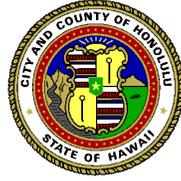


**ETHICS COMMISSION**  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR

JAN K. YAMANE  
EXECUTIVE DIRECTOR  
AND LEGAL COUNSEL

October 28, 2016

TO: CHAIR VICTORIA MARKS, VICE CHAIR MICHAEL LILLY, AND  
MEMBERS OF THE ETHICS COMMISSION

FROM: JAN K. YAMANE, EXECUTIVE DIRECTOR AND LEGAL COUNSEL

SUBJECT: AGENDA ITEMS FOR THE NOVEMBER 2, 2016 MEETING

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I. CALL TO ORDER, PUBLIC NOTICE, QUORUM

II. NEW BUSINESS

A. Chair's Report

1. Announcements, Introductions, and Correspondence
2. For Action: Approval of Open Session Minutes of September 21, 2016
3. For Action: Approval of Executive Session Minutes of the August 31, 2016 and September 21, 2016 meetings

The Commission may convene an executive session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes (HRS), to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

B. Executive Director and Legal Counsel's Report.

1. Staff Work Reports Summary

The staff meets weekly on the Ethics Commission Program of Work – FY2016-2017. **Agenda Item II.B.1., Page 1, OPEN – 1 [EC Program of Work-FY2016-2017].** Details are updated weekly and reflect planned, work-in-progress, and completed work. Staff discuss issues, challenges, work load, and completion dates/targets.

Legal Clerks LParker and KBigornia continue to carry out their administrative responsibilities. Legal Clerk III Parker performs P-Card administration, sorts and files incoming requests for advice, complaints, and other matters, assists with budget and other submittals, and coordinates meetings and meeting materials. Legal Clerk III Parker coordinated Investigator III interviews and processed the selected applicant's hiring documents. Both legal clerks have also provided extensive litigation support.

Legal Clerk I Bigornia compiles statistics, assists Associate Legal Counsel (ALC) LWong-Nowinski with complaints by gathering data and other information, updates the website and resource binders, monitors the UIPA log, assists with web-training development, as well as coordinates meetings and meeting materials. For this meeting, Legal Clerk I Bigornia developed statistical charts for complaints, which will be discussed under Agenda item II.B.2. Additional charts will be developed for future meetings.

Our move to Kapālama Hale is scheduled for Saturday, November 12, 2016. Legal Clerk I Bigornia is preparing for the move by shredding, scanning, and boxing office documents, and preparing inventory. Legal Clerk III Parker attends Kapālama Hale coordination meetings with me and is coordinating our move with the Departments of Design and Construction and Facilities Management, as well as Island Movers and Xerox Corporation. She has secured staff parking at Kapālama Hale (3 confirmed, 1 wait-listed, 1 pending hire of an investigator) and continues to work with administration to arrange for Commissioner parking during meetings.

