



ANDREAS BORGEAS
COUNCILMEMBER

COUNCIL AGENDA ITEM

DATE: June 9, 2011
TO: Fresno City Council
FROM: Councilman Andreas Borgeas
AGENDA ITEM: Recommend Council adopt the:

***Council Management & Transparency Policy
for the City Attorney's Office***

Executive Summary:

The City Attorney's Office (CAO) is charged by Charter §§ 800 & 803 to provide legal services to the City of Fresno. While placed under the administrative jurisdiction of the City Council, the CAO is expected to provide apolitical legal services City-wide to the Mayor, Council and Staff.

In the spirit of providing effective and transparent government, it is incumbent upon the City Council to oversee the City Attorney, who is appointed by and serves at the pleasure of the Council, and his/her management of the CAO's affairs and duties. Inherent to Council's administrative authority is the responsibility to evaluate the quality of the services provided by the CAO and the costs associated with such services.

Therefore, it is recommended Council adopt the "*Council Management & Transparency Policy for the City Attorney's Office.*" This policy is intended to have the City Council hold the CAO to the same transparency and accountability standards of other City departments by requiring the CAO to do the following:

- 1) Produce an *Annual City Attorney's Office Report*;
- 2) Produce a *Quarterly Service and Litigation Log*; and
- 3) Implement the *Work Management Policy*.

The City Attorney's Office Annual Report

The City Attorney's Office shall provide to the City Council a comprehensive annual report in the month of April of each year that identifies with particularity the financial and administrative conditions of the CAO. The City Manager, Risk Manager, and relevant staff shall help provide the CAO information related to claims and insurance administration.

The annual report shall include the following:

A. Financial Analysis

- Total and categorical CAO operating costs (*See Appendix A*);
- Payout amounts for settlements and lawsuits (*See Appendix B*);
- Listing of all matters with payouts over 100k (*See Appendix C*);
- Costs of outside counsel and consultants (*See Appendix D*);
- Litigation costs;
- City Manager will provide an analysis of the fiscal condition of the City's self-insurance fund for incorporation into the annual report; and
- Total yearly costs compared to total costs from previous years (i.e. goal is to maintain a multi-year log with averaging) (*See Appendix F*).

B. Allocation of Legal Resources

- Categorize major practice areas (i.e. land use, litigation, labor etc.);
- Identify the number of attorneys/staff assigned to each practice area (*See Appendix G*);
- Number and percentage of billable hours used by each City department (*See Appendix H*); and
- Number and percentage of billable hours used by Mayor, City Manager, and Council.

C. City Attorney and City Manager Management of Claims and Litigation

- Categorize areas of claims and litigation (i.e. municipal infrastructure, police matters, City vehicle accidents, etc.);
- Number of claims and lawsuits per above areas (*See Appendix I*);
- Financial results of those settlements and lawsuits (*See Appendix J*);
- Number and percentage of claims that evolved into lawsuits;
- Criteria used in creating "percentile" system;
- Comparison of "percent chance of success" as provided in closed-session staff reports vs. actual outcome;
- Comparison of cases kept "in-house" vs. "outside counsel";
- Criteria used for selection of outside counsel (i.e. expertise, topic sophistication etc.); and
- A cost-benefit analysis of in-house vs. selected outside counsel.

D. Office Profile and Personnel

- Office hierarchy/chain of command;
- Profiles of Attorneys (i.e. salary, experience); and
- Changes in personnel (i.e. hired, left employment, transferred excluding any privileged personnel information).

E. Recommendations and Trends in Legal Services

- City Manager to identify trends in claims and City Attorney to identify trends in litigation (i.e. spike in claims against police, bus accidents, increased use of outside counsel etc.) (*See Appendix K*);
- Recommendations on allocations of resources (i.e. more transactional than litigation work, spikes in department specific work, etc.);
- Risk assessment; and
- Recommendations on preemptively reducing risks and liabilities.

It is important to note that in addition to the above referenced topics, the CAO will maintain the flexibility to report on other areas deemed relevant and important. The CAO Annual Report shall be posted and made available to the public on the City website. However, privileged and confidential information may be omitted as necessary from the public report as determined by the CAO.

