

REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA

**A REVIEW OF THE DEPARTMENT
OF FAIR EMPLOYMENT AND HOUSING**

REPORT BY THE
OFFICE OF THE AUDITOR GENERAL

P-636

A REVIEW OF THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

OCTOBER 1986



Telephone:
(916) 445-0255

STATE OF CALIFORNIA
Office of the Auditor General

Thomas W. Hayes
Auditor General

660 J STREET, SUITE 300
SACRAMENTO, CA 95814

October 2, 1986

P-636

Honorable Art Agnos, Chairman
Members, Joint Legislative
Audit Committee
State Capitol, Room 3151
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report concerning its review of the Department of Fair Employment and Housing. The department's system for accepting, processing, and resolving complaints of discrimination complies with state law and has controls to ensure impartiality. In addition, the department's rental and salary budgets have been correctly reported.

We conducted this audit to comply with Item 1700-001-001 of the 1986 Budget Act.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	S-1
INTRODUCTION	1
ANALYSIS	
I THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING'S SYSTEM FOR PROCESSING COMPLAINTS OF DISCRIMINATION COMPLIES WITH STATE LAW AND CONTAINS CONTROLS TO ENSURE IMPARTIALITY	9
CONCLUSION	26
II THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING HAS CORRECTLY REPORTED RENTAL SHORTFALLS AND SALARY SURPLUSES	27
CONCLUSION	34
APPENDICES	
A ORGANIZATION OF THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING	37
B THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING'S DISCRIMINATION COMPLAINT PROCESSING SYSTEM	39
C LEGAL CASES THAT WERE ALLEGED TO HAVE BEEN IMPROPERLY HANDLED BY THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING	41
RESPONSE TO THE AUDITOR GENERAL'S REPORT	
State and Consumer Services Agency	45

SUMMARY

RESULTS IN BRIEF

The system that the Department of Fair Employment and Housing (department) uses for accepting, processing, and resolving complaints of discrimination complies with state law and has controls to ensure impartiality. In addition, the department has correctly reported its rental and salary budgets.

BACKGROUND

In 1980, the Fair Employment and Housing Act established the department and gave it the authority to enforce antidiscrimination laws. To carry out this function, the department uses a detailed process for accepting, investigating, and resolving complaints of discrimination.

Each year, the department accepts and investigates approximately 8,000 complaints of discrimination that are filed at the department's 12 district offices.

The 1986 Budget Act requested that the Auditor General conduct a program and fiscal audit of the department, concentrating on how the department accepts and resolves complaints of

discrimination and how the department reports its budget for rentals and salaries. In addition, we evaluated over 1,200 cases for compliance with departmental policies and procedures. We did not assess the department's adequacy in resolving complaints or the Fair Employment and Housing Commission's decisions because we do not possess sufficient legal expertise to comment on these decisions.

PRINCIPAL FINDINGS

The Department Properly Processes Complaints of Discrimination and Uses Controls To Ensure Impartiality

In a sample of 1,200 cases, we found that the department's policies and procedures for processing complaints of discrimination are consistently applied at all of the department's 12 district offices. Furthermore, according to our review, the system for processing complaints of discrimination has standards and controls to prevent preferential treatment.

The department's jurisdiction has been expanded in recent years to include other types of discrimination, such as discrimination against children in housing. However, the department's overall caseload has not changed significantly because of a decrease in the number of other types of cases, such as race discrimination and ancestry discrimination.

The Department Has
Correctly Reported
Rental Shortfalls
and Salary Surpluses

The department has correctly reported rental shortfalls caused by unanticipated rent increases and the relocation of district offices. In fiscal year 1985-86, the rental shortfall was \$92,000 (13.4 percent) of the \$688,000 budgeted for rent. In fiscal year 1986-87, the shortfall is anticipated to be \$39,000 (5.3 percent) of the \$742,000 budgeted for rent.

Furthermore, the department has experienced salary surpluses due to staff vacancies. The department's staff vacancy rates, however, are below statewide averages. In fiscal year 1985-86, the surplus was \$178,000 (1.8 percent) of a budgeted \$10,036,000. The department has appropriately used its salary surplus and unexpended funds from other budget sources to offset its rental shortfalls.

AGENCY COMMENTS

The department agrees with the report's findings.

INTRODUCTION

In 1959, the Division of Fair Employment Practices of the Department of Industrial Relations was established to enforce the Fair Employment Practices Act. In 1964, the Department of Industrial Relations was given the responsibility for enforcing the Rumford Fair Housing Act. Chapter 992, Statutes of 1980, established the Fair Employment and Housing Act, which is found in Government Code Section 12900 et seq. The Fair Employment and Housing Act established the Department of Fair Employment and Housing (department) as independent from the Department of Industrial Relations and placed the department under the State and Consumer Services Agency. The Fair Employment and Housing Act also requires the department to enforce the Unruh Civil Rights Act, Section 51 et seq., of the Civil Code, and the Ralph Civil Rights Act, Section 51.7, of the Civil Code.

In 1980, the Fair Employment and Housing Commission was established to develop overall policies for implementing antidiscrimination laws. It is independent of the department and acts as a court when hearing cases filed by the department.

To carry out the function of enforcing the State's antidiscrimination laws, the department has a budget of over \$12.6 million for fiscal year 1986-87. Of this amount, \$10.6 million comes from the State's General Fund, and just over \$2 million is provided by the federal government. The department employes over 250 employees.

Organization

The department is administered by a director and is organized into three units: the enforcement division, the legal services section, and the administrative services division. The enforcement division and the legal services section are primarily responsible for enforcing antidiscrimination laws; the administrative services division is responsible for budget and personnel management. The enforcement division is the investigative branch of the department. The field operations section of the enforcement division is made up of 12 district offices located throughout the State. Each district office is headed by a district administrator who is responsible for one or more consultant groups, which consist of a supervising senior consultant and four or more consultants. Consultants are responsible for accepting and investigating complaints of discrimination. An organization chart of the department is contained in Appendix A.

Case Management

The department has developed a Case Analysis Manual that provides specific instructions for investigating complaints of discrimination. The manual defines the issues that must be addressed for each type of discrimination; provides guidance on how the issues should be addressed; and provides a framework of statutory, legal, regulatory, and procedural requirements that must be met in each complaint. The manual is supplemented by Field Operations Directives,

which clarify material in the manual, provide new policies and procedures that have come out of recent court decisions, or provide guidance on the correct procedure for special circumstances.

