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P R O C E E D I N G S

WEDNESDAY, OCTOBER 20, 2010

(9:07 a.m.)

09:07AM 5 CHAIRMAN ANDERSON: I'm Tom Anderson of
6 the Texas Commission on Human Rights. We do have a
7 quorum. I wanted to welcome everybody, and we're
8 probably going to modify the agenda today a little bit.
9 John James is -- Commissioner James' plane is supposed
10 to be arriving now, and we'd like for him to be here for
11 executive session and probably won't be here till about
12 10:00. And so we'll do a few items, and then hopefully
13 about 10:00 o'clock we'll go into executive session.

14 We just have the one, Becky, who wants to
15 speak? None of the attorneys want to speak or they want
16 to speak at the time when we discuss their items?

17 MS. SMITH: Yes.

18 CHAIRMAN ANDERSON: Okay. We do have one
19 citizen who did register to speak, Marilou Morrison of
20 Austin, Texas.

21 Ms. Morrison, you have three minutes.
22 Please keep it relevant to the agenda items.

23 MS. MORRISON: Good morning. I have been
24 accused of repeating myself at these meetings. If that
25 is so, it's only because truth has been missed or
09:09AM 25 ignored. As a consequence, this agency responsible for

1 enforcing state and federal laws against illegal
2 employment and housing discrimination is on the brink of
3 construction -- self-destruction. Unfortunately now
4 some commission employees will lose their jobs due to
09:09AM 5 management's incompetence and the Commissioners'
6 reluctance to attend to their sworn duties and
7 responsibilities. I would not have received a jury
8 award of almost a million dollars if the director and
9 management had understood and respected the laws they
09:09AM 10 were supposed to enforce. This judgment will be paid
11 from agency funds. This, along with management's
12 repeated failures to meet goals probationed by HUD, the
13 hiring of expensive outside consultants, repeated
14 internal audits, internal conflict and so on and on and
09:09AM 15 on, just reemphasizes what I've been telling you. To
16 paraphrase one of Governor Perry's campaign ads, if you
17 dig yourself into a hole, stop digging.

18 During the upcoming legislative session,
19 you will be asked to explain how and why this was
09:10AM 20 allowed to happen. I will present my assessment to the
21 legislators and their committees, also. I see that you
22 will receive training from a member of management
23 responsible for training and supervising housing
24 investigators and who approved all those housing cases
09:10AM 25 that HUD rejected. Anyone can recite from the HUD

1 manual, but minimally adequate training and supervision
2 require the ability to analyze, understand and directly
3 apply laws and facts to differing situations. When
4 supervisors/trainers lack knowledge and analytic
09:10AM 5 ability, they just create confusion and frustration for
6 investigators trying to improve their investigative
7 skills and/or complete a satisfactory investigation.
8 Poor training and supervision is worse than none.

9 Continued poor management is the primary
09:10AM 10 reason for the CRD will never be able to meet its LBB
11 objectives. The CRD remains ineligible for grants as
12 long as these judgments and lawsuits are pending against
13 the agency. TWC general counsel testified in trial that
14 the CRD manager that the jury found had unlawfully
09:11AM 15 retaliated against me should be fired. Unless and until
16 responsible action is taken, the CRD is doomed to a
17 continued failure. If interested and upon request to
18 morrison@austin.rr.com, I will provide email copies of
19 trial testimony of both TWC general counsel and that of
09:11AM 20 the managers who testified. I think reading the
21 transcript will help Commissioners understand the
22 caliber of CRD's management staff and assist you in
23 understanding the CRD's failures.

24 On Friday, October the 15th, CRD staff
09:11AM 25 totally ignored a very important housing conference

1 entitled "Race, Place and Fair Housing in Texas"
2 presented by the U.T. Law School and attended by HUD and
3 other groups interested in housing discrimination in
4 Texas. It was both local and free. Why?

09:12AM

5 CHAIRMAN ANDERSON: I'd like to go ahead
6 and let you do your short, brief statement, Mr. Gomez,
7 concerning your activities, Item No. 3 on the agenda.

09:12AM

8 MR. GOMEZ: Yes, sir. Good morning, Chair
9 Anderson; good morning, Commissioners and Visitors. My
10 name is Robert Gomez, and I'm the director for the Civil
11 Rights Division. You in your packet have received a
12 bulleted summary of my activities since the last
13 meeting, June 16th, 2010. I'd like to just point out
14 some highlights which I think are important and not all
15 of them because you did have a chance to look at them
16 unless you have any questions or comments on any of the
17 items that have been listed on there.

09:12AM

09:13AM

18 As far as under the internal CRD activity
19 action, I think it's important to point out the
20 discussions that we've had within the division on
21 employment and housing training and monitor needs,
22 budget outreach and personnel issues, especially the
23 personnel issues item because that does reflect on our
24 revenue production. And we have kept -- I have kept
25 Chair Anderson in the loop on those personnel issues,

09:13AM

1 but I think it's important to bring up that we are
2 taking personnel issues as needed.

09:13AM 3 Also, under the TWC activity action, we
4 participated in a meeting with Budget, Mr. Gene Crump,
5 the deputy executive director, Commissioner Diggs,
6 budget staff, as I stated before, and also CRD
7 management. And that was for the purpose of discussing
8 the monthly case closures that reflect directly on our
9 budget issues and our revenue production and budget
09:14AM 10 issues, and it was a very successful meeting. And I do
11 not know if Commissioner Diggs wants to elaborate on
12 that or comment on that. If not, then I'll proceed.

13 COMMISSIONER DIGGS: No.

14 MR. GOMEZ: Okay. Thank you, ma'am. Also
09:14AM 15 attended the House appropriations with -- a meeting with
16 a House appropriations staff member regarding -- and TWC
17 External Relations regarding the enforcement duties,
18 responsibilities and functions of TWC CRD. That went
19 very well. It was an information sharing type of
09:14AM 20 meeting, and this was done in preparation to gather
21 information for the upcoming legislative session.

22 Also, under the federal activity action, I
23 do want to point out that we attended the HUD policy
24 conference in New Orleans which was very informative,
09:14AM 25 and we brought back some good information to apply and

1 good information as a heads-up to prepare for some
2 actions that are coming down through HUD. Under that
3 same caption, I also state on there that we are
4 participating in the annual HUD review and house manager
09:15AM 5 with -- with house managers -- housing managers and TWC
6 staff. This was for the purpose of the -- having the
7 entrance and exit conferences with HUD -- the HUD review
8 team where we did come off of the PIP for enforcement.
9 And we came out, as they said, with flying colors, and
09:15AM 10 they were very satisfied with what we had done as far as
11 the corrective actions, as far as where the program is
12 and where the program is headed. Out of the nine
13 performance standards that they do review us on, we
14 complied with all nine, and we received favorable
09:15AM 15 comments on most of them. And so I did want to stress
16 that because I knew that -- I know that that is an
17 issue. That was an issue with HUD and being placed on
18 the enforcement PIP, but like I say, in our -- in both
19 our entrance and exit meetings, we did meet all nine of
09:16AM 20 the performance standards with positive comments given
21 to us by the review team.

22 Lastly participated in the meeting with
23 the U.S. Department of State, the MRP human rights
24 delegation. This included some information sharing
09:16AM 25 again with myself and the two managers. And the group

1 that -- from the U.S. Department of State consisted of
2 individuals involved with human rights around the world.
3 They included individuals representing India; Dominican
4 Republic; West Malaysia; Johannesburg, South Africa;
09:16AM 5 Cairo, Egypt; and London, England. And we received good
6 feedback, good questions, questions relating to our --
7 ours being a state agency, how we related to the federal
8 government and the federal regulations and also how they
9 related to the state regulations here in Texas. They
09:17AM 10 asked about our case load and what we actually did, not
11 only in the areas of enforcement for employment and
12 housing, but also for reviewing state agencies at
13 universities, training and monitoring. The fire fighter
14 reviews, they were kind of interested in those and
09:17AM 15 basically just general information. And like I said, we
16 had very good feedback on that.

17 So that concludes my presentation, a quick
18 presentation, Chair Anderson. And at this point in
19 time, I'd like to take any questions if you-all have any
09:17AM 20 questions for me.

21 CHAIRMAN ANDERSON: Commissioners?

22 (No audible response.)

23 CHAIRMAN ANDERSON: Nothing? Okay.

24 MR. GOMEZ: Okay. If not, then I will
09:17AM 25 bring up Mr. Jim Dixon from Budget -- our budget support

1 area, and he will provide you information and a
2 presentation over the budget status of TWC CRD.

3 MR. DIXON: Good morning, Commissioners.
4 For the record, my name is Jim Dixon, and I'm a budget
09:18AM 5 analyst in the Finance Division of Texas Workforce
6 Commission. And the first slide that we have presented
7 shows the number of cases that were completed in, say,
8 Fiscal Years 2008, '9 and '10, and these are the number
9 of cases that we earned revenue for. And for 2010 we
09:18AM 10 had 343 HUD cases and a 1,021 EEOC cases. Next slide.

11 CHAIRMAN ANDERSON: And the reason for the
12 employment cases going down and also -- well, for all
13 the cases going down, Robert?

14 MR. GOMEZ: Specifically for employment
09:18AM 15 during this fiscal year, we did -- we do have two
16 vacancies in employment now. We have an employment
17 investigator vacancy, and we also have a mediator
18 vacancy that came about last fiscal year. In the
19 housing area, we also have a housing investigator
09:19AM 20 vacancy that we have not filled. We're holding on to
21 that until we have the opportunity to fill. As you-all
22 very well know, when we do fill a vacancy -- and I think
23 I've presented this to you-all before. When we have a
24 vacancy and we fill that vacancy, the hiring process and
09:19AM 25 the learning curve period for a newly hired

1 investigator, which is the time that they need to
2 actually come on board and learn the process, you know,
3 of an investigative case, usually takes anywhere around
4 seven to eight months. So as we were going through this
09:19AM 5 fiscal year and we saw that we were trying to keep up
6 with the budget, it was not to our advantage to hire
7 someone at that point in time and incur the expenditure
8 of the salary and the overhead for that individual, or
9 for that FTE, versus the revenue that was going to be
09:20AM 10 produced during that eight-month period -- seven- to
11 eight-month period.

12 CHAIRMAN ANDERSON: And we're going to be
13 hiring them now after the new fiscal year started,
14 right?

09:20AM 15 MR. GOMEZ: In the new fiscal year? Yes,
16 sir. We're going to look at it. We are going to sit
17 down again with Budget and look at it and see if we are
18 going to hire at least another one or maybe perhaps two
19 housing investigators for the revenue production.

09:20AM 20 CHAIRMAN ANDERSON: And our budgeted
21 number of positions are?

22 MR. GOMEZ: 32.

23 CHAIRMAN ANDERSON: And we're at 30 --

24 MR. GOMEZ: No. We're --

09:20AM 25 CHAIRMAN ANDERSON: -- actual?

1 MR. GOMEZ: We had 36, and in the course
2 of just last year, we lost four FTEs.

3 CHAIRMAN ANDERSON: And so we'll replace
4 two of those four?

09:20AM 5 MR. GOMEZ: We'll replace two of those
6 four, yes, sir.

7 CHAIRMAN ANDERSON: So that should impact
8 our budget, right?

9 MR. GOMEZ: Well, actually we have 32 warm
09:21AM 10 bodies on staff. If we lose another housing
11 investigator, I foresee us hiring two because at that
12 time we'll go through the same learning curve --
13 learning period for one versus two. So it will be
14 advantageous for the division and our revenue versus
09:21AM 15 expenditures to hire two at that point in time.