CAO's Quarterly Service & Litigation Log

The City Attorney's Office shall supply to the Council and City Manager on a quarterly basis a *Service & Litigation Log*. This Log is designed to provide Council with a comprehensive status report on the following:

A. Services

- List of "high priority" projects posing unusual demands on CAO resources;
- Number and percentage of billable hours used by each City department; and
- Number and percentage of billable hours used by Mayor, City Manager, and Councilmembers.

B. Litigation

- City Attorney, in coordination with City Staff, to list status of claims against the City (i.e. in arbitration, mediation, settlement discussions) and amounts sought;
- City Attorney to list claims currently in litigation and amounts sought;
- List of recently closed/settled matters with relevant dollar amounts; and
- Projected payouts and liabilities in the context of a fiscal analysis of City's self-insurance fund (to be done in conjunction with City Manager and City Staff).

Work Management Policy

The City Attorney's Office shall implement a *Work Management Policy* as follows:

- Projects estimated by the CAO to take more than 25 billable hours, or projects that cumulatively surpass that hour amount, shall be reported to Council President;
- Projects estimated by the CAO to take more than 50 billable hours, or projects that cumulatively surpass that hour amount, shall be reported to the Council;
- Council President, or a simple majority of Council, may direct the City Attorney to report to the Council in an appropriate setting on the nature of such projects;
- Matters authorized by a majority vote of Council, such as litigation, research, or claim resolution, or those inherent to the administration of the City Attorney's Office, such as budget, hearings, and reporting requirements, are exempt from the Work Management Policy; and
- For purposes of respecting confidentiality, a general description of the work may suffice as determined by the CAO.

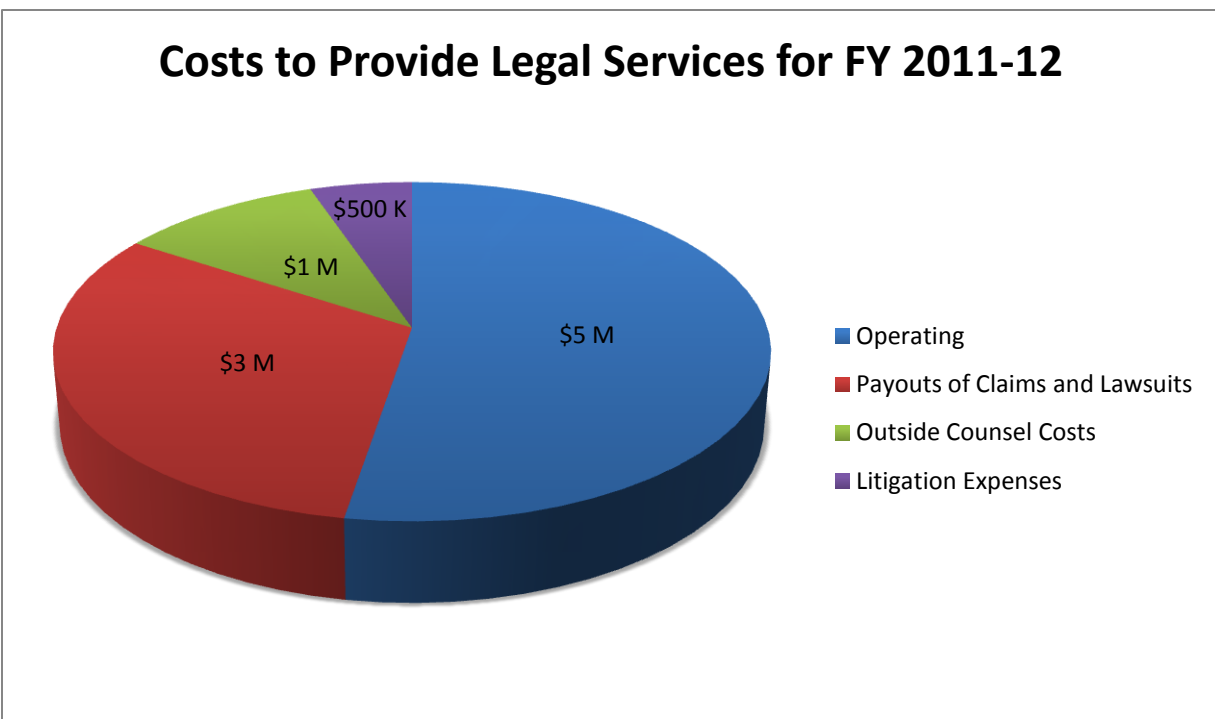
Action Requested:

Recommend Council adopt the: *Council Management & Transparency Policy for the City Attorney's Office*.