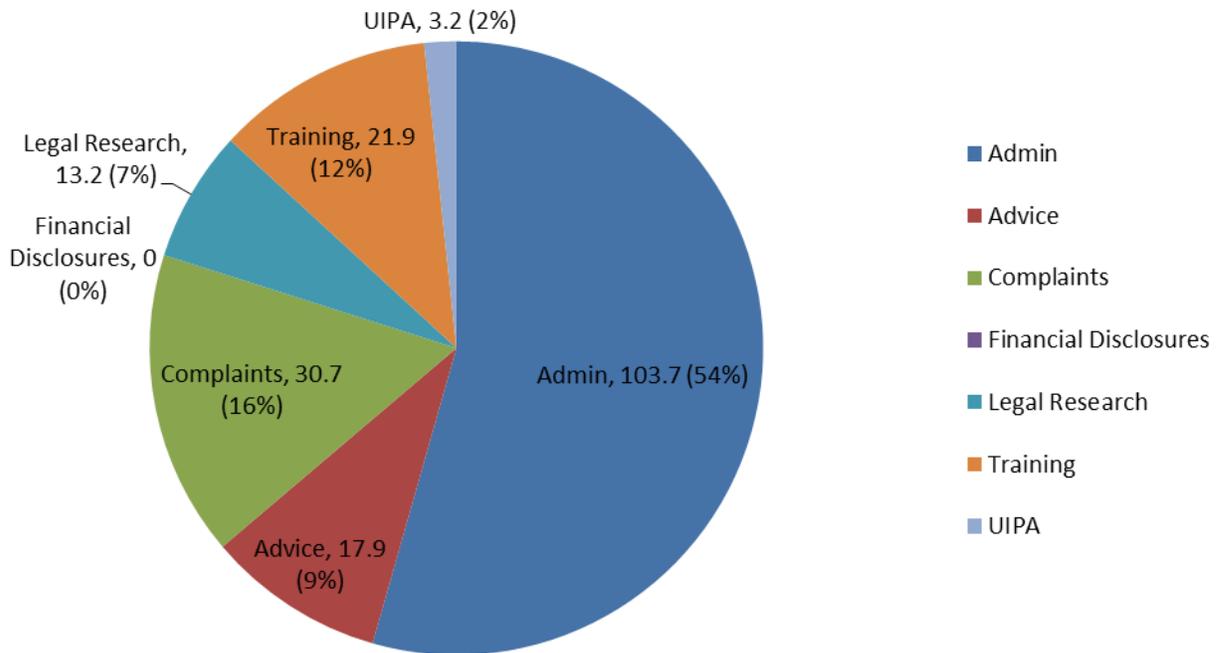
ALC Wong-Nowinski continues to perform administrative duties, address complaints and requests for advice, develop and conduct training, and conduct legal research. Her workload in both actual and percentage of time spent in various categories is summarized in Exhibit 1 on page 3.

An increasing majority of her time is spent on administration, which grew from 49 percent in the prior reporting period (August 1 – September 15) to 54 percent for the present reporting period (September 16 – October 24). Considering the EDLC also spends almost 95 percent of her time in administration, there is a demonstrated need for additional administrative and legal staff. Administrative time includes a variety of tasks such as attending meetings with cabinet and councilmembers, preparing indexes and reviewed case status and reports, preparing form templates, and preparing for, conducting, and scoring investigator interviews, among other responsibilities.

Additionally, ALC Wong-Nowinski has reviewed, investigated, drafted, and closed 13 complaints and 23 requests for advice. At present, there are 66 outstanding complaints (eight of which are cross-complaints being handled by outside counsel), no outstanding requests for advice, and two cases for appeal.

Finally, we hired an Investigator III who will start with the Ethics Commission on Thursday, November 3, 2016. We plan to introduce her to the Commission at the December 2016 meeting.

**Exhibit 1  
Associate Legal Counsel – Summary of Hours, September 16 - October 24, 2016**



Source: ALC Wong-Nowinski time sheets for September and October (partial) 2016

2. Statistics – Complaints, Requests for Advice –

Handouts show Ethics Commission complaints for FY2015 and FY2016 (by quarter) and FY2012-FY2016. **Agenda Item II.B.2., Page 3, OPEN – 2 [Ethics Commission Complaints, FY2015 (by quarter); Ethics Commission Complaints, FY2016 (by quarter); and Ethics Commission Complaints, FY2012-FY2016]**

3. Budget

a. FY2017 Operating Budget (no update)

b. FY2018 Operating Budget Request

Budget and Fiscal Services requested additional information on the following budget requests: 1) travel for one staff and one commissioner to the annual Council on Government Ethics Law (COGEL) conference; 2) Mindflash; 3) external professional services; and 4) parking validations at Kapālama Hale. On October 27, 2016, we withdrew our request for Mindflash funding based on Administration’s decision to develop a training solution using free open-source software (see discussion in Item 4., Ethics Training Program, below).

#### 4. Ethics Training Program

On October 24, 2016, we attended a meeting with the Department of Information Technology (DIT) and were informed that DIT would be developing a platform to host ethics web-based training on free open-source software called “moodle.” DIT will customize moodle to align its capabilities with Mindflash. Because moodle is free, we do not need to request budget to purchase and renew Mindflash software licenses. DIT created a moodle demo with our Mindflash content, which we have reviewed. Although we are working out details and customizing moodle for our use, this free open-source option appears promising. In the event it does not meet our needs, we will revisit our funding request via the Department of Budget and Fiscal Services for Mindflash.

#### 5. Charter Amendments

The ethics amendment is No. 2 on the November 2016 ballot.