16 CHAIRMAN ANDERSON: Are they posted?

17 MR. GOMEZ: No, sir. No. We still need
18 to look at that and get -- sit down with Budget and look
19 at that.

09:21AM 20 CHAIRMAN ANDERSON: Okay. Can we post
21 them anyway? If -- we don't have to fill them if we
22 don't want to, do we, Brenda? We don't have to fill
23 them if we don't want to, right? We --

24 MS. NICHOLS: That's correct.

09:21AM 25 CHAIRMAN ANDERSON: So we can go ahead and

1 post them, pull it down if --

2 MS. NICHOLS: We can post it.

3 CHAIRMAN ANDERSON: Okay.

4 MR. GOMEZ: Yes, sir.

09:21AM

5 CHAIRMAN ANDERSON: That's not a decision
6 the Commissioners make, but my suggestion is we post
7 them.

09:22AM

8 MR. ROBERTSON: Chair, Commissioners, for
9 the record, Tony Robertson, Employment Manager,
10 Team 2. Let me go ahead and also help clarify this, and
11 I believe Mr. Dixon may substantiate that as well. When
12 you look at the 10,000 -- or excuse me -- 1,021 cases,
13 please understand that those are the cases that were
14 billed. That does not show -- that is not a true

09:22AM

15 picture of our -- what we closed. In my report, you'll
16 see what we closed. You-all have had an opportunity to
17 review the information that has been submitted to you.

09:22AM

18 So you have to understand when we go from September
19 through August in our state fiscal year we close out on
20 the 30th of August. So those are the cases that were
21 billed, and each year, 2008, 2009 and 2010, you'll see
22 those cases that were billed at that point in time.

09:22AM

23 Now, our total closures, which I'll share with you
24 later, are a lot higher than that based on our upward
25 modification as well. So please understand. The Chair

1 asked the question why is it 1,021. Those are the cases
2 that were closed and billed during our end of our state
3 fiscal year.

4 And, Mr. Dixon, if you can elaborate on
09:23AM 5 that, I would appreciate it as well.

6 CHAIRMAN ANDERSON: Those numbers still
7 reflect -- I mean, those are like numbers from year to
8 year, not the billed, but the -- I mean, the billed
9 numbers, not the closed numbers, right?

09:23AM 10 MR. ROBERTSON: That's correct.

11 CHAIRMAN ANDERSON: So they were still
12 low?

13 MR. ROBERTSON: Right.

14 MR. DIXON: For our purposes, what we're
09:23AM 15 showing here are the number of cases that we received
16 revenue for at that particular period of time.

17 CHAIRMAN ANDERSON: So that's like numbers
18 or similar. The numbers reflect the same regardless.
19 From year to year, they still reflect a downward trend,
09:23AM 20 right?

21 MR. GOMEZ: Given the detailed numbers,
22 Chair Anderson, if you want me to go into the detailed
23 numbers, we went from a primarily employment
24 investigative division, if you want to call us, agency
09:23AM 25 to a -- we transformed into a housing -- primary

1 housing. Okay. You need to remember that employment
2 investigators -- there were nine employment
3 investigators versus two housing investigators.

09:24AM

4 Employment investigators close an average of 11 to 12
5 cases per month, and that's just numbers. That's not
6 revenue because the revenue is different for employment
7 cases versus housing cases.

09:24AM

8 As you very well know, we get paid \$550
9 for each employment case and \$2,600 average for each
10 housing case. Therefore, the numbers although lower,
11 the revenue would probably reflect higher. We went
12 again from a primarily employment investigative division
13 to a primarily housing investigative division. We went
14 from nine employment investigators, as I stated before,
15 and two housing investigators. We now have ten housing
16 investigators versus five employment investigators.

09:24AM

17 COMMISSIONER STIDVENT: If I can interrupt
18 you there, Mr. Gomez, the question still, though, is,
19 why are the -- both the employment cases lower and the
20 housing cases lower? So regardless of whether there are
21 now more housing investigators and employment
22 investigators, the numbers for both categories are
23 lower.

09:25AM

09:25AM

24 MR. GOMEZ: Yes, ma'am. And I was going
25 to go into that in as far as when we also initiated the

1 shift we also initiated -- with the help of the outside
2 adviser that we hired, we also initiated a lesser case
3 closure ratio for our housing investigators. We
4 established the Housing III and the Housing V
09:25AM 5 investigators whereas before we had Housing V
6 investigators only. They had a closure rate of seven to
7 close, each housing investigator, but when we went into
8 the new plan, which was again predominantly housing
9 investigation closures or housing enforcement, we
09:25AM 10 reduced that. We hired both Housing III investigators
11 and Housing V investigators. The III investigators,
12 their closure rate is three, and the Housing
13 Investigator V, their closure number is four. So when
14 you take into consideration -- and that was due again
09:26AM 15 partly because of the staff feedback that we had, the
16 closure, the quality. If you-all remember on the
17 management performance measures and LBB performance
18 measures report that we do send you, we usually meet or
19 exceed the percentages on investigations complying with
09:26AM 20 federal review standards, and that's in both employment
21 and housing. So it's not only the numbers that we're
22 looking at. We're also looking at the quality.

23 Also, last year, if you remember, because
24 of this shift that we had from employment to housing and
09:26AM 25 because we also lost staff, we had to hire new staff on

1 board. New staff, as I stated before, on the hiring for
2 the first six months, we don't have performance
3 standards closures for the staff. It's their learning
4 curve. So given that that we incurred last year, I
09:27AM 5 believe last year going into the fiscal year we had
6 approximately four to five new investigators at the
7 housing area. That was another cause or reason for the
8 review resulting as it did from the HUD review team. It
9 all kind of came together at one time when we were going
09:27AM 10 through this shift from housing to -- from employment to
11 housing.

12 CHAIRMAN ANDERSON: As I remember, when we
13 changed from a V to IIIs, our admonition also was to --
14 that we had to maintain the budget. We couldn't fall
09:27AM 15 short of the budget, the revenues --

16 MR. GOMEZ: Yes, sir. And that's the way
17 that --

18 CHAIRMAN ANDERSON: -- and past
19 expenditures.

09:27AM 20 MR. GOMEZ: That's the way that we looked
21 at it from that point of view and not only to hire
22 staff. But also when we hire staff, we also incur
23 the -- that expenditure of the salary and incur
24 additional overhead cost which need to be offset with
09:28AM 25 the case closure revenue production, which again in the

1 first seven to eight months is not there for these new
2 investigators.

3 CHAIRMAN ANDERSON: Go ahead, Jim.

4 MR. DIXON: Okay. Our next slide shows
09:28AM 5 a -- the revenues and expenditures over the last three
6 state fiscal years, 2008, '9 and '10, and if you look at
7 all three years over that period, we have now
8 approximately a 35,000-dollar positive balance.

9 The next slide, the one that's in your
09:28AM 10 packet, you've been given an amended version. We did an
11 update based upon a reduction in the number of EEOC
12 cases with the new contract, and so that brought
13 revenues down slightly. And so now the new revenue --
14 budgeted revenue amount is \$2,523,000, and the budget is
09:29AM 15 at \$2,557,000. The 33 FTEs are the budgeted FTEs.

16 That's the number of FTEs. There are only 32 positions
17 that are funded at this point, but there is another
18 position that is an FTE which is available.

19 CHAIRMAN ANDERSON: So revenues are
09:29AM 20 falling short of expenditures. Is that what you're
21 saying?

22 MR. DIXON: Yes, sir, at this point. Now,
23 there is that 35,000-dollar carry-forward. So for 2011
24 it's close, but it is a positive balance overall at this
09:29AM 25 point.

1 CHAIRMAN ANDERSON: Well, I don't know
2 about the other Commissioners, but I'm tired of us
3 relying on carryovers. We got to make the budget within
4 the budget, and the expenditures have to be in line with
09:30AM 5 the revenues. And we can't keep counting on some
6 fantasy dollars that may or may not occur in the future
7 or maybe we have \$35,000 carryover. I just don't want
8 to see it anymore. I want to see the revenues in line
9 with the budget -- the revenues in line with the
09:30AM 10 expenditures. That's my position. I don't know about
11 the other Commissioners. Certainly they may have their
12 opinions.

13 COMMISSIONER DIGGS: I have one quick
14 question. Can you explain? The EEOC travel, what is
09:30AM 15 that?

16 MR. ROBERTSON: Excuse me. For the
17 record, Tony Robertson. Commissioners, that's the
18 travel money that we receive with our FEPA contract with
19 the EEOC each year to attend the EEOC conference.

09:30AM 20 COMMISSIONER DIGGS: Okay. My next
21 question -- and I apologize if I missed it -- why is
22 there a reduction in the EEOC cases?

23 MR. ROBERTSON: The reduction in the EEOC
24 cases is based on our staffing. Again, Mr. Gomez had
09:31AM 25 pointed out we had had a high ratio of staff some two,

1 three years ago. That has now dwindled down because the
2 focus now is on housing, but we're still an effective
3 group. Whereas I had seven to nine investigators, I
4 only have five, and where I had three mediators, I only
5 have two now.

09:31AM

6 COMMISSIONER DIGGS: And in our previous
7 discussion on the budget, it was the 1,003 number,
8 correct?

9 MR. ROBERTSON: 1,003.

09:31AM

10 COMMISSIONER DIGGS: Yes.

11 MR. ROBERTSON: Yes, ma'am.

12 COMMISSIONER DIGGS: All right.

13 MR. GOMEZ: Yes, ma'am. If you remember
14 in our meeting that we had, we shared with you the fact
15 that we had lost -- not only did we shift the focus from
16 employment to housing, but at the same time, we did lose
17 an employment investigator that we did not hire; and we
18 chose not to do that because of the negative impact on
19 the budget. And, also, after our meeting, I believe, we
20 also lost a mediator whose cases -- case closures or
21 settlements do count towards the number of EEOC cases
22 closed that we report to EEOC. So given those two
23 factors and as Tony has stated, the refocus from
24 employment to housing and also the vacancies that we do
25 have that we did not -- that we chose not to fill at

09:32AM

1 this point in time.

2 COMMISSIONER STIDVENT: If I could just
3 echo the Chair's concern, then, about this projected
4 budget for 2011, because carryover is not -- you're not
09:32AM 5 leaving yourself a lot of cushion here. And my concern
6 is that you have budgeted 358 HUD case closures which is
7 more than what you were able to do in 2010, and if
8 you're thinking of hiring and anticipating that those
9 costs would increase while your closures would not
09:32AM 10 increase given the six-month or eight-month learning
11 curve, I think we may be setting ourselves up for
12 another dangerous budget situation in 2011. And so I
13 would echo the Chair's concerns and urge you to consider
14 that because it seems like we are starting from a losing
09:33AM 15 position.

16 MR. GOMEZ: That's exactly my point,
17 Commissioner Stidvent, is that we choose not to hire
18 because of that negative impact that we're going to have
19 on expenditures as far as the salary and the overhead
09:33AM 20 and the nonproduction during those six months of
21 learning curve period. So that's why we chose not to
22 hire. Now, if we do lose another housing investigator,
23 we can't afford not to close any additional cases not
24 only because of the closures here. We don't have a
09:33AM 25 contract per se with HUD as to number of closures. My

1 concern is that our inventory is getting such that it's
2 not going to be able to be handled by the number of
3 investigators that we have. Therefore, at that point in
4 time, maybe if we were to lose another housing
09:34AM 5 investigator, then we would probably opt to hire two to
6 replace those because we would incur the expenditures
7 anyway in the hiring process and in the learning curve
8 period. So we will opt to do that.