Appendices:

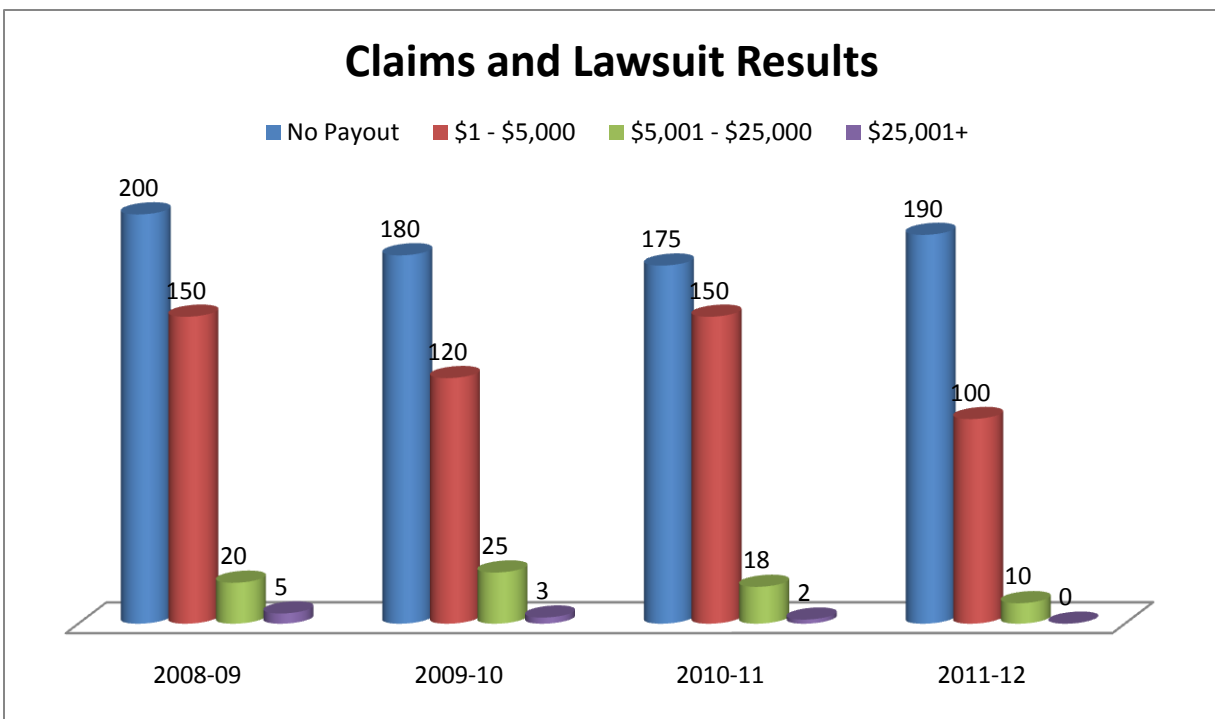
- A: Example chart of "Costs to Provide Legal Services"...page 05
- B: Example chart of "Claims and Lawsuits Results"...page 06
- C: Example table of "All matters with payouts of more than \$100,000"...page 07
- D: Example graph of "Outside Counsel Costs"...page 08
- E: Example of "Cost Benefit Analysis: In-House vs. Outside Counsel"...page 09
- F: Example graph of "Multi-Year Costs of Legal Services"...page 10
- G: Example chart of "Allocation of Attorneys"...page 11
- H: Example graph of "Billable Hours by Department"...page 12
- I: Example table of "Types of Claims & Lawsuits Received"...page 13
- J: Example graph of "Payouts of Claims and Lawsuits by Category"...page 14
- K: Example graph of "Trend of Lawsuits and Claims Filed"...page 15