Individuals who wish to file a complaint of discrimination can contact their local district office, which will provide them with a "pre-complaint" questionnaire and other material. When the complainant has completed the questionnaire, he or she has an interview with a consultant. If the consultant believes that there is sufficient evidence of an act of discrimination, the consultant and the complainant complete a "Charge of Discrimination." In fiscal year 1985-86, the department held approximately 15,000 interviews with complainants, and approximately 8,000 complaints were filed.

The complaint and a request for specific information are then sent to the respondent. If a respondent does not answer the request, the department can enforce an answer through the courts. Once the material from the respondent has been received and reviewed, the complainant is given a chance to react to the respondent's comments, and the consultant attempts to settle the complaint before the department determines if discrimination has actually occurred. Negotiated settlements can occur at any time during the process. In fiscal year 1985-86, 2,429 (28 percent) of 8,780 cases were settled.

If no settlement occurs, the consultant prepares an investigative plan and conducts an investigation, which can include

interviewing witnesses and reviewing records in the respondent's place of business. To determine if a violation of the Fair Employment and Housing Act has occurred, the consultant must address four conditions: (1) the department must have jurisdiction over the complaint; (2) an act of discrimination must have occurred; (3) the "respondent," the individual or individuals who allegedly discriminated, must not have a valid reason to discriminate; and, (4) there must be a remedy for the complainant. Upon the completion of the investigation, the consultant prepares an investigative report, which answers the four conditions of a finding of discrimination and includes a recommendation for the disposition of the case.

If the consultant has determined that a violation of law has occurred, the district administrator sets up a "conciliation" meeting with the respondent to resolve the complaint. The meeting includes a statement of the case against the respondent, the chance for the respondent to counter any findings, and an attempt to negotiate a remedy acceptable to the complainant, the department, and the respondent. If no settlement is reached, the case is referred to the legal services section.

In fiscal year 1985-86, 102 cases were sent to the legal services section. The legal services section has seven attorneys in its Los Angeles office and four attorneys in its Sacramento office.*

*Before July 1986, the northern legal unit was located in San Francisco.

Each office is supervised by a directing attorney who reports to the department's Chief Counsel. When the enforcement division submits a case to the legal services section, it is reviewed, and if accepted, an accusation is prepared. The department's attorneys set up a public hearing, which is held before an administrative law judge. Based on the information provided at the hearing, the administrative law judge prepares a proposed decision. The final decision on each case is made by the Fair Employment and Housing Commission. These decisions are binding on the parties but can be appealed to the superior court. The Fair Employment and Housing Commission issued 17 decisions in fiscal year 1985-86. The majority of the cases submitted to the legal services section are resolved before they reach the public hearing phase.

The department advises complainants at each step of the process that they can elect to file a civil lawsuit instead of proceeding with a complaint through the department. In fiscal year 1985-86, 1,636 (18 percent) of the complainants elected to pursue court action. A flowchart of the case processing system is included in Appendix B.

In addition to individual complaints, the department can file class action complaints if a complaint affects a large group as a class, if the department seeks to address an issue it considers important in the community, or if the respondent is an industry leader.

The department's director can also file a "Director's Complaint" when there appear to be groups of individuals affected by a pattern of discrimination.

SCOPE AND METHODOLOGY

We conducted this audit to comply with Item 1700-001-001 of the 1986 Budget Act, which requested that the Auditor General conduct a program and fiscal audit of the department. We were asked to answer questions on how the department accepts, processes, and resolves complaints of discrimination and how the department reports its budget for rentals and salaries. The 1986 Budget Act requested that we review the following: the department's criteria for determining if complaints should be pursued as a class or individual action, the department's standards and methodology used to determine if a complaint should be transferred from the enforcement division to the legal services section, the department's "checks and balances" used to preclude preferential treatment for complainants or respondents, the department's criteria for caseload management, and the changes in caseload levels. The 1986 Budget Act requested that we also review the department's rental "shortfalls" for the past two years, determine how the department was able to accommodate these shortfalls, and determine whether the department has inappropriately used salary savings.

During our audit, we examined the department's policies and procedures for accepting, processing, and resolving complaints of

discrimination. We reviewed the department's case management system for compliance with applicable laws and regulations and tested the system's internal controls. In addition, we obtained a legal opinion on the adequacy of the department's criteria for determining when a class action instead of an individual action is to be pursued.

Furthermore, we visited all of the department's 12 district offices. At each office, we selected a random sample of complaints that the department did not accept and a random sample of complaints that the department resolved. We also examined cases that have been resolved by the legal services section to determine if the processing of these cases complied with departmental policies and procedures. We did not, however, determine if cases are adequately resolved by the enforcement division, the legal services section, or the Fair Employment and Housing Commission because we do not possess sufficient legal expertise to comment on these decisions.

We interviewed department staff and former department staff concerning allegations of departmental impropriety in certain cases handled by the former San Francisco legal office. We also reviewed the department files of these cases. A summary of these cases is in Appendix C.

We also reviewed the department's fiscal records to determine the extent and the causes of the department's rental shortfalls. Furthermore, we investigated the department's salary budget and

expenditures. We interviewed departmental budget, personnel, and fiscal staff. We also contacted the Legislative Analyst and the department's budget analyst at the Department of Finance.

ANALYSIS

I

THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING'S SYSTEM FOR PROCESSING COMPLAINTS OF DISCRIMINATION COMPLIES WITH STATE LAW AND CONTAINS CONTROLS TO ENSURE IMPARTIALITY

The policies and procedures used by the Department of Fair Employment and Housing (department) for accepting, processing, and resolving complaints of discrimination comply with state law and regulations. Furthermore, in a sample of 1,200 cases, we found that the department's policies and procedures are consistently applied at all of the department's twelve district offices. In addition, the department has standards and controls in place that should prevent preferential treatment. While the number of cases per consultant varies among the twelve district offices, the department has procedures for distributing caseloads. Finally, the department's jurisdiction has expanded in the last two years, but because of a drop in the number of certain types of complaints, the department's overall caseload has not changed significantly.

Compliance With Statute

The Fair Employment and Housing Act, Government Code Section 12900 et. seq., sets specific duties and requirements for the department. The department is required to establish suitable rules to carry out its functions, which are to receive, investigate, and

conciliate complaints alleging discrimination in employment, housing, and the use of public accommodations. The Fair Employment and Housing Act empowers the department to request and inspect records, to administer oaths and examine witnesses, to issue subpoenas, to petition the superior courts to obtain records or testimony, and to issue and prosecute accusations of discrimination. The Fair Employment and Housing Act also requires that the department resolve all complaints of discrimination or that the department file an accusation for public hearing before the Fair Employment and Housing Commission no later than one year after a charge of discrimination is filed.