#### 6. Audit

City Auditor Young met with ALC Wong-Nowinski and me on September 22, 2016, and shared his plan for a three-part audit:

Part I – EDLC performs a control self-assessment of the Ethics Commission (target completion – February 2017)

Part II – City Auditor researches comparison jurisdictions and best practices (target completion – February 2017)

Part III – City Auditor contracts with an outside auditor for a management oversight audit (target completion – December 2017)

Part I (control self-assessment) is a significant assignment and will be challenging for us to complete by February 2017.

#### 7. COGEL Conference – December 2016

Given the audit assignment and other pressing deadlines, we will not attend the conference this year. Travel expenses have been requested in Ethics FY2018 budget.

#### C. For Discussion: Strategic Planning

#### D. For Discussion: Rule-Making

##### 1. Introduction – John (Jack) McDonald, Esq., MPA Intern

#### E. Expectations for the Executive Director and Legal Counsel

- F. For Discussion and Action: Personnel Evaluation Form for the Executive Director and Legal Counsel

III. Executive Session

- A. For Decision: Whether an employee's request to be an Uber/Lyft driver is incompatible with the employee's official duties in violation of RCH Sec. 11-102.1(c)? **Agenda Item III.A., Page 5, EXEC – 1 [Confidential – Uber/Lyft Driver – Exhibits A-I] – Note: Mr. Jimzy Lui and Assistant Chief William Axt, HPD Human Resources, will be attending the meeting.**

Pursuant to Section 92-5(a)(4), HRS, the Commission will consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

- B. For Discussion: Case Brief – Boyd v. Hawaii State Ethics Commission, SCWC-14-0000352 (Haw. July 19, 2016) **Agenda Item III.B., Page 5, EXEC – 2 [Confidential Memorandum – Attorney-Client Privileged Attorney Work Product – October 28, 2016]**

Pursuant to Section 92-5(a)(4), HRS, the Commission will consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

- C. For Discussion: Kealoha v. Totto, Civil No. 16-1-1166 GWBC in the Circuit Court of the First Circuit, State of Hawaii.

1. Introduction – Richard Nakamura, Esq., Chong Nishimoto Sia Nakamura & Goya

Pursuant to Section 92-5(a)(4), HRS, the Commission will consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

- D. For Discussion: Independent Ethics Investigator Retained Due to Conflict of Interest

Pursuant to Section 92-5(a), HRS, the Commission will consider the hire, evaluation, dismissal, or discipline of an officer or employee where consideration of matters affecting privacy will be involved; and pursuant to Section 92-5(a)(4), HRS, to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

IV. Adjournment

Should you have any questions on these matters, please contact me.

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**Page 1**  
**[EC Program of Work**  
**FY2016-2017]**

HONOLULU ETHICS COMMISSION

PROGRAM OF WORK – FY2016-2017

Staff Meeting – Week of 24 Oct 2016

Complaint Intake/Evaluation (on-going)

- Ethics2 mailbox – Open/review/sort
- Complaints statistics visuals (see “EC Statistics, Data” item below)

Ethics Commission (on-going)

- Meeting schedule – CY2017 schedule emailed to EC (mtgs usu 3<sup>rd</sup> Wed ea/mo)
- EC Commissioners Resource Guide – rev/update pending receipt of binders fr commrs
- Target timeframes – EC Mtg docs
  - Minutes – 1) COB Fri before Wed agenda filing, LC III draft minutes to ALC/EDLC for review; ALC r/c; EDLC r/c, return to LC III for final by COB Wed
  - Agenda – 1) COB Fri before Wed filing, EDLC agenda to LC III; 2) COB Mon before Wed agenda filing, LC III sends draft agenda to Chair r/c; 3) COB Tues, Chair sends agenda comments to LC III; 4) Wed midday, ALC/EDLC review Chair’s comments, finalize agenda; 5) COB Wed, LC III files agenda
  - EDLC Report – 1) COB Wed after agenda filed, all staff reports to EDLC; 2) COB Thurs, EDLC rpt to LC III; 3) COB Fri, LC III finalizes EDLC rpt
  - Meeting handouts – 1) COB Thurs, all meeting handouts from staff to LC III; 2) COB Fri after Wed agenda filing, meeting handouts a) upload to Drop Box (LC III); b) upload to website
- Request mtg w/ Chair re mtg mgmt