APPENDIX A



***Information contained in the graphs and charts herein are wholly inaccurate, and are used only for example purposes.

APPENDIX B



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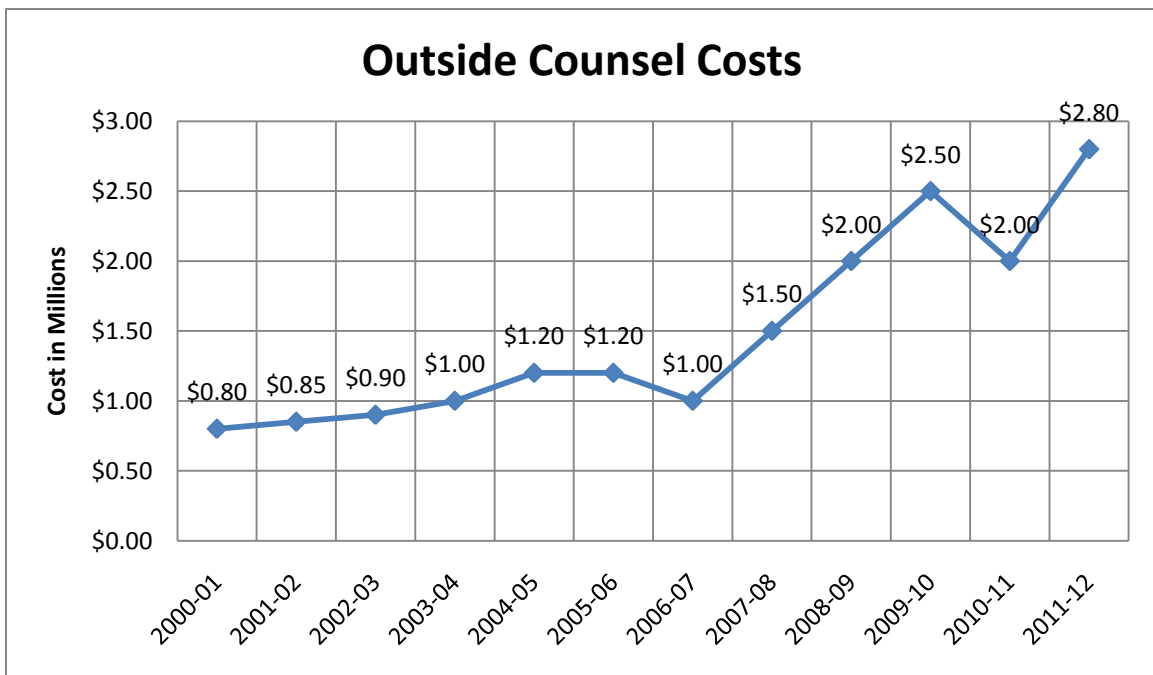
APPENDIX C

Payouts of Claims, Lawsuits & Arbitrations of more than \$100,000

Case	Type	Attorney	In House / Outside	Amount Sought	Payout
Joe Smith	Police	Carl King	In house	\$300,000	\$300,000
Adam Davis	Public Works	Jane Egan	Outside	\$2,000,000	\$900,000
David Jones	Vehicle Accident	Larry Guzman	In house	\$1,000,000	\$200,000

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APPENDIX D



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APPENDIX E

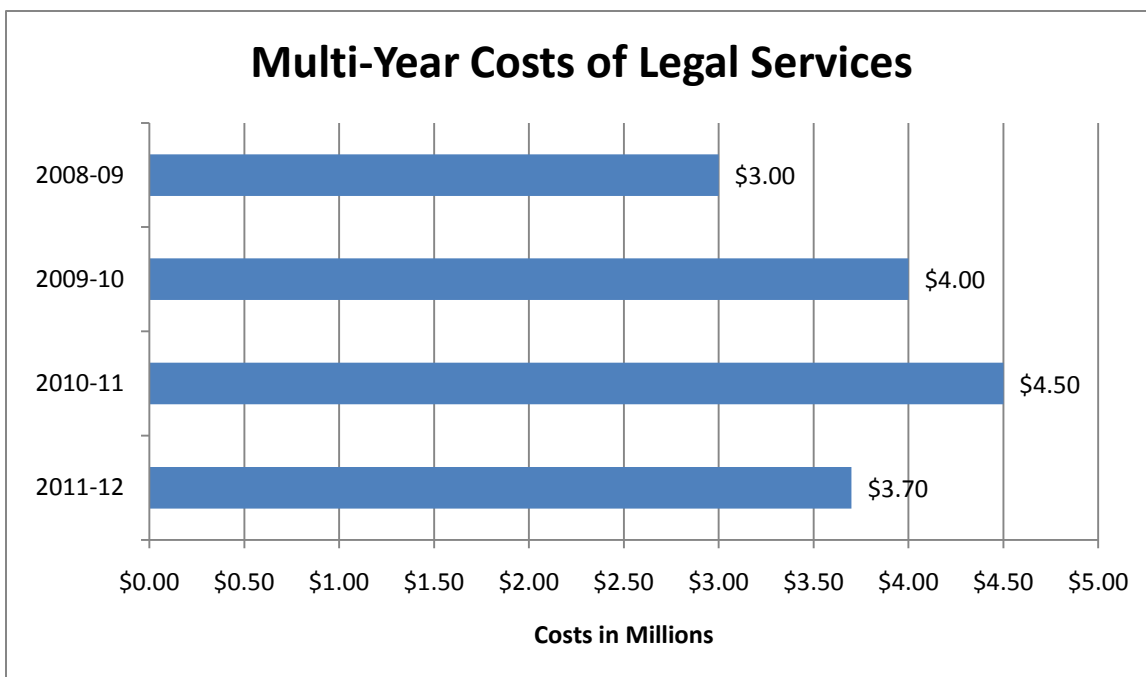
Cost Comparison: In-House v. Outside Counsel