To fulfill the requirements of the Fair Employment and Housing Act, the department has developed detailed policies and procedures for accepting, processing, and resolving complaints of discrimination. These policies and procedures are contained in the department's Case Analysis Manual and in the Field Operations Directives. We reviewed these documents and found that the policies and procedures are in substantial compliance with state law and regulations.

To determine if the department's policies and procedures are being consistently implemented, we reviewed over 1,200 cases at the district offices and the two legal units. We developed checklists that were based on the department's policies and procedures for case closure. Using these checklists, we examined a total of 600 (8.6 percent) of 6,942 complaints that had not been accepted in fiscal year 1985-86. We reviewed 50 cases at each district office, and all of

the cases complied with departmental policies and procedures. We also reviewed 600 (13.1 percent) of 4,510 cases that had been closed after acceptance in the last half of fiscal year 1985-86. We reviewed 50 cases at each district office, and each of the cases complied with departmental policies and procedures.

Finally, we reviewed 10 of 147 cases that had been closed by the legal services section. All of these cases complied with the department's policies and procedures.

Standards and Controls To Prevent Preferential Treatment

According to our review, the department's administrative process for resolving complaints of discrimination has standards and controls to ensure that neither complainants nor respondents receive preferential treatment. The department's 12 district offices comply with the department's policies and procedures. According to our review, the department has the appropriate controls to transfer complaints from the enforcement division to the legal services unit and to determine when to process a complaint as a class action.

Standards and Controls for Case Closure

The decisions to close or to continue a case should be based on adequate standards and be reviewed by someone other than the consultant or attorney responsible for the case to preclude

preferential or subjective treatment of a complaint. We evaluated the department's procedures for closing cases to determine if there are sufficient standards and supervisory review of decisions to ensure impartiality.

At the initial interview between the consultant and the complainant, the consultant determines whether a complaint meets department criteria. When a complaint is not accepted, the complainant may talk to the consultant's supervisor if he or she does not agree with the consultant's decision. The consultant's decision not to accept the complaint is normally reviewed by the senior consultant and the district administrator. These multiple reviews of the consultant's decision are designed to preclude preferential treatment. In fiscal year 1985-86, 14,929 interviews were conducted, and 6,942 complaints were not accepted.

In addition to a consultant's decision not to accept a case, there are five other types of case closures that can occur after a complaint is accepted by the department. Administrative closures include, among others, cases that are closed when the complainant withdraws the complaint and cases that are waived to the federal Equal Employment Opportunity Commission. The complainant can also elect to take civil court action at any time during the department's processing of the complaint. If the complainant chooses court action, the department closes the case. Furthermore, the department closes cases when there is insufficient evidence of discrimination. For example, in

one case that we reviewed, a complainant claimed that he had been terminated from his job because of his ancestry. However, the department found during its investigation that the complainant had actually been terminated because he had physically attacked a co-worker.

The department will also close a case when there is a negotiated settlement between the parties. According to the department, over \$4.3 million has been awarded to complainants as a result of negotiated settlements, and 158 complainants have received jobs or been reinstated to their jobs. For instance, in one case, a complainant alleged he had been terminated from his job because of a physical handicap. After the complaint was filed, the case was settled, and the complainant was reinstated in his job with seniority and other employee benefits.

Before a case is closed because of insufficient evidence of discrimination or a negotiated settlement, it is reviewed by the senior consultant and the district administrator. The multiple reviews of these types of closures should preclude preferential treatment.

Lastly, the department will close a case after a public hearing before the Fair Employment and Housing Commission. The commission issues final decisions based on the testimony presented at the hearings.

Table 1 shows the number of cases closed after acceptance of complaints in fiscal year 1985-86.

TABLE 1
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
CASES OF DISCRIMINATION CLOSED AFTER ACCEPTANCE
FISCAL YEAR 1985-86

<u>Type of Closure</u>	<u>Type of Complaint</u>			<u>Total</u>
	<u>Employment</u>	<u>Housing</u>	<u>Public Accommodation</u>	
Administrative	1,603 (21%)	60 (11%)	70 (15%)	1,733 (20%)
Court action	1,595 (21%)	24 (5%)	17 (4%)	1,636 (18%)
Insufficient evidence	2,587 (33%)	236 (44%)	142 (30%)	2,965 (34%)
Negotiated settlement	1,977 (25%)	212 (40%)	240 (51%)	2,429 (28%)
Public hearing	<u>17 (0%)</u>	<u>0</u>	<u>0</u>	<u>17 (0%)</u>
Total	<u><u>7,779</u></u>	<u><u>532</u></u>	<u><u>469</u></u>	<u><u>8,780</u></u>

Standards and Controls
for Transferring
Cases to the Legal Unit

If the department acquires information that proves that an act of discrimination has occurred and if no settlement has been made between the complainant and the respondent, the case is transferred to the legal services section for "accusation," which is a formal charge of a violation of the Fair Employment and Housing Act. The district

administrator makes the decision for the transfer based on the consultant's investigation. Before the decision for the transfer can be made, the consultant must provide evidence to prove a violation of antidiscrimination laws using the criteria in the Case Analysis Manual. The consultant must fully show that the department has jurisdiction over the complaint, that an act of discrimination has occurred, that the respondent does not have a valid reason to discriminate, and that there is a remedy for the complainant.

When the case is transferred to the legal unit, the directing attorney reviews the case as does the attorney the case is assigned to. The final decision for accusation is made by the attorney who is assigned to the case and is reviewed by the directing attorney and the chief legal counsel. While awaiting a public hearing of the accusation, the department and the respondent can settle the case. For example, in one legal case we reviewed, the department had issued an accusation of discrimination against a large hotel chain. The accusation was based on a complaint filed by a woman who was not promoted to work in the hotel's new Chinese restaurant because she was not Asian. The hotel chain settled the case, the complainant was given the promotion and a \$2,500 award, and the hotel chain agreed to eliminate the discriminatory practices. Some accusations are withdrawn; for example, in another legal case, a complainant had alleged that he had not been hired for a job because of his age. The department found before the public hearing, however, that the respondent in fact had hired individuals over 40 years of age and that

the complainant had not been hired because he was not qualified. In this case, the department withdrew the accusation because the evidence showed there was no violation of law.