Strategic Planning

- Operating Plan (former EDLC updated 6 Oct 2014) for FYs 2014 – 2016
- Strategic Plan (new) – Commr Adler sent Strategy Planning doc dated 30 Sep 2016, final comments requested by 21 Oct 2016

Rulemaking – Art. 6, Sect. 3-6.3(i) via Ch. 91 (HAPA), HRS

- a. Substantive Rules
  - Legal research on ethics issues
  - Begin prelim rsch/drafting; JMcDonald (MPA Intern) invited to 2 Nov 2016 EC mtg
  - Laws and Rules Subcommittee – EC react to rules draft before establishing committee
- b. Procedural Rules
  - Rsch binder (DSimon/law student) provided to Chair Marks

Request for Advice (RFA)

- Log – refinements, p&ps needed (all)

## Education and Outreach

- Web-based training for City emp'ees (Mindflash), annual cost estimate \$14,388 (\$1199 x 12 mos)
  - BFS request clarification; justification submitted via COR
  - DIT offering to dev platform, assist with admin; mtg 24 Oct, demo sent to DIT 21 Oct
- Training mandate – emp'ee; mgr/supervisor; bd/comm; Council; dept-specific (pending)
- Post-Nov 2016 election ethics training; Mayor's request for Cabinet refresher (new – pending election)
- Newsletter (new – pending)
- Annual Report (new – pending)

## Financial and Other Disclosures

- December – reminders for **annual** filings (LP rec'd printout of names):
  - Financial disclosure eFiling – candidates to office (w/i 10 working days after deadline for filing as candidate for office); exec/leg branch officers (w/i 20 working days of taking oath of office or **before 31 Jan each year**); employees (w/i 20 working days of eff date of sect. or **before 31 Jan each year**)
  - Lobbyist Registration – w/i 5 days of engagement (w/i 10 days, ETH issues certificate of registration); **annual report by 10 Jan** (w/i 10 days, ETH issues renewal of certificate of registration)
- Disclosure of Interest (CC-8) – w/i 5 working days of entering employment, promotion, transfer, new non-city employment, other circumstances
- Financial disclosure - file scanning/shredding

## 92F UIPA Requests (on-going)

- Use UIPA forms to respond
- Draft SOP

## Relocation to Kapālama Hale

- Moving date – Sa, 12 Nov 2016 @ 11:00 am; notice posted re move on website, emails (all)
- Final site visit – Tu, 25 Nov 2016 @ 10:00 am
- Parking – 3 spaces confirmed; 1 wait-listed; 1 pending hire
- Request made to DDC re sm in-office/conf tables
- 80 – 90 box estimate; 40 boxes delivered
- Financial disclosure scanning (pending, to do after relocation to Kapālama Hale)

## Personnel

- Investigator III – 3 Nov 2016
- Reassess/redescribe positions, ETH staff organizational structure

## Budget

- 6-year expenditure estimates sent, BFS clarification 1) Mindflash; 2) on-going prof'l services/consultant; 3) travel/training costs; 4) parking fees
- Training request – COGEL conference, ETH commissioners/staff (2) – pass on attending 2016

- Resources – LexisNexis with COR, Westlaw contract exp’s Mar 2017, letter sent re non-renewal of service 30 Sep 2016
- Reassess – LexisNexis tools replace CLEAR, contract exp’s Dec 2017; letter sent re non-renewal of service 30 Sep 2016, also questions re exp date

#### General Records Schedule (GRS)

- ETH records schedule – review/revise, align with new reso
- Reso No. 16-250 (14 Sep 2016) – authorizes disposal of vouchers, docs, and other records or papers; retention period stated in 2016 GRS shall control; “the agencies and boards will update their respective record retention schedules to conform to the GRS attached hereto as Exhibit A”

#### Litigation

- RNakamura (represents City and ETH) invited to 2 Nov 2016 EC mtg

#### Office Procedures

- Standard Operating Procedures (SOP) – incomplete draft, update needed (pending)

#### EC Statistics, Data

- Develop complaints visuals, target presentation @ 2 Nov meeting; mtg in Ste 311, no PC

