
Average Days to Close Complaints	374	415
<u>Complaints Closed Within 240 Days</u>		
Number of Complaints	63	47
Average Days to Close Complaints	110	133

Source: Auditor analysis of AERC complaint closure data.

As of March 24, 2016, AERC had 65 pending complaints. Our review of these complaints found that 18 of 65 (28%) were more than 240 days old, with the oldest pending complaint being 555 days old.

- b. **Recommendation.** The AERC Executive Director should ensure that complaints are resolved within 240 days as required by AMC Title 5.

- c. **Management Comments.** Management concurred and stated, “AERC agrees that neither now, nor in its entire history, has every single individual complaint filed with AERC been closed in less than 240 days in the applicable measuring period. AERC's statutory mandate to enforce anti-discrimination laws is subject to extensive investigative and administrative charge processing and complaint resolution procedures established by law, statute and contract. While by law AERC is not divested of jurisdiction over cases that exceed 240 days, in the 1980's AMC Title 5

was amended to change the time limit from 180 to 240 days. In 2003, AERC regulations were rewritten and placed into AMC Title 5 code and testimony related to this change indicated that the 240 day limit was not met and should be eliminated from the code. However, legal opinion and management's position at the time was that the limit was directory, not mandatory, as there was no legal effect to exceeding it, and so the 240 day limit was left in the code. Viewed as directional or aspirational, AERC believes that the 240 day limit is ambitious, as goals should be, and is extremely useful as a management tool and thus supports retaining it.

AERC developed and implemented an electronic records case management system (ERCMS) and consolidated database in February 2014, opened 107 new cases that year, closed 105 cases, had no public hearings, and had 2 reconsiderations and 2 appeals from those reconsiderations. In 2015, AERC opened 99 cases, closed 97 cases, and had no public hearings and no reconsiderations or appeals. Below is a ten-year overview of AERC's individual case processing statistics:

Number of Cases¹	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Beginning of Year	38	52	39	50	63	87	67	60	64	67
Opened	73	53	84	107	107	75	76	96	107	99
Settlements & Conciliations	21	26	20	35	22	32	23	38	53	33
Total Resolved	60	67	74	91	85	96	84	92	105	97
End of Year	52	39	50	63	87	67	60	64	67	69

¹Numbers are actuals taken from AERC Annual Reports and are more accurate beginning with cases opened since the 2014 implementation of AERC'S ERCMS and new consolidated database.

It appears that business increased in 2008-2010, resulting in a backlog that was reduced in 2011- 2012. Filings again increased in 2013-2015, but case resolutions

kept nearer pace to case filing numbers. While AERC had 10 staff positions in the 1980's, staffing cuts had AERC down to 5 ½ positions in 2009. Since then, AERC incurred further austerity measures and cooperated and returned a decent percentage of its budget to the general fund, was denied a request in 2014 to have an additional investigator position funded for 2015, and increased its docket clerk position to full-time in late 2015. 2016 individual case filings are at 52 as of 6/30/16; thus AERC is on pace to have another busy year. AERC will continue to use its available resources to best advantage in its efforts to investigate and resolve discrimination complaints in the most expeditious manner possible.”

- d. **Evaluation of Management Comments.** Management comments were generally responsive to the audit finding and recommendation. The AERC views the 240-day limit “. . . as directional or aspirational.” However, AMC 5.50.010 states that “The commission shall in any event issue its determination within 240 days after the filing of the complaint.”

2. **Some Commissioners Did Not Meet Attendance Requirement.**

- a. **Finding.** Two commissioners failed to attend two-thirds of the regular meetings within any 12-month period from January 2014 through March 2016. These commissioners have not been removed from the Commission. Anchorage Municipal Code 4.05.060.A, *Attendance requirements; vacancies*, states “. . . a vacancy shall occur if a member during any 12-month period while in office:
1. Is absent from three regular meetings without excuse;
 2. Is absent from:
 - a. six regular meetings; or
 - b. eight regular meetings for members of the planning and zoning commission, platting board, or zoning board of examiners and appeals; or
 3. Fails to attend a two-thirds majority of the regular meetings.”