Any decision to settle or withdraw a case is reviewed by the directing attorney, sometimes by the chief legal counsel, and by a representative of the enforcement division. As noted above, the multiple reviews of case closure decisions should preclude preferential treatment. We found that the department's enforcement division and legal services section have sufficient standards to transfer cases.

Other Case Reviews

The department requires additional reviews to ensure impartial and consistent processing. The assistant directors in charge of the southern and the northern regional offices conduct periodic quality control reviews at each of the district offices that they are responsible for. The district administrators are required to conduct quarterly reviews of case closures to ensure that the decisions were appropriate. The senior consultants conduct continuing case file reviews of ongoing cases to ensure that consultants comply with policies and procedures.

Class Action Procedures

The department's criteria and procedures for deciding when to process a complaint of discrimination as a class action instead of as an individual action appear appropriate. The department has established its criteria and procedures for class action complaints in a Field Operations Directive. The major difference between processing a class action complaint and an individual complaint is that the department has two years instead of just one year to resolve the class action complaint or issue an accusation. The department decides if a case will be an individual action or a class action by determining the most efficient method of processing the case. The department may decide to process a complaint of discrimination as a class action complaint if the reason for the complaint affects a large group as a class, if the department seeks to address an issue it considers important in the community, or if the respondent is an industry leader. The decision to initiate a class action is made by the enforcement division and can happen any time during the investigation of individual cases. According to a Legislative Counsel opinion that we requested, the department's class action procedure complies with statutory requirements.

We reviewed one group of complainants who filed separate complaints of discrimination against a single respondent. The complainants alleged that they had not been hired because of their national origin. An attorney for the California Rural Legal Assistance

had raised concerns that this case should have been handled as a class action complaint. The department initially decided to handle the complaints as individual complaints. During the investigation, the complainants elected to take court action, and the department closed the cases. According to the senior consultant in charge of the complaints, if the complaints had not been closed and if the investigation proved that an accusation was appropriate, then the cases could have been combined as a class action complaint.

Caseload Management

We reviewed the distribution of caseloads among the 12 district offices. Caseloads vary among the 12 offices, and the department has procedures for distributing extra caseloads so that each district office will have approximately the same caseloads. Table 2 summarizes the number of consultants, the number of active cases, and the caseload per consultant at the 12 district offices.

TABLE 2

**DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
AVERAGE CASELOAD PER CONSULTANT AS
REPORTED BY THE 12 DISTRICT OFFICES
AS OF AUGUST 1986**

<u>District Office</u>	<u>Number of Consultants</u>			<u>Total Active Cases</u>	<u>Average Caseload per Consultant*</u>
	<u>Actual</u>	<u>Filled</u>	<u>Budgeted</u>		
San Jose	5	5	5	228	45
Santa Ana	8	8	8	273	34
Fresno	6	6	6	442	68
San Diego	6	6	6	259	44
San Bernardino	8	8	8	267	35
Bakersfield	7	7	7	314	49
Ventura	4	5	5	152	26
San Francisco	5	5	5	360	68
Oakland	9	9	9	516	52
Los Angeles City	15	15	15	967	40
Los Angeles County	11	11	11	**	45
Sacramento	<u>7</u>	<u>9</u>	<u>10</u>	<u>382</u>	<u>50</u>
Total	<u>91</u>	<u>94</u>	<u>95</u>	<u>4,160</u>	<u>46</u>

*These figures do not include senior consultants.

**Los Angeles City and County are combined.

Included as part of the table are the actual, filled, and budgeted number of consultants at each of the 12 district offices. The difference between the filled consultant positions and actual number of consultants at 2 of the district offices is a result of consultants being on long-term stress or maternity leave.

While the caseloads per consultant vary among the 12 offices, the department has reasonable procedures for distributing extra caseloads. According to the deputy director for the enforcement division, when one district office receives a large number of cases

that it cannot adequately handle, the assistant deputy directors send some cases to another office. For example, the Fresno district office sent 100 cases to the Sacramento office for investigation. The department also has three "case expeditors" who handle difficult or excess cases for the district offices. Additionally, the department states that it will transfer staff if the caseload increases significantly. For example, the number of cases that Bakersfield received increased in fiscal year 1985-86. As a result, the office assigned some cases to two of the department's expeditors and hired an additional consultant.

Changes in the Department's Caseload

We obtained statistics concerning the changes in the department's jurisdiction and the resulting changes in caseloads. In recent years, the department's jurisdiction has expanded while the caseload of other types of complaints, such as race-related complaints, has decreased slightly. As a result, the department's overall caseload has not changed significantly.

Table 3 shows the number of complaints filed, the number of complaints accepted, and the percent of complaints accepted by the department's district offices for fiscal years 1981-82 through 1985-86.

TABLE 3
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
COMPLAINT CASELOAD
FISCAL YEARS 1981-82 THROUGH 1985-86

	<u>1981-82</u>	<u>1982-83</u>	<u>1983-84</u>	<u>1984-85</u>	<u>1985-86</u>
Complaints filed	14,441	15,407	14,986	14,577	14,929
Complaints accepted	8,383	8,233	7,948	8,317	7,972
Percent of complaints accepted	58%	53%	53%	57%	54%

As the table shows, the department's caseloads have not significantly changed in the past five years.

Since fiscal year 1984-85, there have been four jurisdictional changes that have affected the department's caseloads. First, two completely new areas of jurisdiction have been added. The first is the acceptance of complaints alleging discrimination against children in housing, which added 160 cases in fiscal year 1984-85 and 253 cases in fiscal year 1985-86. Second, the department's processing of complaints of employment discrimination alleging harassment against employees of employers with fewer than five employees added 18 cases in fiscal year 1984-85 and 40 cases in fiscal year 1985-86.

The two other areas of additional jurisdiction are the result of court actions. Before August 1985, the department was not allowed

to process complaints of discrimination filed by state civil service employees. In August 1985, a court ruling allowed the department to process this type of complaint. In fiscal year 1984-85, the department processed 120 complaints from state civil service employees, and in fiscal year 1985-86, the department processed 148 complaints from state civil service employees. Similarly, the department, because of court action, was not allowed to process certain types of discrimination complaints concerning denials of leaves of absence due to pregnancy. The department has always filed these cases and waived the responsibility for processing them to the federal Equal Employment Opportunity Commission. In August of 1985, the department's jurisdiction over some of these cases was reinstated.

Table 4 shows the changes in employment discrimination cases since fiscal year 1981-82. Table 4 also shows the percent of changes since fiscal year 1984-85 for each type of case.