9 But that's exactly it because it's whether
09:34AM 10 you want to incur an additional expenditure with the
11 possibility of having additional revenues six months
12 down the line, but that additional expenditure that we
13 have will be a reality in those six, seven, eight months
14 whereas the revenue being produced or that will be
09:34AM 15 generated by those new investigators, we won't see the
16 result of that till seven -- six or seven months down
17 the line. So you're exactly right. We would go into it
18 knowing we would have additional expenditures without
19 expecting to see additional revenue.

09:35AM 20 CHAIRMAN ANDERSON: Is -- are the managers
21 closing any cases?

22 MR. GOMEZ: The managers will close cases
23 that come up that they see that they can close that will
24 not take their time from what they're doing. They have
09:35AM 25 plenty on their plates. Also, we've had, you know,

1 assignments for a housing manager in investigating a
2 case when we need that housing manager to investigate a
3 case. But the housing managers and the housing
4 supervisors at this point in time cannot afford to carry
09:35AM 5 a housing inventory because of what else is on their
6 plates. You need to realize that the housing
7 supervisors also have to review the cases that are
8 turned in in order for us to reach those numbers, and
9 that mostly is taking up their time in what they do on a
09:35AM 10 day-in and day-out basis.

11 One of our supervisors is also the
12 supervisor for the ADR team, our mediation team. The
13 other supervisor is responsible for housing intake. So
14 they have more than enough on their plate. My housing
09:36AM 15 manager, she takes on special projects and also, like I
16 say, when requested will investigate cases. But at this
17 point in time, they're pretty much at the level that
18 they need to be to handle what they have on their desk,
19 and at this point in time, it wouldn't be advantageous
09:36AM 20 for us to assign a housing inventory to either the
21 manager or the supervisors.

22 CHAIRMAN ANDERSON: I think next meeting
23 we need to have a plan that says this is how we're going
24 to meet the budget because I'm not -- I don't know that
09:36AM 25 all of us are convinced that we're going to be able to

1 meet the budget with what we have right now.

2 Gene, the budget is going to go down in
3 the future, too, right, next biennium probably get cut?

4 MR. CRUMP: For the record, Gene Crump,
09:37AM 5 deputy executive director. Commissioners, we've
6 protected the general revenue for CRD since they've been
7 here, and it would be my recommendation to our
8 commissioners -- to the TWC commissioners that we
9 preserve the GR. So we've kept that whole. We've
09:37AM 10 actually increased a little bit over time even though
11 there's been some budget reduction. So, yes, sir, the
12 state as a whole is going to face a budget reduction.
13 And I'm sure that we've already submitted our request to
14 the LAR, and we've preserved CRD whole. So they weren't
09:37AM 15 cut.

16 I would point out one thing to the
17 Commissioners, and you-all are absolutely correct. It's
18 pretty tight. In the other operating down in the
19 revised budget and expenditure side, the overhead is
09:37AM 20 always based on full employment for all the overhead.
21 We'll have some vacancies. So in all likelihood, that
22 number will go down to help a little bit.

23 And then if I could add just a little bit
24 more, of course, there's good news and not-so-good news.
09:37AM 25 In looking at the case closures for September relative

1 to the projected number of 804 cases, CRD has already
2 closed 80 which is certainly ahead of the schedule. On
3 the HUD side, they've closed 24 which would be below a
4 monthly average, but it is higher than this same period
09:38AM 5 last year. So on an improving trend, if we keep moving
6 forward, then hopefully the CRD team could meet that.

7 CHAIRMAN ANDERSON: Was there one --
8 there's one consolidated case. There was a whole bunch
9 of closures in that one case, right?

09:38AM 10 MR. GOMEZ: Yes, sir. There's a
11 consolidated case. There's a block of cases that we
12 have with a FIP in Houston which is a block of nine
13 cases, and if those cases would have been closed, we
14 would have exceeded that number. Also, just to bring to
09:38AM 15 your attention, we did have an investigator that was out
16 about half of the month in September. So given those
17 two factors, it is very close. As Gene says, you know,
18 it's a very tight fit as far as the expenditures versus
19 the revenue. So when you have any of these situations
09:39AM 20 arise, whether you have an investigator that goes on
21 sick leave, it's FML covered, and we prorate the
22 closures. If the individual is not there for a half
23 month, we prorate it for a half month. If they're not
24 there the whole month, we don't require them to have
09:39AM 25 closures. We --

1 CHAIRMAN ANDERSON: Robert, I've been on
2 this commission for six, seven years, and we always have
3 people out.

4 MR. GOMEZ: Yes, sir.

09:39AM 5 CHAIRMAN ANDERSON: We almost always have
6 somebody on sick leave or something like that. We can't
7 use that as the rationale for not making the cases
8 because we're always going to have people out or we have
9 people resign or retire or something else.

09:39AM 10 MR. GOMEZ: That's exactly right, sir.

11 CHAIRMAN ANDERSON: So we always have to
12 work through those issues and these numbers and the
13 budgets reflect that or we're always going to be up here
14 saying, "Okay. How are we going to make the budget this
09:39AM 15 year?" We've gone through this the last several years.

16 MR. GOMEZ: Yes, sir. I realize that, and
17 I agree with you on that. I'm just stating the facts as
18 what we have to work with on a day-in and day-out basis,
19 and those are the facts. If we have an investigator
09:39AM 20 that's out, if the number is 30 and that investigator's
21 numbers is 3, we're only going to reach 27.

22 COMMISSIONER STIDVENT: I understand that.
23 I think the larger point, though, is, if you look at
24 historical data and guess that if the future will hold
09:40AM 25 the same, that you will have an estimated average of 20

1 sick days or whatever, you could build that into your
2 budget and assume, then, that instead of 358 cases your
3 average is actually going to be closer to 300 and then
4 budget accordingly. I think that's the larger point.

09:40AM

5 If you know that year in, year out you will have someone
6 on FMLA leave, you will have so many people on vacation
7 or sick leave, that you take that into account when
8 estimating your revenues and then estimate -- and then
9 budget accordingly. I mean, I think that that's the

09:40AM

10 larger point. Why say we're going to close 358 cases if
11 you know that two people are going to be out sick for
12 two months? You know you're not going to make those
13 cases.

09:40AM

14 MR. GOMEZ: Yes. And in discussions we
15 had about the budget, we did discuss that.

09:41AM

16 COMMISSIONER DIGGS: When you mentioned
17 earlier in your report that we're going to have a higher
18 focus on HUD, what does "a higher focus" mean?--because
19 from the old budget to the new budget, the number of
20 cases closed didn't change, and I wouldn't advise that
21 it do because it's such an aggressive number. But what
22 does it mean to have a higher focus on HUD?

09:41AM

23 MR. GOMEZ: Higher focus is severalfold,
24 Commissioner Diggs, because if you have a higher focus
25 on HUD, those cases pay more. They're \$2,600 versus

1 \$550. So --

2 COMMISSIONER DIGGS: But operationally
3 what does it mean? Are we shifting personnel over to
4 HUD to close those cases, or what's happening
09:41AM 5 operationally --

6 MR. GOMEZ: We have --

7 COMMISSIONER DIGGS: -- that gives us a
8 greater --

9 MR. GOMEZ: We have staffed towards having
09:41AM 10 housing the focus of the division. As I stated before
11 in comparison, when I took over this division, we had
12 nine or ten employment investigators versus two or three
13 housing investigators at any point in time. Now we have
14 ten housing investigators versus five employment
09:42AM 15 investigators. The numbers as far as the LBB -- we're
16 looking at several numbers again. As far as the LBB, we
17 have a target to meet with the LBB. On the employment
18 side, the reason that we don't just staff out employment
19 altogether is because we do have a contracted number
09:42AM 20 with EEOC. So we still have a number that we need to
21 shoot at with EEOC versus HUD we don't.

22 Now, in HUD, again, if you have a housing
23 investigator, the IIIs close three, and the Vs close
24 four. In employment, to give you a comparison, they are
09:42AM 25 all Investigator Vs, and they all close 11. That's what

1 their PPR reflects, is that their performance standard
2 is at 11. So just by the numbers of closures per month
3 per investigator, it's more, but then you look at the
4 revenue side and the overhead that we need to pay. You
09:42AM 5 need to remember also that we cannot mix the funds. If
6 we have housing investigators doing housing or housing
7 staff doing housing activities, we have to pay them from
8 the housing budget or what we generate with HUD; on the
9 employment side, the same. At this point in time, it
09:43AM 10 just so happens that the housing revenue is also
11 covering some of the support that we have, some of the
12 support in as far as administrative assistant support,
13 general office support and also the supervisor/manager
14 support that we have, and so that's reflective of what
09:43AM 15 the revenue produced by any housing investigator or any
16 revenue that's produced. All the housing needs to be
17 used for activities that encompass housing --

18 COMMISSIONER DIGGS: All right.

19 MR. GOMEZ: -- and not mixed with
09:43AM 20 employment because we don't want to do that. That
21 violates our federal contracts in as far as how we
22 budget for the division.

23 CHAIRMAN ANDERSON: To beat a dead horse,
24 we had generalists, and when the generalists were able
09:43AM 25 to close cases on both sides, those dollars could flow

1 back and forth a little bit more easily, couldn't they,
2 Gene?

3 MR. CRUMP: Yes, sir. But, again, it
4 would have to be allocated based on the case closure
09:44AM 5 rate for each individual, but the answer is yes.

6 CHAIRMAN ANDERSON: Sounds like we don't
7 need any IIIs -- Investigator IIIs in housing or that
8 they need to move as quickly as possible into Vs and
9 close as a V rate because that's where we get the most
09:44AM 10 revenue because that's where they have the most
11 closures. Oh, I understand when you hired somebody they
12 don't come in as a V unless you hired somebody from the
13 outside who already has that experience.

14 MR. GOMEZ: Yes, sir. And that's our
09:44AM 15 intent. When we bring them on board, we do, in fact,
16 advise them of this. And we also gear our training,
17 gear our guidance and anything that we do with staff in
18 as far as case staffings to accelerate that learning
19 curve period so they can close the number of closures
09:44AM 20 that will allow them to be promoted to Investigator Vs,
21 yes, sir. We sure are looking at that.

22 CHAIRMAN ANDERSON: Any more questions on
23 the revenues and the expenditure budget?

24 (No audible response.)

09:45AM 25 CHAIRMAN ANDERSON: I'd like to quickly --

1 Joanne, how long do you think you have on your audit?

2 MS. BENTON: About five minutes.

3 CHAIRMAN ANDERSON: Well, we'll give you
4 ten.

09:45AM 5 MS. BENTON: All right.

6 CHAIRMAN ANDERSON: And then we're going
7 to go into executive session. My plan is to discuss the
8 litigation first so that we can let the general counsels
9 go back to being general counseling, and then we'll go
09:45AM 10 into the other items in executive session. That's my
11 plan. So let's go ahead and do the audit and give
12 Commissioner James time to breathe, and then we'll go
13 into executive session.

14 MS. BENTON: Chairman Anderson,
09:45AM 15 Commissioners, for the record, I'm Joanne Benton, the
16 director of Internal Audit. And in your briefing
17 packets, we provided a handout about the audit that is
18 currently underway for the Civil Rights Division. Our
19 goal for this audit is to identify existing, if there
09:46AM 20 are any, inefficiencies or ways to do things more
21 effectively to assist the investigators in seeing where
22 there might be ways to make the case closure rate
23 improvements by continuing to do their work, but maybe
24 do it a little more effectively, and until we get in
09:46AM 25 there, we don't know if those things do exist or not,

1 but that's our -- their goal for the audit.