<i>Litigation</i>	Amount
Deputy City Attorney (Salary and Benefits) (1500 billable hours)	\$150,000
Costs for Outside Counsel to handle same work (\$135 x 1500 hours)	\$202,500
Potential Additional Cost to the City	\$52,500

<i>Transactional/Advisory</i>	Amount
Deputy City Attorney (Salary and Benefits) (1500 billable hours)	\$150,000
Costs for Outside Counsel to handle same work (\$200 x 1500 hours)	\$300,000
Potential Additional Cost to the City	\$150,000

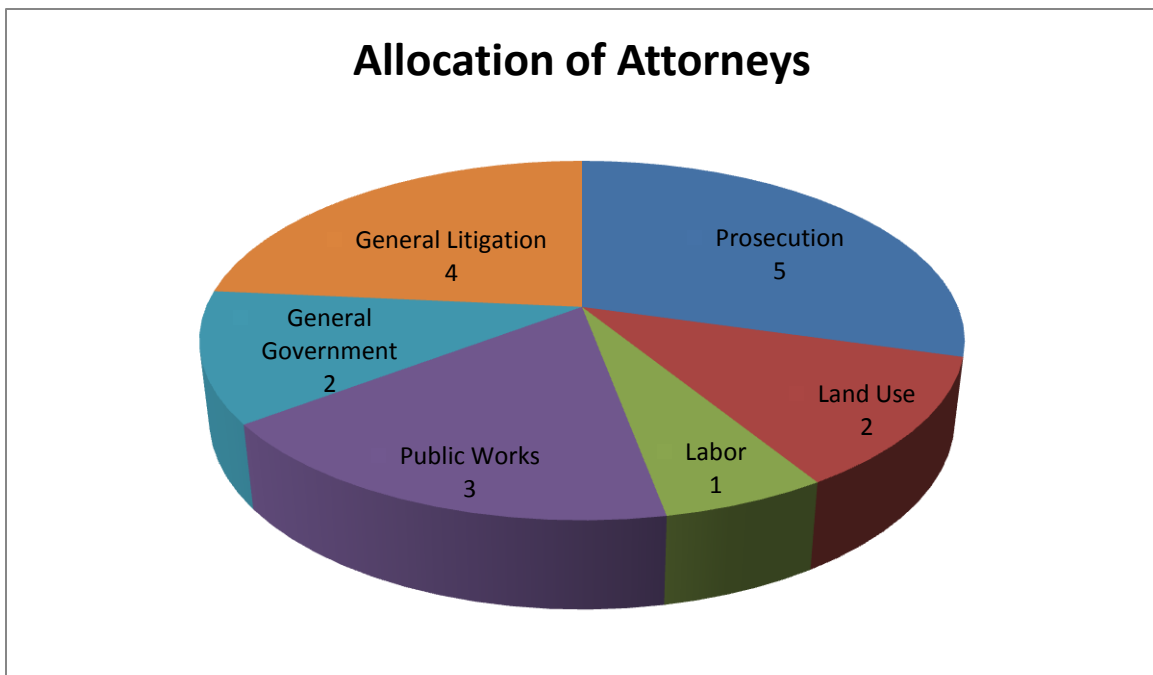
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APPENDIX F