In addition, AERC allowed one commissioner to attend one meeting telephonically. Anchorage Municipal Code 4.05.060.F requires the physical presence of an adjudicatory commission member at Commission meetings. The AERC is part of AMC Chapter 4.40, *Regulatory and Adjudicatory Boards and Commissions* and therefore, AMC 4.05.060.F applies to the AERC.

- b. **Recommendation.** The AERC Executive Director should ensure that Commission members understand the attendance requirements found in AMC 4.05.060 and coordinate with the Mayors office for the removal of Commissioners who did not satisfy these requirements.

- c. **Management Comments.** Management concurred and stated, "AERC agrees that two of nine different commissioners on two separate occasions during the time frame in question failed to comply with AMC 4.05.060.A3. AERC holds regular meetings five times a year; therefore, only one regular meeting during any 12-month rolling period may be missed. As a result, if a member missed more than one meeting in a rolling 12- month period, the commissioner will have failed "to attend a two-thirds majority of the regular meetings."

The Chair and staff provide varied and numerous types of communication regarding member attendance requirements to members. For example, Commissioners are emailed approximately one week before each regular meeting and required to respond with their attendance confirmation or a request for excusal from the Chair to ensure a quorum. The Chair also occasionally sends attendance email reminders, discusses absences individually with members to remind them of attendance rules, or refers members to the Mayor's office for absences. AERC will continue to work with members and the Mayor's office to ensure that the member roster is fully filled and that AERC is able to continue to conduct business.

AERC does not hold adjudicatory proceedings during its regular meetings, but agrees that it is listed as an adjudicatory board or commission under AMC 4.05.060.F. Members are informed and are aware that they may call in for a regular meeting if ill but that such telephonic participation does not count towards their attendance requirements.”

- d. **Evaluation of Management Comments.** Management comments were responsive to the audit finding and recommendation.

3. **Lack of Transparency.**

- a. **Finding.** Our audit revealed transparency issues with some of AERC’s activities. For example, Commission meetings minutes frequently referred to reports, such as the Executive Director’s Report and Staff Attorney’s Report, that were e-mailed to Commission members prior to the Commission’s meetings. When we reviewed these reports they were marked “Confidential – for AERC Commissioners Only.” However, our review of these reports found that they did not appear to contain any confidential information that needed to be withheld from the public. For example, in one report we reviewed it only contained statistics regarding case closures, the number of inquires and new complaints, statistics for cases over 240 days old, AERC budget information, and AERC outreach efforts.

The marking of non-confidential documents as confidential resulted in a process that appeared to lack transparency and appeared to be secretive. Lack of transparency might impair the public’s trust in the AERC.

- b. **Recommendation.** The AERC Executive Director should evaluate the transparency of its activities.

- c. **Management Comments.** Management concurred and stated, “AERC agrees that certain reports are not confidential. One report to commissioners still in use is a long-standing monthly Executive Director's (ED) Report, which was marked confidential by the prior Executive Director, which assists the commission in performing its supervisory function. AERC feels that it can generate the ED Report without retaining any longer the designation of confidential. The less frequently generated Staff Attorney's Report is another matter, as AERC believes that case status and litigation expectations briefing from the Staff Attorney may be confidential. In the future, AERC will go into executive session at commission meetings to discuss these reports. Additionally, AMC 5.10.040A.13 authorizes the commission to provide an annual report to the mayor and the assembly. AERC publishes an extensive, detailed public annual report with case summaries and full statistics to inform the community of its recent results, activities and accomplishments, which reports are posted on its website at <http://www.muni.org/Departments/AERC/Pages/publications.aspx> and widely distributed to the community.”
- d. **Evaluation of Management Comments.** Management comments were responsive to the audit finding and recommendation.

OTHER PERTINENT INFORMATION

Our review of AERC's staffing from January 2014 to March 2016 identified some employee turnover. Specifically, one of the three investigator positions was filled by three different people. The position is currently staffed by an employee who was promoted from the intake and outreach coordinator/investigator position. Due to this promotion, the intake and outreach coordinator/Investigator position was filled by an employee who was promoted from the docket clerk position. The docket clerk position has been filled by five different employees. The docket clerk position was a part-time position, but recently became a full-time position to help keep the position staffed.

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Discussion With Responsible Officials. The results of this audit were discussed with the appropriate
Municipal official on May 23, 2016.

Audit Staff:
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