2 And the way we've broken it down on -- as
3 we have on our handout, there's a planning aspect, and
4 then we go into field work; and then there will be a
09:46AM 5 reporting phase. And right now we are in the beginning
6 of the planning phase. We notified Robert and the CRD
7 management that we would be performing this audit. The
8 middle of September we sent out an engagement memo, and
9 we also sent forward at that time a request list for
09:47AM 10 policies and procedures, manuals, organization charts,
11 process maps, all the things that we need for the
12 auditors to gain an understanding of the way the
13 workflow works within the division in both areas, EEO as
14 well as housing, as well as the training as well as the
09:47AM 15 policy and procedure reviews and the fire fighter
16 reviewer. We're looking at the entire spectrum of
17 activities performed within the division.

18 And we did get, then, with management on
19 the 11th of October to ask some questions -- follow-up
09:47AM 20 questions based on our initial understanding of all of
21 the information that CRD had provided to the auditors,
22 and that was a very good session. I think it went on
23 for almost three hours, and Robert and his staff were
24 very generous with their time to make sure that we had
09:47AM 25 the information that we needed to go forward.

1 Our next step -- and it's what our project
2 manager is working on right now -- is developing a risk
3 assessment which will lead us to the development of
4 objectives and subobjectives, and from those we will
09:48AM 5 develop our field work strategies and methodology. At
6 that point, we will schedule an entrance conference
7 again with Robert and his management team to go over the
8 actions that we intend to take in a projected time line
9 to achieve our results. So that's where we are right
09:48AM 10 now. When -- and then we go into our field work phase.
11 We'll have a better understanding of exactly what that
12 consists of and how long that's going to take when we
13 complete our planning and after that, of course, a
14 report to you and to management.

09:48AM 15 And that's -- so that in a nutshell is the
16 audit process. And I know Chairman Anderson wanted
17 everyone to hear kind of what it entailed and to give
18 you-all a chance to ask any questions, and I'd be glad
19 to answer any questions you might have right now.

09:48AM 20 CHAIRMAN ANDERSON: I believe you've
21 talked with --

22 COMMISSIONER DIGGS: We haven't had a
23 chance to talk yet.

24 CHAIRMAN ANDERSON: Oh, you have not?

09:49AM 25 COMMISSIONER DIGGS: No.

1 CHAIRMAN ANDERSON: Okay. I stand
2 corrected.

3 COMMISSIONER DIGGS: But I will -- this is
4 Michelle Diggs.

09:49AM 5 MS. BENTON: Yes.

6 COMMISSIONER DIGGS: I will be giving you
7 a call. I'm just really curious about --

8 MS. BENTON: Okay.

9 COMMISSIONER DIGGS: -- your methodology
09:49AM 10 and things like that. So I'll follow up and give you a
11 call on that issue.

12 MS. BENTON: That will be wonderful.

13 CHAIRMAN ANDERSON: And --

14 COMMISSIONER JAMES: I --

09:49AM 15 CHAIRMAN ANDERSON: I'm sorry. Go ahead.

16 COMMISSIONER JAMES: Thank you. And I
17 apologize for my delay. What do you anticipate the time
18 line is? You probably said it, but I didn't catch it.

19 MS. BENTON: We are not sure exactly how
09:49AM 20 long it will take because we haven't mapped out our
21 approach to our field work, to the methodology. It -- I
22 can envision already some process mapping, getting with
23 staff to understand exactly what they go through in
24 their processes, comparing what they do to what's
09:49AM 25 actually required to see if there is any overzealousness

1 towards making sure they meet all the standards of the
2 EEOC or the HUD. Maybe there's a way to back off on
3 some of that, so process mapping, also narratives,
4 interviews. We have a variety of tools we can use
09:50AM 5 during the field work process, doing some testing of
6 cases to see if what they think is happening is what
7 we're seeing as well and just sort of comparing our
8 independent, external view with the way the work flows
9 with the way they're doing it currently, sometimes just
09:50AM 10 a different external look at things, identify some
11 things that might be available or not. And that's what
12 we'll see when we get in there.

13 COMMISSIONER JAMES: Absolutely, and I
14 concur, recognizing the necessity for organizations to
09:50AM 15 have audits and be audited. We also know there's a
16 balancing act between the work that has to be done for
17 the audit process --

18 MS. BENTON: Right.

19 COMMISSIONER JAMES: -- and the work that
09:50AM 20 has to be done to meet the mission of the organization.

21 So on average in general, is this a
22 three-month effort, a six-month effort, a two-day
23 effort? What's your thought?

24 MS. BENTON: I'm thinking it's going to be
09:50AM 25 between three and six months, sir.

1 COMMISSIONER JAMES: Okay.

2 CHAIRMAN ANDERSON: In addition to
3 Commissioner Diggs, I encourage any other Commissioners
4 to give Joanne --

09:51AM 5 MS. BENTON: Yes.

6 CHAIRMAN ANDERSON: -- Ms. Benton, a call
7 if they have any questions concerning the audit, the
8 audit process, and, if you could, do it within the next
9 couple of weeks.

09:51AM 10 MS. BENTON: That would be wonderful.

11 CHAIRMAN ANDERSON: Okay.

12 MS. BENTON: And we will be very cognizant
13 of the fact that we are taking their time and their time
14 is very precious and it's dedicated to getting the work
09:51AM 15 done. So we are aware of that, sir. Okay. Thank you.

16 CHAIRMAN ANDERSON: What -- and they would
17 just be recommendations, I assume? In other words,
18 who -- once you're finished with it, it's presented to
19 Robert and the management team --

09:51AM 20 MS. BENTON: Yes, sir.

21 CHAIRMAN ANDERSON: -- and the
22 Commissioners?

23 MS. BENTON: They'll get the first --
24 they'll -- we will present -- it'll be a draft report at
09:51AM 25 that time, and we'll present it to Robert and his team

1 for concurrence to see if there's anything that we
2 didn't fully understand if we have a finding or
3 recommendation. We'll get their concurrence that the
4 recommendations appear reasonable, and then they will
09:51AM 5 give us management responses, if they say, "Yes, we
6 agree, and we're going to make this change," or however
7 they see that.

8 After that dialogue is complete, we will
9 produce a final report -- a final draft that we can take
09:52AM 10 around to show our commissioners and get them up to
11 date, and then we will, of course, involve you, also,
12 Chairman and the Commissioners. And at the end of it,
13 the final report will go to the -- we are required to
14 send it to state auditors, the Legislative Budget Board.
09:52AM 15 There are certain four different places that we have to
16 send the final reports as well as to you commissioners
17 and our commissioners as well.

18 CHAIRMAN ANDERSON: And who would act on
19 those recommendations? Is it us? Is it management? Is
09:52AM 20 it TWC?

21 MS. BENTON: Management. Management acts.
22 As a matter of fact, we are required by standards to go
23 back. We usually give management six months, eight
24 months to go back to make sure that the implementation
09:52AM 25 is underway. But it is management's responsibility to

1 put the recommendations into practice.

2 CHAIRMAN ANDERSON: Okay. Any other
3 questions for Ms. Benton?

4 (No audible response.)

09:53AM 5 CHAIRMAN ANDERSON: Thank you.

6 MS. BENTON: Thank you.

7 CHAIRMAN ANDERSON: One additional thing I
8 wanted to discuss real quickly because it won't take
9 long, and that is the next meeting. So I'm skipping
09:53AM 10 around on the agenda. It's Item No. 9. We have
11 traditionally gone on the third Wednesday of the month
12 each quarter, and there is a proposal to meet February
13 2nd rather than January 19th as our first session in
14 2011.

09:53AM 15 Does anybody have any objections or any
16 changes or any modifications?

17 COMMISSIONER DIGGS: My only concern is,
18 looking at the budget, having it being this tight,
19 February is an awful long time for us to wait to have
09:54AM 20 this discussion as a group. And so there may need to be
21 some sort of conversation about where we are even before
22 January.

23 CHAIRMAN ANDERSON: How soon can we get
24 the numbers, Gene? Jim is gone already or --

09:54AM 25 MR. CRUMP: Commissioners, we produce

1 numbers on a monthly basis. I mean, so every month we
2 could send out a report. It's you-all's pleasure.

3 CHAIRMAN ANDERSON: Well, we can get the
4 numbers, but we can't take any action or look into
09:54AM 5 the -- delve into the numbers or critique the numbers.

6 MR. CRUMP: No, sir, not as a full body.
7 But certainly you can have a subcommittee, as you've
8 done before, to have an informal review as a suggestion.

9 CHAIRMAN ANDERSON: Let me table that
09:55AM 10 until after we go into closed session --

11 MR. CRUMP: Yes, sir.

12 CHAIRMAN ANDERSON: -- because we got some
13 issues. We're now going to go into closed session --
14 executive session pursuant to Government Code, Section
09:55AM 15 551.074(A)(1) to discuss the appointment, employment,
16 evaluation, reassignment, duties, accomplishment,
17 performance, goals, and responsibilities of the Texas
18 Workforce Commission Civil Rights Division Director;
19 also, Section -- Government Code, Section 551.074 to
20 discuss the appointment, employment, evaluation,
21 reassignment, duties, accomplishments, performance
22 goals, and responsibilities of the executive staff and
23 other personnel.

24 Additionally, we go into executive session
09:55AM 25 pursuant to Government Code, Section 551.071(1) and (2)

1 concerning contemplated litigation or pending litigation
2 of the following cases: Texas Commission on Human
3 Rights, Texas Workforce Commission, David Powell and
4 Robert Gomez v. Marilou Morrison; John Benavides, et
09:56AM 5 al v. Texas Commission on Human Rights; Texas Workforce
6 Commission-Civil Rights Division v. Cameron Overstreet,
7 et al; Texas Workforce Commission-Civil Rights
8 Division v. Raymond Henshaw and Mark Henshaw; Texas
9 Workforce Commission-Civil Rights Division v. Spiros
09:56AM 10 Tsokos; and, Anthony G. Petrello v. Matthew W. Prucka,
11 et al.

12 And Agenda 10c where the Commissioners
13 seek the advice of their attorneys as privileged
14 communications under the Texas Disciplinary Rules of
09:56AM 15 Professional Conduct of the State Bar of Texas. We are
16 now in closed session on October 20th, 2010, and the
17 time is 9:56 a.m.

18 (At this time, the Texas Commission on
19 Human Rights Commissioners went into
09:56AM 20 executive session from 9:56 o'clock a.m.
21 until 11:43 o'clock a.m., after which time
22 the proceedings continued as follows:)

23 CHAIRMAN ANDERSON: We concluded our
24 closed session on October 20th, 2010 at 11:43. We're
11:47AM 25 back in open session. It's 11:47. So let's be -- we

1 did have one item that the Commissioners took action
2 on -- or we'd better wait for Commissioner James. So we
3 will wait till Commissioner James because we will have
4 to vote on one item. And he's back.

11:48AM 5 Commissioner Stidvent, do you have a
6 motion?

7 COMMISSIONER STIDVENT: I do have a
8 motion. Chair Anderson, I move that the Commission
9 certify the case, Petrello v. Prucka, et al, certify
11:48AM 10 that it is one of general public importance pursuant to
11 Section 301.155(A).