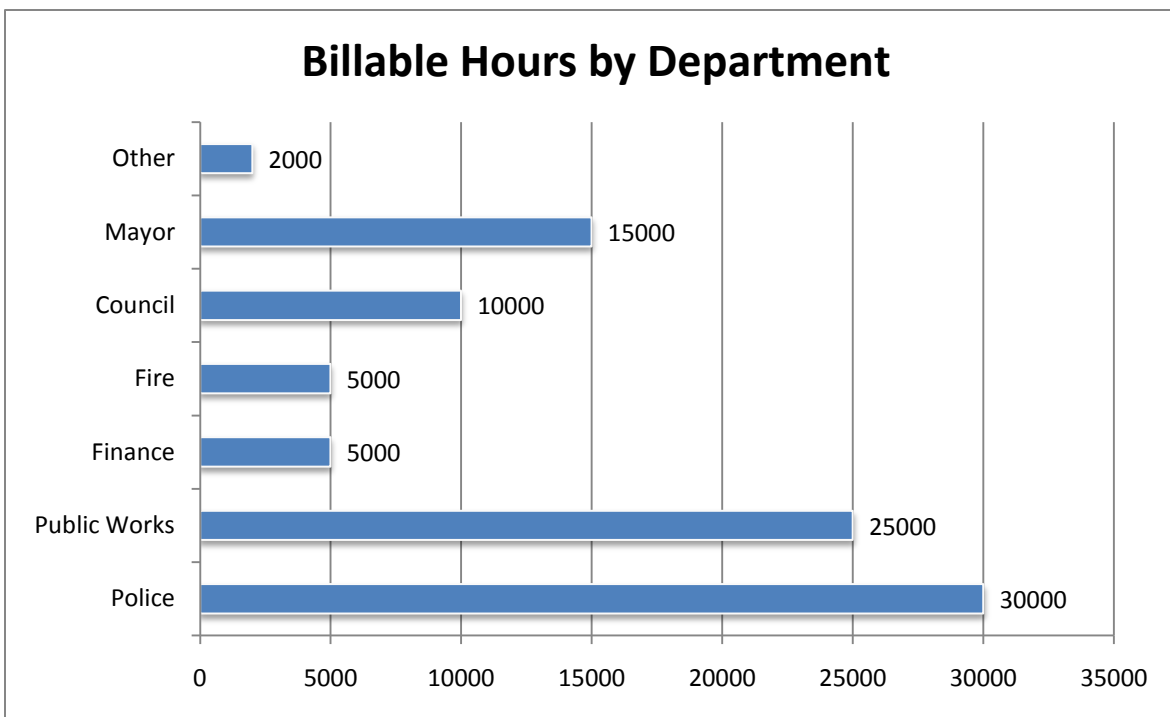
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APPENDIX I

Types of Claims Received

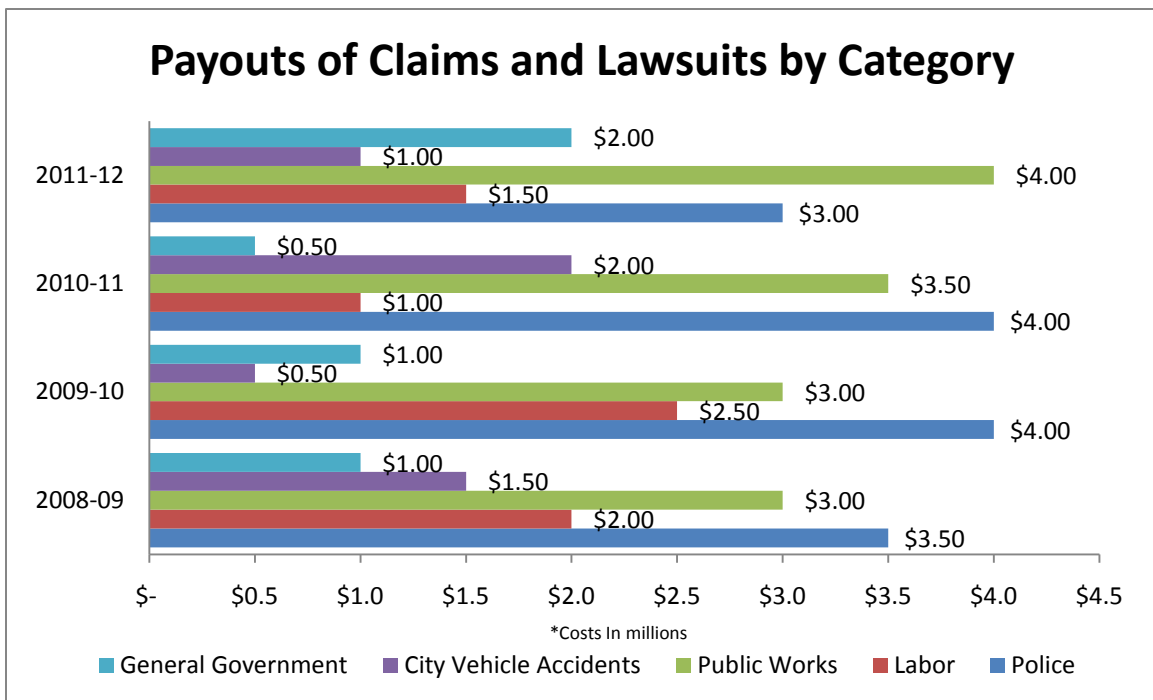
Category	06-07	07-08	08-09	09-10	10-11	5-year average
Public Works	210	200	230	170	190	200
Police Matters	130	140	138	136	120	132.8
City Vehicle Accidents	50	55	40	47	38	46
Other	60	62	47	55	52	55.2
Total	450	457	455	402	400	432.8