TABLE 4

**DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
NUMBER OF EMPLOYMENT DISCRIMINATION CASES
FISCAL YEARS 1981-82 THROUGH 1985-86**

	<u>1981-82</u>	<u>1982-83</u>	<u>1983-84</u>	<u>1984-85</u>	<u>1985-86</u>	Percent Change Since Fiscal Year 1984-85
Race	2,279	2,042	1,821	1,916	1,579	-18%
Ancestry	1,163	1,068	1,004	1,009	846	-16
Religion	116	130	123	118	141	+19
Physical Handicap	601	648	693	803	916	+14
Sex	2,261	2,377	2,228	2,187	2,262	+ 3
Marital Status	107	75	80	107	72	-33
Age	838	873	894	940	900	- 4
Medical Condition	20	17	29	21	26	+24
Retaliation	250	320	234	260	241	- 7
Association, Other	<u>18</u>	<u>10</u>	<u>8</u>	<u>11</u>	<u>10</u>	- 9
Total	<u>7,653</u>	<u>7,560</u>	<u>7,114</u>	<u>7,372</u>	<u>6,993</u>	- 5%

As Table 4 shows, since fiscal year 1984-85, race discrimination cases have declined by 337 (18 percent) and ancestry discrimination cases have declined by 163 cases (16 percent).

Table 5 shows the changes in the levels of housing discrimination cases filed since fiscal year 1981-82.

TABLE 5

**DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
NUMBER OF HOUSING DISCRIMINATION CASES
FISCAL YEARS 1981-82 THROUGH 1985-86**

	<u>1981-82</u>	<u>1982-83</u>	<u>1983-84</u>	<u>1984-85</u>	<u>1985-86</u>	Percent Change Since Fiscal Year 1984-85
Race	322	345	366	327	282	-14%
Ancestry	87	91	115	107	79	-26
Religion	8	10	6	13	12	- 8
Sex	50	50	58	42	38	-10
Marital Status	81	82	113	99	71	-28
Retaliation	9	5	15	8	6	-25
Association, Other	<u>7</u>	<u>5</u>	<u>7</u>	<u>12</u>	<u>9</u>	-25
Total	<u>564</u>	<u>588</u>	<u>680</u>	<u>608</u>	<u>497</u>	-18%

As the table shows, there has been a decrease in most types of housing discrimination complaints since fiscal year 1981-82. The largest decrease has been for race discrimination, which declined by 40 cases over five years.

Table 6 shows the changes in the number of public accommodation discrimination cases filed since fiscal year 1981-82. Public accommodation discrimination occurs when an individual, because of his or her race, sex, ancestry, national origin, or religion, is not allowed to use the facilities and services of a public establishment.

TABLE 6
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
NUMBER OF PUBLIC ACCOMMODATION DISCRIMINATION CASES
FISCAL YEARS 1981-82 THROUGH 1985-86

	<u>1981-82</u>	<u>1982-83</u>	<u>1983-84</u>	<u>1984-85</u>	<u>1985-86</u>	Percent Change Since Fiscal Year 1984-85
Race	64	73	60	76	72	- 5%
Ancestry	13	17	23	23	57	+148
Religion	2	2	1	-	2	Neg.
Physical Handicap	1	-	1	-	1	Neg.
Sex	17	18	25	24	41	+ 71
Marital Status	3	2	4	16	13	- 19
Age	7	-	-	13	26	+100
Retaliation	3	-	1	3	4	+ 33
Children	1	9	3	148	230	+ 55
Association, Other	<u>29</u>	<u>4</u>	<u>5</u>	<u>17</u>	<u>36</u>	+112
Total	<u>140</u>	<u>125</u>	<u>123</u>	<u>320</u>	<u>482</u>	+ 51%

As the table shows, changes have occurred in the area of public accommodation. The actual number of public accommodation cases, however, compared to the total number of cases is small.

The department attributes the declines in the number of complaints to "social trends and improvements in the way the department screens complaints." We did not attempt to determine the reasons for the changes in the department's caseload. According to the department's information officer, there have been no major reductions in the department's advertising budget or in the way the department advertises its services.

CONCLUSION

The department's policies and procedures for accepting, processing, and resolving complaints of discrimination comply with state law and regulations. Furthermore, the department's policies and procedures are consistently applied at all of the department's 12 district offices. In addition, the department has standards and controls in place that should prevent preferential treatment. While the caseloads vary among the 12 district offices, the department has procedures for evenly distributing caseloads. Finally, the department's jurisdiction has increased in the last two years, but because of a drop in the number of other types of complaints, the department's overall caseload has not changed significantly.

II

THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING HAS CORRECTLY REPORTED RENTAL SHORTFALLS AND SALARY SURPLUSES

The Department of Fair Employment and Housing (department) has correctly reported its shortfalls in budgeted rental allowances and its amount of unspent salary allotment (salary surplus). The rental shortfalls, which ranged from an anticipated \$39,000 (5.3 percent) of the \$742,000 budgeted for rent in fiscal year 1986-87 to \$92,000 (13.4 percent) of the \$688,000 budgeted for rent in fiscal year 1985-86, were caused by rent increases and the relocation of district offices. The department has had salary surpluses for the past two fiscal years. In fiscal year 1984-85, the surplus was \$316,000 (3.3 percent) of the \$9,684,000 budgeted for personal services, and in fiscal year 1985-86, the surplus was \$178,000 (1.8 percent) of the \$10,036,000 budgeted for personal services. During these years, the department's staff vacancy rates were less than the statewide averages, and the department did not lose positions due to the length of vacancies. The department has appropriately used its salary surplus and unspent funds from other budget sources to offset its rental shortfalls.

Rental Shortfalls

The department has 12 district offices, a southern legal services office, a northern legal services office, and a headquarters

office. These offices are housed at 11 locations throughout the State: 3 of these offices are located in state-owned buildings, and 8 are located in privately owned buildings leased by the State. The leases for these offices run from three to six years. The department allocates money for renting its office space under a budget line item called "Facilities Operations." Table 7 shows the amounts the department has budgeted for rent, the amounts actually spent, and the shortfalls for three fiscal years.