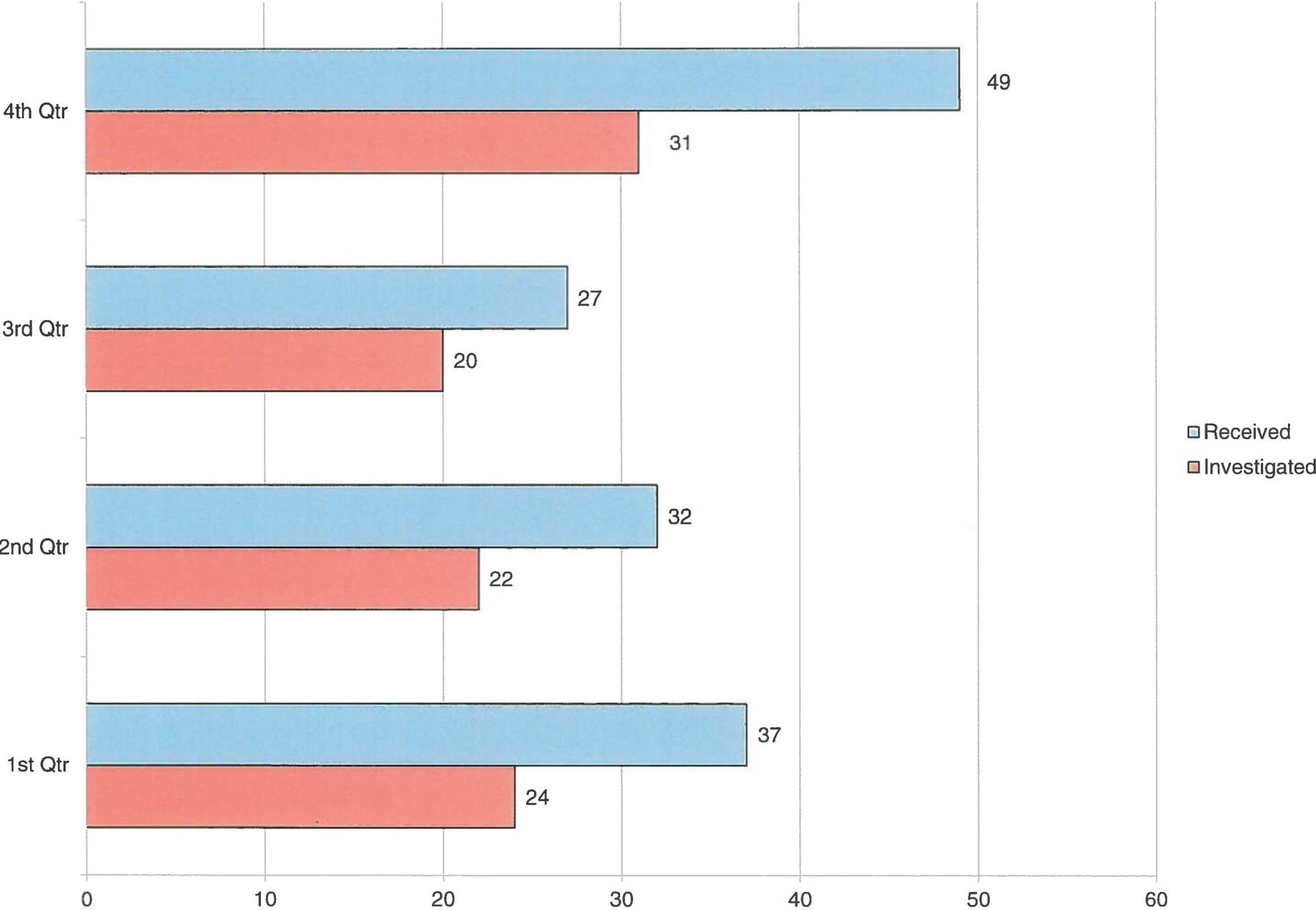
#### Audit Request – Reso. 16-164

- Preliminary meeting with City Auditor Young 22 Sep 2016, Auditor taking 3-part approach:
  - 1) EDLC - conduct control self-assessment, target completion Feb 2017
  - 2) City Auditor staff - conduct comparison with other jurisdictions and best practices, target completion Feb 2017
  - 3) Outside auditor - conduct management oversight piece; \$100K request in City Auditor’s FY2018 budget, contract to commence July 2017, target completion Dec 2017