12 CHAIRMAN ANDERSON: Do I have a second?

13 COMMISSIONER DIGGS: Second.

14 CHAIRMAN ANDERSON: Second, Commissioner
11:48AM 15 Diggs. All in -- any discussion?

16 (No audible response.)

17 CHAIRMAN ANDERSON: Seeing none, all in
18 favor say aye.

19 THE COMMISSION: Aye.

11:48AM 20 CHAIRMAN ANDERSON: Opposed?

21 (No audible response.)

22 CHAIRMAN ANDERSON: Seeing none, motion
23 carries.

24 COMMISSIONER STIDVENT: Chair Anderson,
11:48AM 25 given that the motion passed, I move that the case be

1 referred to the Office of the Attorney General for
2 review and possible intervention into the case pending
3 in the United States District Court, Southern District
4 of Texas, styled Petrello v. Prucka, et al.

11:48AM 5 CHAIRMAN ANDERSON: Do I have a second?

6 COMMISSIONER DIGGS: Second.

7 CHAIRMAN ANDERSON: Commissioner Diggs,
8 second. Any discussion?

9 (No audible response.)

11:48AM 10 CHAIRMAN ANDERSON: Seeing none, all in
11 favor say aye.

12 THE COMMISSION: Aye.

13 CHAIRMAN ANDERSON: Opposed?

14 (No audible response.)

11:49AM 15 CHAIRMAN ANDERSON: Seeing none,
16 unanimous. Thank you, Commissioner Stidvent. Are we
17 ready to proceed with the rest of the agenda?

18 (No audible response.)

19 CHAIRMAN ANDERSON: Okay. We have nothing
11:49AM 20 further from Legal. Nothing else -- oh, I know what we
21 didn't decide. We didn't decide on the meeting dates.
22 The general -- let's see what I did with my agenda. The
23 consensus was that January would -- we still need to
24 keep it as January 19th.

11:49AM 25 And whatever arrangements and

1 modifications that need to take place within your
2 office, Robert, go ahead. There's no need for --
3 you-all can work that out. So we have January 19th,
4 April 20th, July 20th and October 19th. Those are all
11:50AM 5 2011. For the next meeting, for the 2011 -- I don't
6 think we need to take a vote on this.

7 Susanna, we don't need to vote on those
8 dates, do we?

9 MS. CUTRONE: No.

11:50AM 10 CHAIRMAN ANDERSON: Okay. It's not of
11 public importance. So those are the dates that are set.
12 Are all the Commissioners in agreement with those dates?

13 COMMISSIONER DIGGS: Yes.

14 CHAIRMAN ANDERSON: They're generally the
11:50AM 15 same ones that we've had the last couple of years.

16 All right. Now, Mr. Gomez, Mr. Robertson,
17 I think we're ready to proceed with the rest of the
18 agenda.

19 MR. GOMEZ: Yes, sir. Thank you. For the
11:50AM 20 record, again, Robert Gomez, division director. At this
21 point in time, I think we left off with Mr. Robertson's
22 presentation of the employment enforcement aspect of
23 civil rights.

24 MR. ROBERTSON: Thank you, Commissioners,
11:51AM 25 Chair. Good morning, Tony Robertson, manager, Team 2,

1 employment enforcement intake and training and
2 monitoring. I'm going to be very brief and just really
3 take this opportunity to just answer any questions that
4 you-all have. You've had ample time to look at these
11:51AM 5 slides, and then I'll entertain any questions. There's
6 no need for me to repeat what you have all seen. Our
7 highs have been that we've completed a good fiscal year
8 in FY '10 in our closure cases. We had an upward
9 modification with our federal partner with an additional
11:51AM 10 83 cases. So staff is doing a tremendous job in closing
11 the cases above and beyond what's expected of them.

12 I do want to say in closing where I am
13 from this point is that as you are aware every two years
14 we have our biennium report, and every year there's an
11:52AM 15 annual report. The annual report is from the Commission
16 on Human Rights basically with you-all's signatures on
17 it. That report at present is being completed as we
18 speak. The data that had been awaiting from the
19 Comptroller's Office and from our federal partners, we
11:52AM 20 have received that data. It should be coming to you the
21 latter part of November so that you-all will be able to
22 review, look it over. If you have any questions, I can
23 entertain them then.

24 The second report that we deal with is the
11:52AM 25 biennium report which is every two years, and that is

1 due out as well the latter part of November, which
2 you-all don't have a signature base on this, but we will
3 be sending it to you-all's individual offices for your
4 review, your input. And this is the report that's
11:52AM 5 submitted to the TWC commissioners who sign, and from
6 that point with the help of the External Relations, who
7 we worked with tremendously on this report as well as
8 the Comptroller's Office, we will be submitting to the
9 legislature when they do convene in session in January.

11:53AM 10 So with that said, I just wanted to give
11 you an update, give you that information and entertain
12 any questions you may have.

13 CHAIRMAN ANDERSON: Why can't we use some
14 of our training people to do some employment
11:53AM 15 investigations? It doesn't seem like there's very many
16 people that go through the training. I don't know how
17 many sessions there are, but to train -- I know you got
18 policy reviews and the fire fighter reviews, also.

19 MR. ROBERTSON: That's correct.

11:53AM 20 CHAIRMAN ANDERSON: Why can't we use some
21 of them to close the employment cases which are less --
22 much less complex than the housing cases?

23 MR. ROBERTSON: Well, Chair, I don't see
24 where -- we're meeting our numbers in employment. I
11:53AM 25 mean, the staff that I have now, the five investigators

1 plus the two mediators that belong to Team 1, are
2 closing cases at a tremendous rate. They're all
3 Investigator Vs. They're all closing more than what's
4 expected of them for an outstanding -- they're all
11:54AM 5 closing over 11 cases a month. And so with that said as
6 well as dealing with the mediators who are expected to
7 close six cases a month are exceeding those numbers as
8 well when it comes to the end of the year. The bottom
9 line is that we had to make an adjustment on our
11:54AM 10 contracts because the reality of it is is that with a
11 case load and an inventory that the current mediators
12 have is about 50, almost 60 cases now. The average case
13 load for an ADR staffer would be 20 to 25. The case
14 load that these five investigators are dealing with
11:54AM 15 right now is almost in the eighties, and so that's a lot
16 of cases. And then we get questioned about age cases.
17 So we don't want those cases to age.
18 They're moving them out. They're doing their job, and
19 there's no issue with the trainers doing closures.
11:55AM 20 That's something I can get with Mr. Gomez on. They do
21 conduct the EEO trainings. They are quite aware of how
22 our investigative process works, and they can accomplish
23 that mission. But that would be something I'd have to
24 get with Mr. Gomez on and go from that point.
11:55AM 25 CHAIRMAN ANDERSON: Well, we'd get more

1 money. Getting \$550 is better than nothing, and it's
2 not costing us any more money because they're already on
3 the payroll.

4 MR. ROBERTSON: Understood. But still
11:55AM 5 that's not a guarantee with all due respect of an upward
6 modification.

7 MR. GOMEZ: There's -- and I'm sorry to
8 interrupt. But there is an internal reason; there is an
9 external reason. The internal is that we had previously
11:55AM 10 three individuals doing training, monitoring and reviews
11 which encompasses training which is either scheduled or
12 requested. The reviews that are scheduled for this
13 year, we have 30 reviews that are on the calendar, and
14 then we have the fire fighter reviews which are 60 for
11:56AM 15 the fiscal year. We reduced that amount from three
16 reviewer trainers to two. Given the fact that we do
17 have to meet these other target measures, that would be
18 the reason that I would hesitate.

19 Again, yes, those cases are easier. There
11:56AM 20 still would be a learning curve for those individuals.
21 I hesitate internally again to set them up with an
22 inventory that like Tony said because there are other
23 priorities or there are other responsibilities they're
24 going to fall behind on, and we're going to start aging
11:56AM 25 cases. To give you an example, before on the 30-day

1 case list that we had, cases that are 300 -- I mean --
2 I'm sorry -- 300 days or older, we had quite a number of
3 those, and we have been able to cut it down to about
4 12 -- 11 or 12, and that's for the entire inventory.

11:56AM

5 if -- these cases, again, if they're assigned, with a
6 learning curve on employment, internally that wouldn't
7 be beneficial for us.

11:57AM

8 As Tony alluded to, externally there's no
9 more money being given to the FEPA program through EEOC
10 which is what we've learned time and again. The only
11 reason that we did get an upward modification this past
12 year on our contract was because there were two FEPAs
13 that were in quite worse financial turmoil, if you want
14 to call it, that were not able to close their number of
15 cases, and this is where they get that upward

11:57AM

16 modification. There is no additional money given to the
17 FEPA program from EEOC. They kind of just shift the
18 monies within the region. So if you forecast that
19 you're going to close more cases and you're looking at
20 an upward modification of cases, then you approach EEOC,
21 and then they have to wait to see who's not going to
22 meet their cases on their contract to give you that
23 money.

11:57AM

11:58AM

24 COMMISSIONER STIDVENT: Let me interrupt
25 you. I guess --

1 MR. GOMEZ: Yeah.

2 COMMISSIONER STIDVENT: -- I would suggest
3 that maybe we should start thinking creatively outside
4 the box. And I wouldn't suggest that the trainers take
11:58AM 5 on an inventory per se, but looking at the numbers, if
6 the 2010 budget was for 1,056 cases, the 2010 actuals
7 are 1,021, it seems if you know you're getting in a
8 hole, you say, "Hey, we're falling a little behind. Can
9 you work on this case this month? Can you close two
11:58AM 10 cases this month," rather than say they're hitting the
11 same targets as an investigator. But, rather, when
12 you're falling behind you give some of that overflow
13 over to them rather than having to worry about them --

14 MR. GOMEZ: Yes, ma'am.

11:58AM 15 COMMISSIONER STIDVENT: -- aging cases
16 themselves, make that a release valve for when you do
17 start falling under. But that's just something to
18 consider.

19 MR. GOMEZ: Sure. We'll consider it, and
11:58AM 20 we'll look into it.

21 MR. ROBERTSON: Thank you, absolutely.

22 CHAIRMAN ANDERSON: And let us know by
23 next meeting.

24 MR. ROBERTSON: Sure.

11:58AM 25 CHAIRMAN ANDERSON: Becky, that is an

1 action item. Okay.

2 MR. ROBERTSON: Is there any other
3 questions I can entertain for you-all?

4 (No audible response.)

11:59AM 5 MR. ROBERTSON: Then thank you very, very
6 much, and I will turn it back over to Mr. Gomez.

7 MR. GOMEZ: Thank you. And at this point
8 in time for the housing enforcement report and ADR, I'd
9 like to bring up Ms. Vickie Covington.

11:59AM 10 MS. COVINGTON: Good morning,
11 Commissioners and TWC staff and guests. For the record,
12 my name is Vickie Covington, and I'm the manager for
13 ADR, alternative dispute resolution, housing enforcement
14 and housing outreach. I'm going to be brief also this
11:59AM 15 morning. Just to cover the first report during the
16 fiscal year, our ADR staff resolved 232 cases, and
17 complainants received more than \$1,400,000 in individual
18 relief. We also shared with you a scenario that's in
19 your booklet, and it's located behind the "ADR" tab.

12:00PM 20 Our inventory, we had 333 cases filed. We closed 343,
21 leaving a pending inventory of 112 cases.

22 Are there any questions?

23 (No audible response.)

24 MS. COVINGTON: At the end of the year,
12:00PM 25 our conciliation and withdrawal with resolution rate was

1 51 percent compared with 40 percent last fiscal years --
2 last fiscal year. And we also shared two case scenarios
3 with you in your booklets, and they're behind the
4 "Housing" tab.

12:01PM

5 Were there any questions on the scenarios?
6 COMMISSIONER JAMES: Ms. Covington, these
7 are actual or --

8 MS. COVINGTON: Yes, Commissioner.
9 Housing complainants received more than \$100,000 in

12:01PM

10 monetary relief, and they also receive nonmonetary
11 relief such as neutral rental references, actual
12 housing, rescinding of debt letters sent to credit
13 reporting agencies and approval of requests for
14 reasonable accommodations and modifications. Relief in
15 the public interest consisted of retrofitting

16 properties, and that's in the hundreds of thousands of
17 dollars. We presently do not capture those dollars, but
18 we're looking into how we would be able to capture those
19 in the future. As a result, more people has been made

12:02PM

20 available to People with Disabilities. Respondents have
21 also changed their discriminatory policies and
22 procedures and/or practices, and they've agreed to
23 ensure their staff review and comply with the terms of
24 conciliation agreements; and also they've attended fair
12:02PM 25 housing training.

1 Are there any questions?

2 (No audible response.)

3 MS. COVINGTON: On the age of the pending
4 cases, age cases for housing also are of concern to us.
12:02PM 5 We are continuously working on reducing our age case
6 inventory. The HUD standard is to close half of our
7 cases within the fiscal year, within 100 days, and last
8 year we got close at 49 percent. So we're still working
9 to not just meet that, but to exceed it. Also, last
12:03PM 10 year --

11 CHAIRMAN ANDERSON: Do we have enough
12 staff?

13 MS. COVINGTON: Do we have enough staff?
14 I think Robert alluded to it earlier. Right now our
12:03PM 15 case loads are right -- probably at the maximum amounts
16 that they need to be. And so we have a continuous
17 dialogue with HUD regarding our inventory levels, which
18 means that if we are receiving too many cases, then
19 we'll ask HUD to go ahead and keep some of those cases,
12:03PM 20 and so it's a continuous assessment. I get with Robert,
21 and we discuss the inventory levels; and then we have
22 that dialogue with HUD. But if HUD decides that they --
23 the cases that we have jurisdiction over -- because
24 cases HUD is keeping are the ones that are outside of
12:03PM 25 our jurisdiction. They include Fair Housing, but they

1 also include other federal programs. So if they decide
2 that we have to take those cases and they have the
3 authority to do that, then I would have to approach
4 Robert about additional staff.

12:04PM

5 CHAIRMAN ANDERSON: The vacancies you
6 have, again, are they in housing or the one -- is that a
7 housing investigator or employment investigator?

8 MR. GOMEZ: I didn't catch that.

12:04PM

9 CHAIRMAN ANDERSON: The vacancy out of the
10 employment --

11 MR. GOMEZ: We have one housing
12 investigator, one employment investigator and one ADR
13 vacancies.

12:04PM

14 CHAIRMAN ANDERSON: Okay. And we're going
15 to go ahead and post all three of those, right?

16 MR. GOMEZ: We can post those three.

17 CHAIRMAN ANDERSON: Well, I thought that's
18 what we discussed earlier, that we're going to go ahead
19 and post them. We don't have to necessarily fill them.

12:04PM

20 MR. GOMEZ: We'll go ahead and post them.
21 What I would like to do, Chair Anderson, is -- because
22 of the revenue generation and because of the knowledge
23 that we have externally that EEOC is not going to
24 provide any more funding for the FEPAs is post two
12:05PM 25 housing investigators and get ready to fill those in

1 case we do get another vacancy into housing. That would
2 be my recommendation.

3 CHAIRMAN ANDERSON: If we're only going to
4 close 800 -- I think Commissioner Stidvent said 800
12:05PM 5 employment cases -- which is 200 less than we had last
6 year, are we not falling short on our mission with EEOC?
7 There's got to be --

8 MR. GOMEZ: No, sir.

9 CHAIRMAN ANDERSON: There's got to be lots
10 of employment cases out there, I would think.

11 MR. GOMEZ: No, sir, because we have -- we
12 enter into a new contract every year. And, in fact,
13 this year's contract is lower for the fact that I
14 mentioned before, that there's not going to be
12:05PM 15 additional funding for the FEPAs, and given that they
16 have lowered our contract number. And, again, if we do,
17 for whatever reason, either go short or go long on that
18 number, we can ask for an upward or downward

19 modification from EEOC. I don't foresee that because we
12:05PM 20 did forecast based on the number of staff that we had
21 when we sat down with the FEPA coordinator -- program
22 coordinator, and we came up with a number for the
23 contract. So it would be more beneficial -- and, again,
24 my recommendation would be if we do post positions to
12:06PM 25 post two Investigator III housing investigators, and

1 that's simply because, again, having knowledge of the
2 payment of cases, \$550 versus \$2,600, we would be losing
3 on the case closures for employment whereas we would be
4 in the positive as far as revenue generation for the
5 housing.

12:06PM

6 CHAIRMAN ANDERSON: I just have a
7 concern -- individual concern. The economy the way it
8 is, maybe it generates more employment cases, but we
9 make sure that we're fulfilling that particular mission
10 that we have. I'm a little concerned. We're down a
11 couple of hundred -- projection on a couple hundred
12 cases, but I understand about the revenue aspect. But
13 we're a civil rights division which means we handle
14 employment cases and housing cases. So I thought we had
15 budgeted at least for the same number we had last year.
16 But take a look at it, particularly using some of those
17 trainers to get some additional cases. I don't want to
18 do them if we're not going to get paid for them, but I
19 would think that EEOC would like to have additional
20 cases investigated if we can do them.

12:06PM

12:07PM

12:07PM

21 MS. COVINGTON: Are there any other
22 questions regarding the age of pending cases for
23 housing?

24 (No audible response.)

12:07PM

25 MS. COVINGTON: I'd also like to share

1 with you that last year we conducted numerous fair
2 housing training sessions in-house as well as sending
3 staff to external training sessions, and this year we
4 kicked off our training with refresher design and
12:08PM 5 construction training. Last year 19 fair housing
6 sessions were conducted with respondents, and our
7 outreach efforts consisted of Governor Rick Perry
8 signing a proclamation designating April as Fair Housing
9 Month. We also partnered with the Board of Fair Housing
12:08PM 10 and Economic Justice Center to present its fifth annual
11 summit conducted on fair housing, and in March TWC
12 conducted an interview with KLUV FM Radio Station. It
13 has an audience of about 12 million listeners in Dallas
14 and Tarrant Counties and the surrounding counties.

12:08PM 15 We continue to distribute the "Did You
16 Know" update to let the Commissioners and other
17 stakeholders know of federal employment and housing
18 discrimination cases, and at the end of the fiscal year,
19 we installed a billboard in Edinburg, Texas and
12:09PM 20 published a PSA that can be downloaded from the TWC web
21 site. Both the billboard and the PSA serve to inform
22 the housing industry and housing consumers of their fair
23 housing rights and responsibilities.

24 And I'd like to take this opportunity to
12:09PM 25 thank Mr. David Trinidad for developing the PSA, and I

1 also had Mr. Trinidad and Kathleen Davis -- she's one of
2 our housing investigators -- actually do a run-through
3 of the PSA to see how it would sound, and it sounded
4 pretty great.

12:09PM

5 Are there any questions?

6 COMMISSIONER JAMES: I just have a general
7 question, and, Mr. Gomez, you can probably answer this
8 one.

9 MR. GOMEZ: Yes, sir.

12:09PM

10 COMMISSIONER JAMES: And I can't recall if
11 this is new and I just missed it or if this has always
12 been the case. But in the ADR report in our packet, we
13 list, I'm assuming, individual mediators or their names
14 are up there and how they've performed. And I've always
15 found that very interesting to not only look at, but I
16 found it very interesting that in the other areas of
17 housing and employment we don't replicate that.

12:10PM

18 Is there a particular reason why we don't
19 list how the other individuals perform? And it's more
20 for your benefit than for ours, but it's always neat to
21 see how people are doing the great things that you-all
22 do.

12:10PM

23 MR. GOMEZ: We do capture that, and we do
24 have a report that captures that. That's for the whole
25 year. We just started this. So we have -- well, for

12:10PM

1 the fiscal year, we've just started this. We've been
2 using this as a control document. We could possibly do
3 similar -- what we try to do in the employment and the
4 housing area is not listed each individual investigator
12:11PM 5 because of the sheer numbers and the number of
6 investigators, first of all, and the number of cases.
7 So we kind of summarize the whole total. With the ADR
8 staff, you see there are listed three, but now we only
9 have two ADR staff.

12:11PM 10 So we do generate -- this is kept by Becky
11 in my office, and we track the individual investigators
12 for all three areas, for ADR, employment, housing. And
13 we have on there the average for the year and the --
14 each month the closure and inventory. We have the
12:11PM 15 number of cases closed for that month and the inventory
16 that they still have in that month, and we do this for
17 the whole year. What I can do is, since we did finish
18 off the fiscal year -- the last fiscal year, I can send
19 that to you-all if you-all -- if you want me to or we
12:11PM 20 can start listing them in the handout.

21 COMMISSIONER JAMES: Sure. I will defer
22 to the Commissioners, but it would be interesting to see
23 especially if included in that document are the goals
24 that each person has as well. I think that just helps
12:12PM 25 me --

1 MR. GOMEZ: Sure.

2 COMMISSIONER JAMES: -- clarify my
3 understanding of what's going on, but perhaps it might
4 help everyone else.

12:12PM 5 MR. GOMEZ: For our purpose, Commissioner
6 James, what we have is a breakdown. What we could put
7 here also on this report, Becky, is -- or what I can
8 have Becky do is put -- identify the employment and
9 housing investigators as to whether they're a III or a V
12:12PM 10 and then on separate -- what we have on a separate
11 report, or a separate printout if you want to call it,
12 is what their proficient number and what their
13 outstanding number is. And we can make that available
14 to you, also, and we -- we use those as management
12:12PM 15 controls. But we can designate whether an investigator
16 is a III or V, and then that way you know if they're
17 proficient. If they're a III for housing, it'll be 3
18 and 4, 3 proficient, 4 outstanding. For Investigator V,
19 it'll be 4 and 5, proficient/outstanding. For the
12:13PM 20 Employment Investigator V, it'll be 9 and 11 as far as
21 proficient and outstanding. So that's how we guide
22 ourselves using this control document, and I can make
23 that available to you, also.

24 COMMISSIONER JAMES: And, again, I'd defer
12:13PM 25 to the Chair and my peers on the Commission, but that

1 would be interesting to me.

2 CHAIRMAN ANDERSON: Sure. I think we
3 ought to go ahead and include it, and the Commissioners
4 can either read it or not at their own --

12:13PM 5 MR. GOMEZ: Okay. Just to clarify, do you
6 want me to send these on a monthly basis when we have
7 compiled the information on a monthly basis, or do you
8 want us to include it in the packet information?

9 CHAIRMAN ANDERSON: Give us monthly, and
10 then give us a quarterly update --

11 MR. GOMEZ: Okay.

12 CHAIRMAN ANDERSON: -- when we have our
13 meetings.

14 MR. GOMEZ: Alrighty. Yes, sir; will do.

12:14PM 15 MS. COVINGTON: If there are no other
16 questions on the information that I've shared, I'm going
17 to turn it back over to Mr. Gomez.

18 MR. GOMEZ: Okay. Thank you, Vickie. And
19 I have no further information to submit to you,
12:14PM 20 Commissioners, at this point in time. So I would
21 address any questions that you might have or any
22 comments or issues that you might have at this point in
23 time.

24 CHAIRMAN ANDERSON: Okay. Seeing none,
12:14PM 25 I'm going to go ahead and give us a brief overview on

1 just one of the items we included on the action items,
2 and you did prepare it. So let's go ahead and get a
3 brief overview to how a housing investigation might be
4 conducted.

12:15PM

5 MS. COVINGTON: Thank you, Chair. When
6 we're conducting a housing investigation and we receive
7 a case and the case is assigned to an investigator, the
8 first thing that the investigator does is develop what's
9 called an investigative plan. And the investigative

12:15PM

10 plan, first of all, allows the investigator to determine
11 jurisdiction. I know a lot of times when we receive a
12 case there's an assumption made that we do have

13 jurisdiction. But the investigator goes through a
14 second jurisdictional screen, and throughout the

12:15PM

15 investigation, the investigator always keeps in mind
16 that the -- you know, the facts of the case might
17 determine that it's nonjurisdictional to us.

18 The investigative plan provides a road map
19 for the investigator to follow throughout the

12:15PM

20 investigation, and it helps the investigator avoid dead
21 ends and keep them on track, because what oftentimes
22 happens during an investigation, the complainant will
23 try to pull the investigator in one direction and the
24 respondent will try to pull the investigator in another

12:16PM

25 direction. So it guides with that. It guides with the

1 interviews that are going to be conducted with the
2 complainant, the complainant's witnesses, the
3 respondent, the respondent's witnesses and any
4 independent witnesses that the investigator might
12:16PM 5 identify during the investigation. And oftentimes we
6 only have one complainant, but it's not unusual for us
7 to have more than one complainant.

8 Normally as far as respondents, we have
9 several respondents that are listed. For example, if
12:16PM 10 it's a rental property, you might have the assistant
11 manager named, you might have the manager named, you
12 might have the owner of the property named, you might
13 have the maintenance person named. And so as you can
14 see, it gets to be kind of complicated, and each one of
12:17PM 15 those parties might have their own attorney. So the
16 investigator conceivably could end up working with all
17 of those parties and/or their attorneys.

18 The investigative plan also guides the
19 gathering, reviewing and analysis of documents, and it
12:17PM 20 allows for adjustments to the plan at any time. For
21 example, during the investigation, one of the parties
22 might mention the name of a state agency and a person
23 that they've been working with at a state agency, and so
24 that person could conceivably become a part of the
12:17PM 25 investigation as an independent witness. The

1 investigative plan also allows the investigator to
2 establish the prima facie elements of the case, and
3 those are basically questions that are going to have to
4 be answered in order for the investigator to provide a
12:18PM 5 recommendation of cause or no cause and basically to
6 prove or disprove the allegations that are in the
7 complaint.

8 The plan may be reviewed by the team lead,
9 and usually with new investigators, each investigative
12:18PM 10 plan is reviewed by the team lead from the very
11 beginning of the investigation and then throughout the
12 conduct of the investigation. If the investigator is
13 going to be traveling on site, then the investigative
14 plan is reviewed by the team lead and also by the
12:18PM 15 manager, and it has to be approved by the manager prior
16 to the investigator going on site. And, of course, it's
17 updated as the investigation goes along.

18 CHAIRMAN ANDERSON: Now, did you close --
19 did you say you closed those cases in Houston, those
12:19PM 20 consolidated cases, or they will be closed?

21 MR. GOMEZ: The conciliation cases --

22 CHAIRMAN ANDERSON: The consolidated.

23 MR. GOMEZ: Yeah. They were
24 conciliated. They were being conciliated through the
12:19PM 25 respondent. We had the representative for the

1 complainants come in person on Thursday. He signed the
2 conciliation agreement. We sent it to the respondent.
3 The respondent did not agree with a couple of items. So
4 it was not until yesterday -- late yesterday, Chair
12:19PM 5 Anderson -- and I really have not had an opportunity to
6 find out what occurred on those cases. We're all very
7 eager to get those cases closed because they number nine
8 plus an additional one for the representative of the
9 complainants that he filed on his own. So I will find
12:19PM 10 out when I get back to the office, but this morning I
11 wasn't able to find out what the status was. I believe
12 there was an issue with representation. They were going
13 into the office of the respondent to sign those
14 documents.

12:20PM 15 Another reason we were very concerned that
16 they be done yesterday -- and this I need to find out
17 again -- is because the respondent was going to go on
18 vacation for two weeks. So if we didn't get them signed
19 yesterday, we're going to have to wait two weeks until
12:20PM 20 the respondent returns. So at this point in time,
21 that's the status.

22 MS. COVINGTON: And, also, we're mandated
23 by state and federal law to attempt conciliation from
24 the beginning of an investigation until the end. So if
12:20PM 25 a case doesn't conciliate, then we have to conduct a

1 complete and thorough investigation on the case.

2 Some of the parts of an investigative
3 plan -- or the parts of an investigative plan consist of
4 the jurisdictional elements as well as the jurisdiction
12:20PM 5 paragraph, the complainant's allegations, the
6 respondent's defense, elements of a prima facie case,
7 the complainant, respondent and independent sources data
8 requests that we send to them. So from the beginning of
9 an investigation, the investigator lays out his or her
12:21PM 10 plan on how they are going to conduct that
11 investigation.

12 The jurisdictional elements consist of:
13 Standing - does the person have a complaint under the
14 Fair Housing Act? The statute of limitation - is the
12:21PM 15 complaint timely filed? It has to be filed within one
16 year. There are some extenuating circumstances where
17 the complaint may not be filed within one year. Is it a
18 covered respondent? Is the property covered? Is the
19 dwelling covered? Is the respondent covered? And we do
12:21PM 20 that by looking at the Texas Fair Housing Act to see if
21 they're actually covered. Subject matter jurisdiction -
22 is the transaction actually covered? Was it a rental
23 circumstance or a sales circumstance or any of the other
24 circumstances as identified in the Texas Fair Housing
12:22PM 25 Act?

1 Is the bases covered? In order for us to
2 have jurisdiction, the person has to be complaining
3 because of race, color, religion, national origin, sex,
4 familial status, disability, and they can also claim
12:22PM 5 retaliation based on a protected activity or based on a
6 protected class.

7 And then the jurisdiction paragraph is
8 automatically generated by the Title VIII automated,
9 paperless office tracking system which is better known
12:22PM 10 as TEAPOTS. When I say automatically generated, of
11 course, someone has to input the data in there. So even
12 though it's automatically generated, we have to put the
13 data in. It contains the date filed and the date of
14 harm, the basis of the complaint, the issue of the
12:23PM 15 complaint, the subject property address, the section of
16 the Title VIII violation, and the jurisdiction can be
17 amended at any time based on the result of the
18 investigation. And just for your information, TEAPOTS
19 is a web-based program. What that basically means is
12:23PM 20 that you can access it from anywhere basically by going
21 to their web site if you have permission, and all of our
22 staff have permission. We have a log-in and password
23 and all that.

24 The complainant's allegations are
12:23PM 25 basically -- or is a written statement stating that an

1 unlawful housing practice has been committed. It sets
2 forth the facts on which a complaint is based, basically
3 the who, what, when, where and how, and it can be
4 amended at any time during the investigation. Sometimes
12:24PM 5 we'll find that the complainant has alleged harm based
6 on race and national origin, and they really were --
7 only wanted to claim race, and so we would have to go in
8 and amend that complaint, or they might name a
9 respondent or somehow or another they say, "Well, that
12:24PM 10 person didn't harm me. So I want that person removed
11 from the complaint."

12 The respondent may provide a defense or an
13 answer to the complaint, and it has to be in the form
14 prescribed by us. We actually have a preformatted
12:24PM 15 letter that we send to the respondents, and the answer
16 also can be amended at any time. If we do not receive
17 an answer from the respondent, that does not stop our
18 investigation. And as I stated before, we could have
19 four or five respondents for each complaint, and each
12:25PM 20 one of the respondents is responsible for providing
21 their own answer. What oftentimes will happen is that
22 all the respondents will maintain the same
23 representative, the same attorney, and so we're working
24 with one attorney, but that doesn't always happen. The
12:25PM 25 most common defense that we have is that "We didn't do

1 it," and the second most common is that a claim of
2 exemption, it happened more than a year ago or something
3 of that nature. And, also, sometimes there's a dispute
4 over the act requirements, and usually at that stage
12:25PM 5 we'll get with Regulatory and Integrity Department; and
6 we'll ask them for some legal guidance on how to
7 proceed.

8 And when we're talking about the elements
9 of a prima facie case and fair housing discrimination,
12:26PM 10 these are just questions at the beginning of the
11 investigation, and usually going into it the
12 investigator does not have the answers. And that's --
13 the plan is laid out so that they gather the answers as
14 they're conducting the investigation. It's kind of like
12:26PM 15 a fill in the blank, and once you finish, you should
16 have enough facts through verbal and written statements
17 to answer those questions. And all along the process,
18 TEAPOTS, that paperless system, has to be meticulously
19 documented, and basically, you know, that's what HUD
12:27PM 20 grades us on, our reports and what is in TEAPOTS.

21 Once we've completed the investigation and
22 all of our analysis and summaries are entered into
23 TEAPOTS, we can run a final investigative report. And
24 once that final investigative report has been finalized,
12:27PM 25 then the investigator is ready to present a

1 recommendation through the format of a letter of
2 determination of either cause or no cause.

3 The most time-consuming part of our
4 investigation is the gathering of information and
12:27PM 5 documentation from the complainant and/or the respondent
6 or their representatives. So at the beginning of the
7 investigation, the investigator is anticipating what
8 documents are out there, what the responses are going to
9 be from the complainant and the respondent, and so they
12:28PM 10 develop a list of narrative questions relating to each
11 of the issues that have been identified by the
12 complainant. And if at that time they've had an
13 opportunity to speak with the respondent, they'll also
14 ask questions based on what they've learned from the
12:28PM 15 respondent. So they'll decide what documentation is
16 required from the complainant. They'll interview the
17 complainant, and they'll prepare the complainant data
18 requests and analyze and summarize and enter the
19 responses in the TEAPOTS.

12:28PM 20 And I believe in one of your handouts you
21 have a time line that we try to adhere to, and that time
22 line is a 70-day -- 75-day outline of how to get the
23 investigation completed within 75 days. And in
24 approximately half of our cases, we are able to finalize
12:29PM 25 either the investigation or they conciliate or we close

1 them for some other administrative reason.

2 On the respondent's request for
3 information, we basically do the same thing. We try to
4 anticipate what the respondent's answer is going to be
12:29PM 5 and develop our questions and what documents we believe
6 have been generated during that transaction. We
7 interview the respondent or if -- in most cases, there's
8 more than one respondent, and we prepare the data
9 request letters. And once we receive that information,
12:29PM 10 it's analyzed, summarized and entered into TEAPOTS.

11 A very important part of our
12 investigations are also identifying independent sources.
13 For example, at a rental property, the independent
14 sources could be other tenants, tenants who have not
12:30PM 15 filed a complaint. And so what we'll do is, we'll
16 develop a list of narrative questions for them. We'll
17 ask them, "How have you been treated at the property?"
18 We'll also look at maybe documents on the Secretary of
19 State web site. We'll look at the respondent's web site
12:30PM 20 to see if there's information and documentation on
21 there. Sometimes we can look at a property if it's a
22 design and construction case and see before we even go
23 on site that the property is not in accordance with the
24 Fair Housing Act Design and Construction Manual.
12:30PM 25 Another independent source is the Tax Assessor's Office,

1 the U.S. Census Bureau, city and local governments, city
2 ordinances that talk about zoning and occupancy, police
3 reports. Very often we have to go to police stations or
4 contact them via email or telephonically to get
12:31PM 5 information and documentation from them and then any
6 additional investigative activities that might be --
7 that the investigator might have to conduct.

8 We have one case at RID right now where
9 they've asked us to conduct additional investigative
12:31PM 10 activities. So those additional investigative
11 activities can be because the investigator needs to
12 confirm and clarify conflicting information that they've
13 received from both parties. It could be the team lead
14 directing the investigator to go back and do additional
12:32PM 15 investigative activities or the manager or Robert or
16 RID. So even the Office of the Attorney General when we
17 pass the case to them, they ask us to go back and gather
18 some other information and documentation.

19 And if the case is not conciliated by this
12:32PM 20 time or we've not closed it for any other administrative
21 reason, then we conduct what's called a predetermination
22 interview, and that basically consists of the
23 investigator telling the party -- for example, if it's a
24 no-cause -- or we believe it's a no-cause, laying out
12:32PM 25 the evidence to the complainant to tell them why we

1 believe it's no-cause and give them an opportunity to
2 provide rebuttal information. And if it's a cause case,
3 it goes to the respondent, and we ask them to provide us
4 information and documentation to rebut what the
12:33PM 5 investigation has found. And then we print out the
6 final investigative report, and that report contains
7 just the facts, not a conclusion of what happened in the
8 investigation. And then there's a second document that
9 we develop for the recommendation of cause, no cause or
12:33PM 10 administrative closure.

11 And just to talk a little bit about the
12 predetermination interview -- I think I've already
13 talked about it. Are there any questions on what's
14 listed there?

12:34PM 15 (No audible response.)

16 MS. COVINGTON: But one common theme that
17 I hope you see throughout the investigation is the prima
18 facie elements, and we basically have to get evidence
19 from the complainant and the respondent or any
12:34PM 20 independent parties. And sometimes what happens is, we
21 get pushback from the complainant or pushback from the
22 respondent or the respondent's representatives and even
23 the complainant's representative sometimes in providing
24 us with the information and documentation that we need.
12:34PM 25 And if we have a signed complaint, we are bound by HUD

1 regulations to complete the investigation. We can't
2 close it because -- once we have a signed complaint, we
3 cannot close it because of failure to cooperate.

12:34PM 4 COMMISSIONER DIGGS: How do you determine
5 which investigator gets which case?

6 MS. COVINGTON: Well, basically it's you
7 close one you get one. We have -- the investigators --
8 Investigator IIIs have a lower case inventory than the
9 Investigator Vs. And if it's identified as a complex
12:35PM 10 case -- and I believe there's a handout also behind the
11 "Training" tab that talks about complex cases. If we
12 know up front that it's going to be a complex case, we
13 try to spread them out so that one investigator doesn't
14 have a whole case load of complex cases.

12:35PM 15 COMMISSIONER DIGGS: Do you make the
16 assignments?

17 MS. COVINGTON: No. That's done by
18 Cynthia Washington. She actually does the intake for
19 housing cases, one of the team leads.

12:35PM 20 COMMISSIONER DIGGS: Thank you.

21 COMMISSIONER JAMES: Is that time line
22 driven by law, by HUD?

23 MS. COVINGTON: Yes and no. We -- our
24 statute and HUD's -- the Fair Housing Act say that we'll
12:36PM 25 close the case within 100 days, I believe, absent

1 extenuating circumstances, and so we try to close them
2 within 100 days. We're also graded by HUD because we
3 have to close at least half of the cases that we receive
4 during the fiscal year within 100 days or less. And
12:36PM 5 so --

6 MR. GOMEZ: Commissioner James, that is
7 one of the performance standards that I mentioned, 1
8 through 9, that they do review us on. And that's one of
9 the performance standards, that we close a certain
12:36PM 10 percentage number of cases within 100 days, within that
11 review period of the fiscal year.

12 COMMISSIONER JAMES: But that's for the
13 most part driven by HUD?

14 MR. GOMEZ: Yes, because essentially
12:36PM 15 they're the ones that are reading our cases and paying
16 the bill. Yes, sir.

17 COMMISSIONER JAMES: Ultimately. Okay.

18 MS. COVINGTON: And the final
19 investigative report is the Word document generated in
12:37PM 20 TEAPOTS. And all of these documents have similar
21 information because we want to make sure that from the
22 beginning of the investigation to the end that the
23 investigator understands that they're gathering
24 information and that information that they're gathering
12:37PM 25 from the beginning, the middle and the end is going to

1 result in a report that the reviewer is going to be able
2 to look at and come to the same conclusion that the
3 investigator made as far as a recommendation of cause or
4 no cause. A cause case or a charge is approved by the
12:37PM 5 director with RID review and recommendations, and a no
6 cause or an administrative closure is approved by
7 management or the director.

8 And I believe that's it. I just want to
9 remind the Commissioners again that throughout the
12:38PM 10 investigative process there is -- there are conciliation
11 efforts ongoing. Each contact with the complainant and
12 the respondent the investigator discusses conciliation,
13 and over the years, our conciliation rates have gone, I
14 believe, from the teens to 51 percent.

12:38PM 15 MR. GOMEZ: One of the unique features of
16 a PDI is, you have an immovable respondent sometimes
17 that digs in their heels and says, "I'm not going to do
18 anything for this person. I'm not going to give him a
19 single dime or give him what he wants," then -- or he's
12:38PM 20 hesitant on providing the information. So we work with
21 the information we have. So if the investigator sends
22 out a PDI to both parties, especially the respondent,
23 that usually brings them to the table because by that
24 time he kind of looks at it. It's a cause case or
12:39PM 25 possible -- there's possibly something there.

1 Then from that investigative -- from those
2 investigative activities, it goes into the conciliation
3 because usually that's when we have the attorneys step
4 in and say, "Well, my client received this PDI. You
12:39PM 5 know, is there anything we can do to bring this to the
6 table and try to resolve this?" So that's where a lot
7 of those cases go from a possible cause or even a
8 possible no cause to, "Hey, we've got this additional
9 information" or "Can we bring it to the table so we can
12:39PM 10 conciliate?" Then you start that conciliation process
11 as in this case with the -- that group of nine
12 complaints. We started the investigative process,
13 obtained some comparative data, talked to witnesses,
14 talked to all the complainants obviously and the
12:39PM 15 respondent, and then they said, "Well, we'll go ahead
16 and do what they want," and this and that. So we drew
17 up the nine conciliation agreements, and that's where we
18 were on on this particular group of cases that Chair
19 Anderson asked about, is that last Thursday we had
12:40PM 20 signed, but one party, they saw it, changed it. So now
21 we have to get it signed again by both parties. So it
22 kind of brings out that aspect of the investigative
23 process and turns it into a conciliation process.

24 COMMISSIONER JAMES: Mr. Gomez, is there
12:40PM 25 anybody who telecommutes?

1 MR. GOMEZ: No, Commissioner.

2 COMMISSIONER JAMES: And the system is
3 web-based for the most part?

4 MS. COVINGTON: That's correct,
5 Commissioner.

12:40PM

6 MR. GOMEZ: And the reason being is that
7 we did kind of address that issue with HR. We
8 determined with HR along with, I believe, executive
9 staff that our positions, our jobs, our functions as
10 investigators and due to the confidentiality and the
11 secure documents that we handle the positions did not
12 lend themselves to be a telecommuting type of position.

12:40PM

13 COMMISSIONER JAMES: My sister who's about
14 5'4" and weighs about 110 pounds carries a badge for the
15 IRS and repossesses homes and cars and things like that,
16 and she telecommutes. That's why I was asking. So I
17 figure that's probably pretty confidential. Maybe
18 there's an opportunity for us as well, and it does save
19 money, is the only reason I ask. Okay. Great.

12:41PM

12:41PM

20 MR. GOMEZ: Yes, sir.

21 MS. COVINGTON: Are there any questions
22 regarding how we conduct a fair housing investigation?

23 COMMISSIONER JAMES: Good stuff.

24 CHAIRMAN ANDERSON: Okay. Good

12:41PM

25 information. I think that January we won't do anything

1 like this, but tentatively in April we may want to look
2 at doing the employment side.

3 MS. COVINGTON: Thank you.

4 CHAIRMAN ANDERSON: Thank you.

12:41PM

5 COMMISSIONER JAMES: Thank you.

6 CHAIRMAN ANDERSON: Now, on the action
7 items, the agenda has been modified. So that's
8 complete. The workshops during quarterly meetings,
9 that's begun with this one on housing. The scenarios
10 have been added, and the calendar we've taken care of,
11 Commissioner Diggs and Commissioner Stidvent for future
12 budget meetings. And I'd like to make sure that they
13 are continued to be notified and if their schedule
14 permits that they will attend -- I assume they are
15 regular meetings, aren't they? Are they monthly
16 meetings on the budget or not?

12:42PM

17 MR. GOMEZ: Not necessarily. What we were
18 going to do is get together with Budget, Daryl and Jim,
19 and then notify Commissioner Diggs, and then we'll meet
20 on the budget as soon as we close out that previous
21 month one when we meet.

12:42PM

22 CHAIRMAN ANDERSON: Okay. So whatever
23 schedule that is, please notify the two local
24 commissioners. Give them at least a week or two-week
25 notice so they can work it in their schedule, if

12:42PM

1 possible. Thank you.

2 Becky, do we have any action items for our
3 next meeting in January?

4 MS. SMITH: The ones that we did today?

12:43PM 5 CHAIRMAN ANDERSON: Yes.

6 MS. SMITH: Yes. You want us to look at
7 the -- possibly having the trainers and reviewers do
8 employment case closures?

9 CHAIRMAN ANDERSON: Right.

12:43PM 10 MS. SMITH: And then to provide the
11 closure trend monthly via email and then at the
12 quarterly meetings, to put it in the packets.

13 CHAIRMAN ANDERSON: For the individual
14 investigators?

12:43PM 15 MS. SMITH: Yes.

16 CHAIRMAN ANDERSON: Right. Is there any
17 other action items that we discussed today?

18 (No audible response.)

19 CHAIRMAN ANDERSON: Okay. Anything else
12:43PM 20 that we need to discuss?

21 (No audible response.)

22 CHAIRMAN ANDERSON: Okay. If not, without
23 objection, the meeting is adjourned at 12:43. Thank you
24 very much.

25 (At this time, the proceedings were

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adjourned at 12:43 o'clock p.m.,
Wednesday, October 20, 2010.)

1 STATE OF TEXAS)

2 COUNTY OF TRAVIS)

3 I, LYDIA L. EDWARDS, certified shorthand
4 reporter for the State of Texas, do hereby certify that
5 the above-captioned matter came on for hearing before
6 the TEXAS COMMISSION ON HUMAN RIGHTS as hereinafter set
7 out.

8 I FURTHER CERTIFY that the proceedings of said
9 hearing were reported by me, accurately reduced to
10 typewriting under my supervision and control, and, after
11 being so reduced, were filed with the TEXAS COMMISSION
12 ON HUMAN RIGHTS.

13 GIVEN UNDER MY OFFICIAL hand of office at
14 Austin, Texas, the _____ day of November, 2010.

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Lydia L. Edwards
Certification No. 2567
My Commission Expires 12/31/10

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