TABLE 7
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
REPORTED RENTAL SHORTFALLS
FISCAL YEARS 1984-85 THROUGH 1986-87

<u>Fiscal Year</u>	<u>Budgeted Rent</u>	<u>Actual Rent</u>	<u>Rental Shortfall</u>	<u>(Percent)</u>
1984-85	\$657,000	\$741,000	\$84,000	12.8
1985-86	\$688,000	\$780,000	\$92,000	13.4
1986-87*	\$742,000	\$781,000	\$39,000	5.3

*Anticipated amounts

The rental shortfall in fiscal year 1984-85 was caused by rental increases and the costs of relocating a district office. Rents increased in Sacramento by \$21,000 when the Department of Transportation terminated a sublease for space in the Sacramento office. The Department of Transportation had sublet space from the Department of Fair Employment and Housing's Sacramento office but failed to renew the agreement. According to the department's budget

officer, the decision not to renew the space occurred after the department's budget was prepared. In San Francisco, the rent increased \$46,000 when rents jumped from \$.97 to \$1.55 a square foot. The rent increase was anticipated; nevertheless, at the time the department prepared its budget, the size of the increase was not expected. The department also incurred an \$8,000 expense associated with its relocation of the San Bernardino district office. According to the department's budget officer, the department also incurred an additional \$9,000 in expenses for the renovation of the San Francisco district office.

Rental shortfalls in fiscal year 1985-86 were caused by increases in rent in San Bernardino, Bakersfield, and Sacramento after unanticipated relocations and reallocations of space and, according to a Department of Finance budget officer, the Governor's elimination of a proposed budget increase of \$34,000. The office in Bakersfield was relocated because, among other problems, the office lacked access for the physically handicapped. The San Bernardino district office had to relocate because its office space was inadequate. The rental shortfalls include the costs of the new space, \$7,000 for the Bakersfield office, and \$19,000 for the San Bernardino office. The shortfalls also include the unanticipated cost of \$15,000 in rent for the vacated space in the San Bernardino state office building for which no new tenant could be found. An additional \$21,000 of the shortfall occurred because the Sacramento office continued to pay for the space that had been occupied by the Department of Transportation. As noted

above, this increase occurred after the department's budgets were prepared. According to the department's budget officer, part of the rental shortfall in fiscal year 1985-86 was offset by savings in other budget categories.

The anticipated rental shortfall of \$39,000 for fiscal year 1986-87 is due to rent increases, the relocation of the San Jose district office, and the Governor's elimination of a proposed budget increase of \$29,000. In San Francisco, the rent increases of 1985 continued to add to the rental shortfall. In San Jose, the district office is to be relocated because, among other problems, the current space is not accessible to the handicapped. Relocating the San Jose district office will add to the rental shortfall once the move is complete.

According to the department's budget officer, the rental shortfalls in fiscal years 1984-85 and 1985-86 were offset by using salary surpluses. The anticipated shortfall for fiscal year 1986-87 will be offset through anticipated savings in operating expenses, specifically from savings in professional and consultant services.

The Department of Finance's budget analyst in charge of reviewing the department's budget told us that the department has made appropriate use of salary and other budgetary surpluses to offset the rental shortfalls. The budget analyst noted that Section 3 of the 1986 Budget Act permits departments to transfer funds between budget

categories within a program. He went on to explain that it is common practice for the Department of Finance to allow departments to use salary surpluses to meet shortfalls in other budget categories. He also explained that the department has experienced rental shortfalls in the past two fiscal years primarily because the Governor eliminated proposed budget increases.

Salary Surpluses

The Governor's Budget specifies the budget allotment for salaries and wages and for staff benefits for each state department. The salaries and wages and staff benefits allotments constitute the personal services category of the budget. The budget also specifies the salary savings, if any, the department must meet. Salary savings reflect cost savings from vacant positions. Salary surpluses occur if the number of vacant positions or the duration of vacancies exceed what is required to meet the budgeted salary savings. As stated before, the department may use these salary surpluses to meet other budgetary needs.

However, in accordance with Section 12439 of the Government Code, Section 20 of the Budget Act, and Section 6117 of the State Administrative Manual, the State Controller will abolish positions that remain vacant continuously from October 1 through June 30 of the fiscal year. Therefore, a department cannot hold a position vacant throughout the fiscal year to meet budgeted salary savings or create a salary

surplus without losing the position. We found that the department has complied with these provisions and has not lost any positions for the past two fiscal years.

Table 8 shows the department's total budget, the amount the department spent, and the salary surplus for fiscal years 1984-85 and 1985-86.

TABLE 8
THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
REPORTED SALARY SURPLUSES
FISCAL YEARS 1984-85 AND 1985-86

<u>Fiscal Year</u>	<u>Total Budgeted</u>	<u>Amount Spent</u>	<u>Salary Surplus</u>	<u>Percent of Total</u>
1984-85	\$9,684,000	\$9,368,000	\$316,000	3.3
1985-86	\$10,036,000	\$9,858,000	\$178,000	1.8

Table 9 shows the department's staff vacancy rates for the past two fiscal years.

TABLE 9
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
STAFF VACANCY RATES
FISCAL YEARS 1984-85 AND 1985-86

<u>Fiscal Year</u>	<u>Positions Budgeted</u>	<u>Positions Filled</u>	<u>Vacancies</u>	<u>Vacancy Rate</u>
1984-85	253.3	243.4	9.9	3.9%
1985-86	253.5	239.4	14.1	5.6%

According to a budget analyst at the Department of Finance, vacancy rates of 4 to 7 percent are normal for state departments. According to information from the State Controller, on September 30, 1985, the statewide vacancy rate was 5.8 percent. The department's vacancy rates of 3.9 percent for fiscal year 1984-85 and 5.6 percent for fiscal year 1985-86 are below the statewide vacancy rate.

In addition to determining the department's vacancy rates, we identified 113 vacancies in the department between March 1984 and July 1986. None of these vacancies lasted from October 1 through the end of the fiscal year. Thus, none of the vacancies was open long enough to be abolished in conformance with Government Code Section 12439.

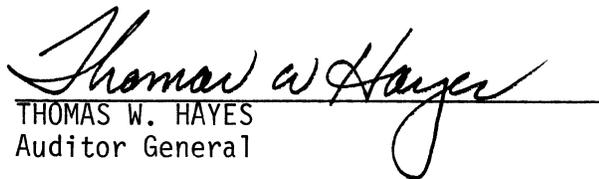
According to the department's budget officer, the department used salary surpluses to offset rental shortfalls. Rent is included in the operating expenses and equipment category of the budget, and departmental budget reports indicate that the department redirected some of its salary surplus to its operating expenses and equipment category of its budget. For example, in fiscal year 1985-86, the department transferred \$71,000 of salary surplus into its operating expenses and equipment budget category. As stated previously, according to the Department of Finance budget analyst for the department, the redirection of these funds is common practice for departments with salary surpluses.