Types of Lawsuits Received

Category	06-07	07-08	08-09	09-10	10-11	5-year average
Public Works	45	40	42	38	38	40.6
Police Matters	34	30	31	20	28	28.6
City Vehicle Accidents	21	30	27	32	24	26.8
Other	10	15	10	10	20	13
Total	110	115	110	100	110	109

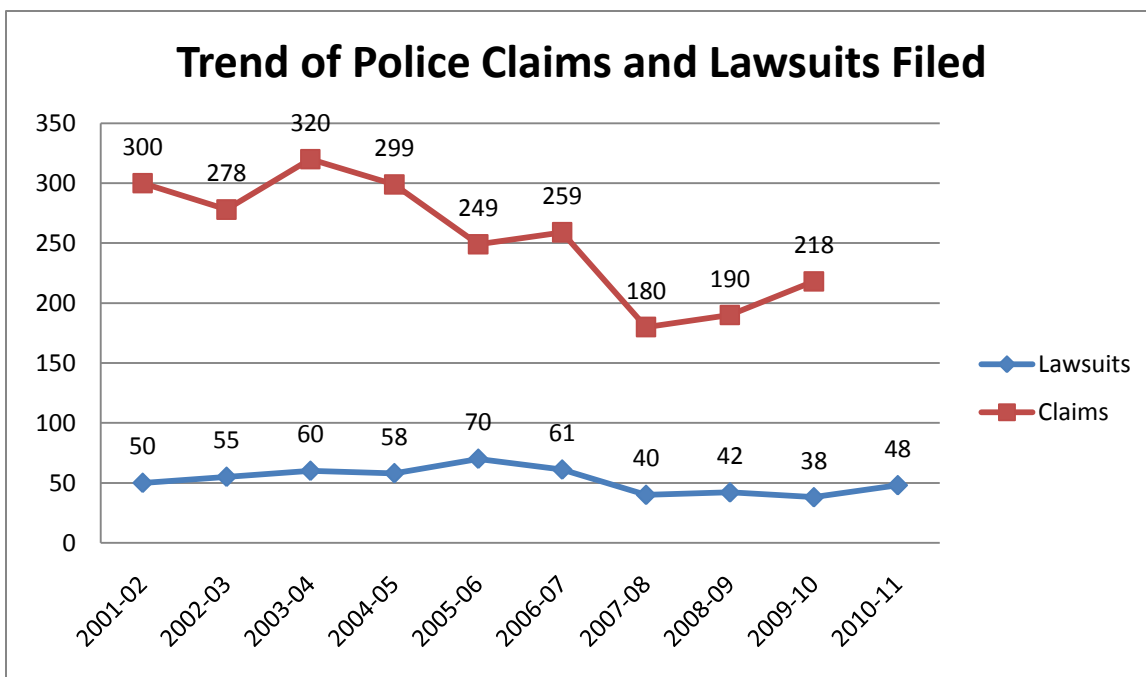
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