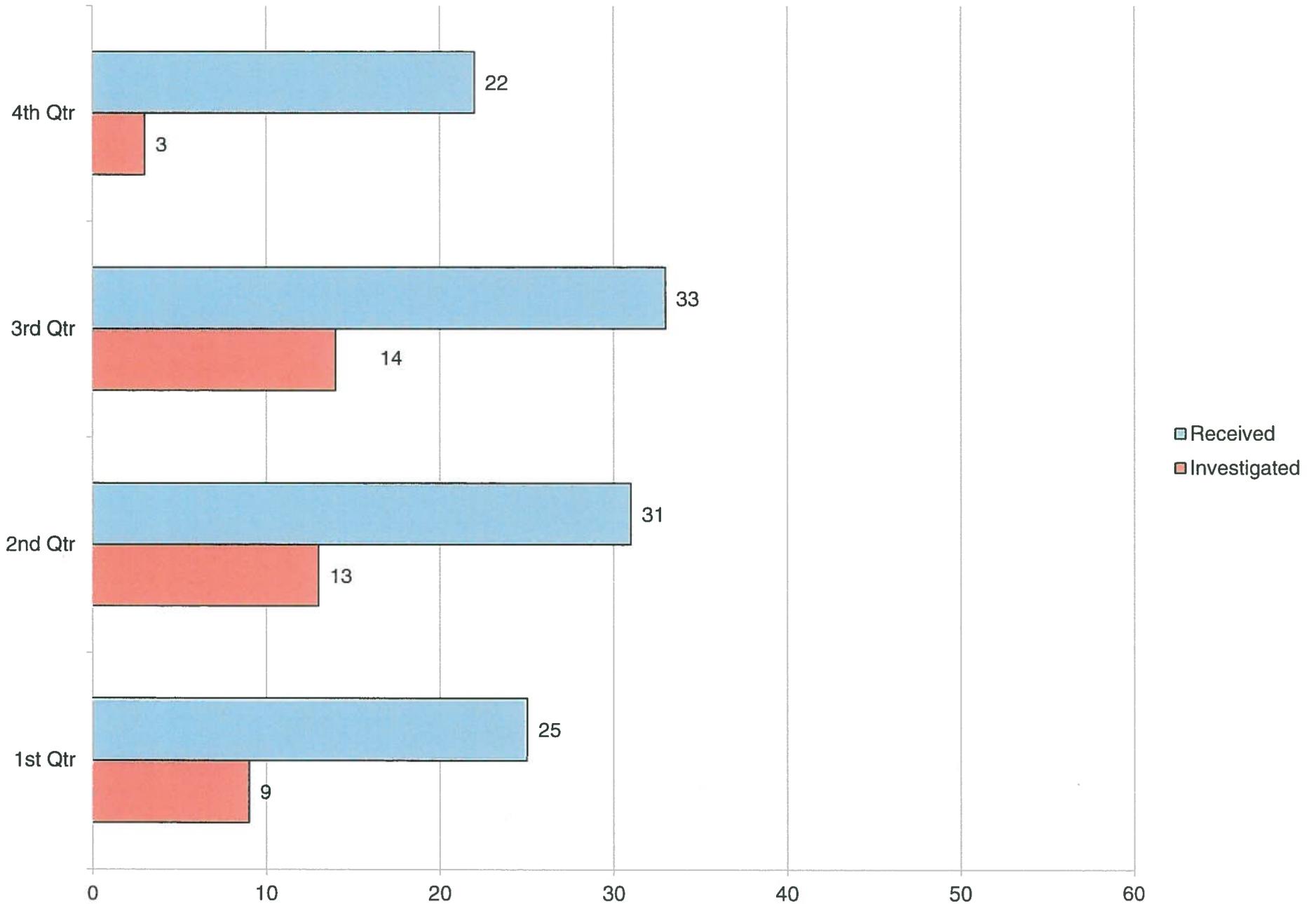
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**Page 3**

**[EC Complaints, FY2015 (by  
quarter); EC Complaints, FY2016  
(by quarter); EC Complaints  
FY2012-FY2016]**

# Ethics Commission Complaints, FY2015 (by quarter)



## Ethics Commission Complaints, FY2016 (by quarter)



Last Reviewed: 10/18/2016

# Ethics Commission Complaints, FY2012-FY2016