CONCLUSION

The department has correctly reported its shortfalls in budgeted rental allowances and its amount of unexpended salary (salary surplus). The rental shortfalls which ranged from an anticipated 5.3 percent in fiscal year 1986-87 to 13.4 percent in fiscal year 1985-86, were due to rent increases and the relocation of district offices. The department has had salary surpluses for the past two fiscal years. In fiscal year 1984-85, the surplus was 3.3 percent of the \$9,684,000 budgeted for personal services, and in fiscal year 1985-86, the surplus was 1.8 percent of the \$10,036,000 budgeted for personal services. During these years, the department's staff vacancy rates were less than the statewide averages. We determined that the department has appropriately used its salary surplus and unspent funds from other budget sources to offset its rental shortfalls.

We conducted this review under the authority vested in the Auditor General by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

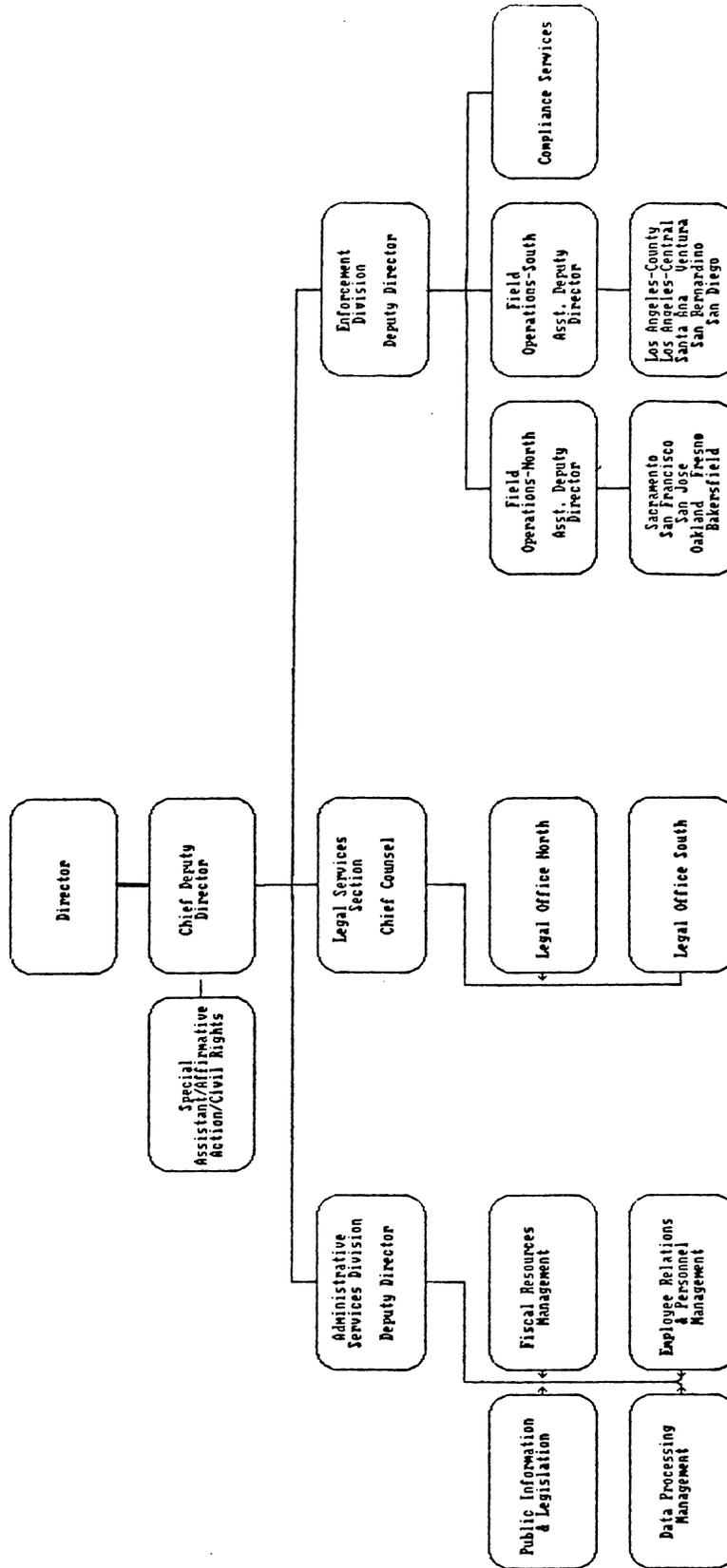
Respectfully submitted,


THOMAS W. HAYES
Auditor General

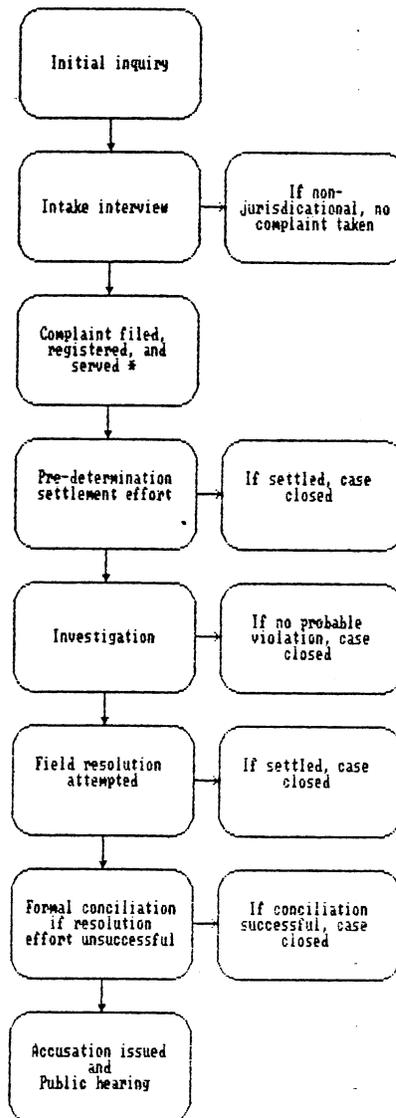
Date: September 29, 1986

Staff: William S. Aldrich, Audit Manager
Clifton John Curry
Paul J. Carrigan, Jr.
Keith K. H. Tsukimura
Katherine M. Weir
Daniel W. Gonzales
James Lynch, J.D.

**ORGANIZATION OF THE
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**



THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING'S
DISCRIMINATION COMPLAINT PROCESSING SYSTEM



*Where there is concurrent jurisdiction with a federal agency, the complaint will be investigated by the Department of Fair Employment and Housing.

**LEGAL CASES THAT WERE ALLEGED TO HAVE
BEEN IMPROPERLY HANDLED BY THE
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**

Four Department of Fair Employment and Housing (department) staff attorneys from the San Francisco legal office have raised allegations regarding the department's processing of five specific discrimination cases. We reviewed the processing of these cases and present the following information about them without assessing the legal judgments made in their processing.

**THE DEPARTMENT OF FAIR EMPLOYMENT AND
HOUSING vs. THE BANK OF AMERICA
NATIONAL TRUST AND SAVINGS ASSOCIATION**

The department filed a "Director's Complaint" against the Bank of America National Trust and Savings Association (Bank of America) on December 2, 1982, under Section 12961 of the Government Code, which empowers the department director to file complaints alleging violations of the Fair Employment and Housing Act when there appear to be groups of people adversely affected by a pattern of discrimination. The complaint charged the bank with sex discrimination in hiring and compensating its tellers. The department and the Bank of America reached a negotiated settlement, which was signed by the department's director on December 16, 1983, under which the Bank of America agreed to continue to improve career counseling and training opportunities for its tellers, and include such positions in its merit salary program, which is based upon individual performance and "time progression." The bank also agreed to report to the department regarding its development of these programs.

Former staff members of the department's San Francisco legal office allege that the department took the case files from the San Francisco office and settled the complaint without the advice of the legal staff, and they allege that the department has since refused to adopt comparable worth cases. The department states that the case was a Director's Complaint, which is processed through the Sacramento department headquarters, and that the case was conducted according to departmental procedures. Also, it is the department's legal position, following the Ninth Circuit Court's decision, that comparable worth is not a sex discrimination issue under Title VII of the 1964 Civil Rights Act and, therefore, is not part of the department's jurisdiction. (The department follows the federal Equal Employment Opportunity Commission's precedents in civil rights laws.)

DEL MAR vs. THE ARDEN HILLS
SWIMMING AND TENNIS CLUB

Dexter Del Mar filed a complaint of discrimination against the owner of the Arden Hills Swimming and Tennis Club on October 11, 1983, charging him with racial slurs and violence when he attempted to use the club's facilities. The department issued a formal accusation of discrimination on September 17, 1984; while the case was in a hearing before an administrative law judge, on August 9, 1985, the department's staff attorney negotiated a settlement with the parties involved. The respondent apologized to the complainant and paid him a monetary settlement of \$20,000.

Former staff members of the department's San Francisco legal office allege that the department pressured them to settle an accusation of discrimination against the respondent, and unfairly ordered them to drop civil code damage claims in the case. The department states that it did not interfere with the resolution of the case but sought from the respondent only compensatory and punitive damages as required by the government code, under which the Department enforces antidiscrimination law.

STRIMPLE vs. THE STATE BAR OF CALIFORNIA

Patricia Strimple filed a complaint of employment discrimination on the basis of race against the State Bar of California on March 25, 1983, and the department issued a formal accusation on March 23, 1984. The department reached a negotiated settlement with the parties involved. The settlement was signed by the staff attorney, on December 28, 1984. The settlement required that the State Bar review its affirmative action program for compliance with the federal Equal Employment Opportunity Commission's guidelines and agree to submit records of such reviews to the department's compliance unit for three years.

A former staff member of the department's San Francisco legal office alleges that the department unduly influenced her into issuing an accusation of discrimination despite deficient legal grounds in the case. The department states that there were sufficient grounds for accusation.

THE DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING vs. THE BOHEMIAN CLUB

On June 4, 1980, the department filed a Director's Complaint against the Bohemian Club, charging employment discrimination on the basis of sex. The Fair Employment and Housing Commission (commission), on October 14, 1981, decided in favor of the department in a ruling which was subsequently overturned by a September 12, 1983, Superior Court appeal filed by the Bohemian Club. Subsequently, the department and the Bohemian Club reached a proposed settlement agreement in the case, which the department submitted for consideration to the commission. The department sought a confidential Executive (closed)

Session for negotiation; however, the commission declined the request to participate in an Executive Session, citing the Open Meeting Act, which requires that meetings be open to the public. The commission also refused to keep the proposed settlement confidential. The commission rejected the proposed settlement, and the case currently remains in litigation.

Former staff members of the department's San Francisco legal office allege that the department attempted to secretly negotiate a settlement with the commission and the Bohemian Club. The department states that it was following statutory mandates under the Fair Employment and Housing Act in seeking a negotiated settlement in the case and in keeping conciliation efforts confidential.

THE DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING vs. THE CALIFORNIA
PSYCHOLOGY EXAMINING COMMITTEE

The department filed a Director's Complaint against the California Psychology Examining Committee on May 26, 1981, charging the California Psychology Examining Committee with race and age discrimination in its examining practices. The department reached a negotiated settlement with the California Psychology Examining Committee and the Attorney General, who represented the California Psychology Examining Committee in the case, on September 29, 1985. The agreement was signed by the department director, and stipulated that the California Psychology Examining Committee would demonstrate to the department proof that its examinations were based upon valid job-related qualifications. Further, the California Psychology Examining Committee is required to submit to the department data for monitoring the race, ethnicity, and age of examinees for compliance with the agreement. Finally, the agreement grants specific relief to applicants who were affected by previous examinations.

A former member of the department's San Francisco legal staff alleges that the department took the case files from the San Francisco office and settled the case without the advice of the legal staff. The department states that the case was a Director's Complaint, which is processed through the Sacramento department headquarters and was conducted according to departmental procedures.



State and Consumer Services Agency

OFFICE OF THE SECRETARY
915 Capitol Mall, Suite 200
Sacramento, CA 95814

September 24, 1986

Mr. Thomas W. Hayes
Auditor General
Office of the Auditor General
600 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Hayes:

Thank you for your draft audit report entitled "Review of the Department of Fair Employment and Housing." The Department agrees with the findings of the report.

As indicated in the audit report, the Department's system for accepting, processing, and resolving complaints of discrimination complies with State law and has controls to ensure impartiality. In addition, the Department's rental and salary budgets have been correctly reported.

The Department appreciates the thorough and professional approach used by your office and staff. If you have any further questions, please do not hesitate to call me at 445-1935.

Sincerely,


SHIRLEY R. CHILTON
Secretary of the Agency

SRC:as

cc: Mark Guerra

DEPARTMENTS AND PROGRAMS OF THE AGENCY

Building Standards Commission • Consumer Affairs • Fair Employment & Housing • Fire Marshal
Franchise Tax Board • General Services • Museum of Science & Industry • Personnel Board
Public Employees' Retirement System • Teachers' Retirement System • Veterans Affairs

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps