



Eliminating FCHR Would Limit Options and Increase Costs to Citizens Seeking Remedy for Discrimination

at a glance

Although other state, federal, and local entities enforce anti-discrimination laws, the Florida Commission on Human Relations does not duplicate the functions of these entities due to differences in jurisdiction, types of complaints processed, and provisions of applicable laws. The commission provides a reasonably effective method for resolving discrimination complaints, although it should examine the results of its new internal reviews of complaint investigations and revise investigative procedures as needed to address quality issues. It would not be cost-effective to authorize the commission to hold its own administrative hearings. Eliminating the commission could simplify the process for pursuing discrimination complaints. However, it would reduce citizens' options for addressing discrimination complaints, likely increase costs to Florida citizens and the state, and lengthen resolution time.

- Does the commission provide an effective method for citizens to resolve discrimination complaints?
- Would it be cost-effective to authorize the commission to hold all administrative hearings in-house rather than using the Division of Administrative Hearings?
- What would be the advantages and disadvantages of eliminating the commission?

Background

The Florida Commission on Human Relations (FCHR) was created in 1969 under Ch. 760, *Florida Statutes*. The purpose of the commission is to eliminate discrimination by promoting and encouraging fair treatment, equal opportunity, mutual understanding, and respect among Florida residents. FCHR is responsible for enforcing the provisions of the Florida Civil Rights Act, Florida Fair Housing Act, and Whistle-blower's Act.¹

Scope

As directed by the Legislature, OPPAGA examined the Florida Commission on Human Relations' (FCHR) role in providing civil remedies for Florida citizens who feel they have been discriminated against. Our report answered four questions.

- Is there duplication between the Commission on Human Relations and other federal, state, and local entities that also process discrimination complaints?

¹ Sections 760.01-760.11 and 509.092, *F.S.* (The Florida Civil Rights Act), prohibit discrimination in employment and public accommodations on the basis of race, color, religion, sex, handicap, national origin, age and marital status. Sections 760.20-760.37, *F.S.* (Florida Fair Housing Act), prohibit discrimination in housing based on race, color, national origin, sex, handicap, religion, and familial status. Sections 112.3187-112.31895, *F.S.* (Whistle-blower's Act), protect employees from any form of retaliation by the agency for which they work in cases where they disclose information about actual or suspected violations or misconduct.

Complaint Resolution Process. Exhibit 1 illustrates FCHR's complaint handling process. The commission accepts and investigates complaints from citizens who believe they have been discriminated against in the areas of housing, employment, and certain public accommodations, as well as those who believe they have been retaliated against for filing a whistle blower complaint.² For example, individuals may file a complaint with the commission alleging they were denied rental of an apartment because of their race or familial status, or if they believed that their employment was terminated based on a disability.

If FCHR has jurisdiction over an allegation and filing requirements are met, the complaint is docketed and accepted for investigation.³ If the investigator determines that both parties desire mediation, the case is forwarded to the commission's mediation unit. Mediation provides for an exchange of concerns from both the complainant and the respondent to work toward a possible resolution acceptable to both parties, prior to the commission's full investigation. Mediation can be beneficial to both parties because it reduces potential costs for respondents and helps complainants avoid potential mental anguish and the perception of retaliation. If the parties in mediation cannot reach agreement, the case proceeds to investigation.

The commission investigates complaints by interviewing complainants, respondents, and witnesses having knowledge of the alleged violation, requesting relevant documents and other evidence, and researching case law. Based on information obtained during an investigation, a recommendation is made to the executive director as to whether there is reasonable cause to believe that a discriminatory act has occurred.⁴

If the executive director issues a determination of reasonable cause, the complainant may either file a civil action with the court or request an administrative hearing with the Florida Division of Administrative Hearings (DOAH). If a determination of no reasonable cause is issued, the executive director dismisses the complaint and the complainant may request an administrative hearing, but by statute, may not proceed to civil court.

After hearing a case, DOAH issues a recommended order to the commission.⁵ A panel of 3 of the 12 FCHR commissioners reviews each case and issues a final order based on the results of their vote. Final orders can be appealed to the District Court of Appeal.

FCHR dismisses some complaints before making a determination. For example, complaints can be dismissed if FCHR does not have jurisdiction over the respondent or subject matter of the complaint, or if the complainant fails or refuses to cooperate or did not timely file the complaint. In some instances, the complainant negotiates a settlement or voluntarily dismisses or withdraws the complaint before the investigation is completed. Some complaints also are resolved through mediation or conciliation.⁶

During Fiscal Year 2004-05, the commission received 3,153 housing and employment complaints and closed 3,794.^{7,8} Most (88%) of the complaints received alleged discrimination in employment. Appendix A shows the complaints received during Fiscal Year 2004-05 by type and basis.

² Public accommodations include food and lodging establishments, certain private clubs and places of exhibition or entertainment such as stadiums, sports arenas, and theaters.

³ Complaints determined to be outside of the commission's jurisdiction can be referred to other agencies.

⁴ If FCHR fails to determine whether there is reasonable cause within 180 days of the date of filing, the complainant can file a lawsuit in civil court.

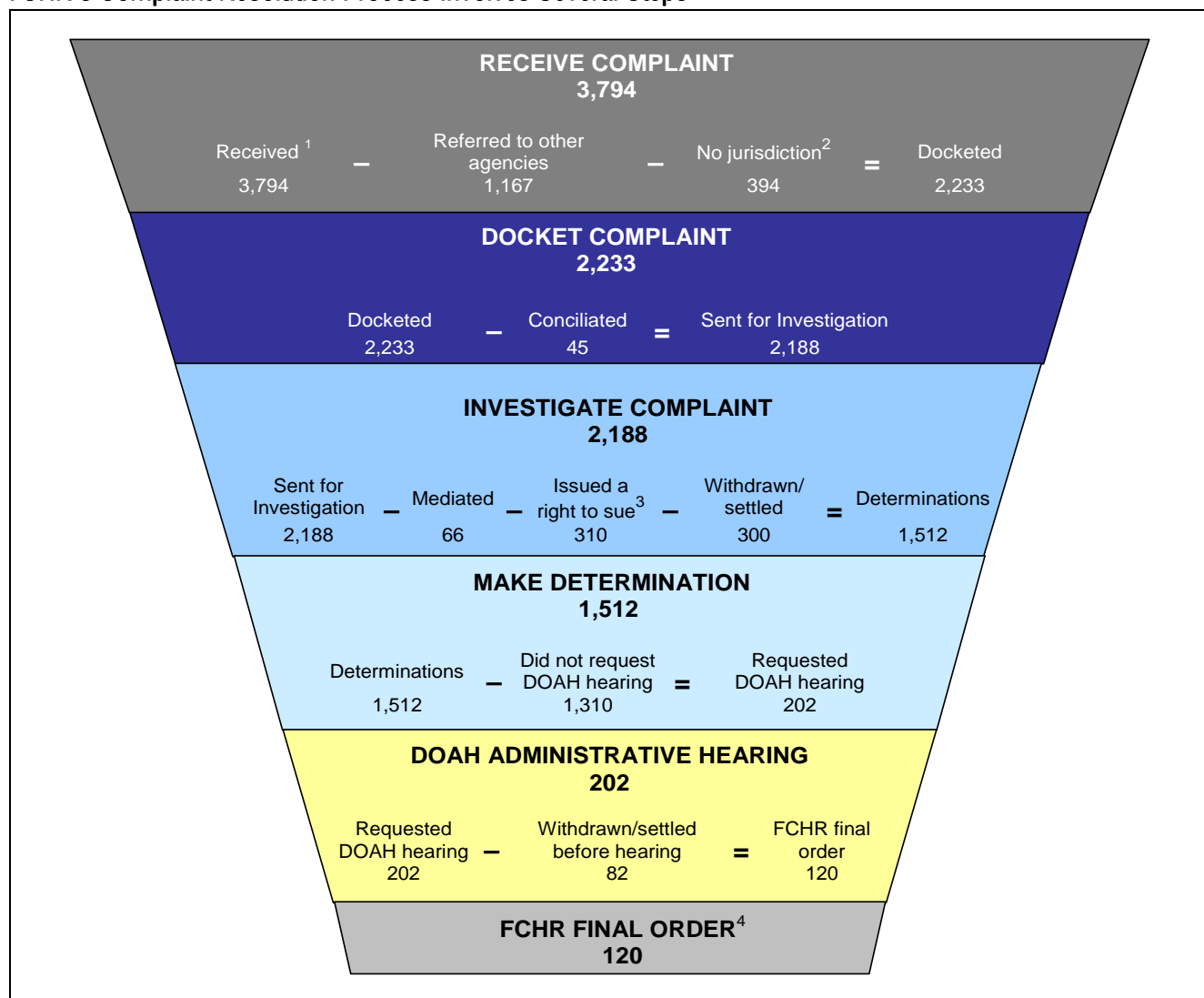
⁵ If the administrative law judge finds that a violation has occurred, a recommended order prohibiting the practice and recommending relief for the complainant is issued.

⁶ During conciliation the commission attempts to achieve a just resolution of all violations found and obtain an agreement that the respondent will eliminate the unlawful practice and provide appropriate affirmative relief.

⁷ The commission also received 32 whistle-blower retaliation complaints and closed 35 during this period.

⁸ Complaints closed during Fiscal Year 2004-05 include some complaints which were received during the previous year. Beginning inventory for Fiscal Year 2004-05 was 1,578 complaints.

Exhibit 1
FCHR's Complaint Resolution Process Involves Several Steps



¹ During Fiscal Year 2004-05, FCHR closed 3,794 complaints alleging violations in employment, housing and public accommodations. Whistle-blower retaliation complaints are processed differently and are not included in this total. FCHR closed 35 whistle-blower retaliation complaints during this period.

² When FCHR does not have jurisdiction over a complaint, the complainant may seek remedy by filing a civil lawsuit or requesting an administrative hearing.

³ When FCHR fails to conciliate a complaint or determine whether there is reasonable cause within 180 days of filing, FCHR issues a notice of right to sue to the complainant. This allows the complainant to file a civil lawsuit or request an administrative hearing.

⁴ Final orders can be appealed to the District Court of Appeal.

Source: OPPAGA analysis.

As shown in Exhibit 2, the commission disposes of many complaints it receives before making a formal determination whether there is sufficient evidence to find reasonable cause that a discriminatory act has taken place. In Fiscal Year 2004-05, FCHR closed the majority (60%) of its cases without making a determination. Most of these complaints were referred to other entities (31%), while others were deemed outside the commission's jurisdiction (10%), withdrawn (8%), or resolved through mediation (2%) or conciliation (1%).

Exhibit 2 60% of Complaints Were Closed Prior to Making a Determination in Fiscal Year 2004-05

Closed Prior to Making a Determination				
	Employment	Housing	Total	Percent
Referred to other agencies	1,157	10	1,167	31%
No jurisdiction	394	0	394	10%
Withdrawn or settled	271	29	300	8%
Failed to make determination within 180 days	310	0	310	8%
Conciliation ¹	0	45	45	1%
Mediation	66	0	66	2%
Subtotal	2,198	84	2,282	60%
Closed After Making a Determination				
	Employment	Housing	Total	Percent
Cause	35	39	74	2%
No Cause	1,064	255	1,319	34%
No Jurisdiction	110	9	119	3%
Subtotal	1,209	303	1,512	40%
Total	3,407	387	3,794	100%

¹ Does not include cases conciliated after FCHR determined whether there was sufficient evidence to find reasonable cause that a discriminatory act occurred.

Source: Florida Commission on Human Relations.

In addition to investigating complaints, FCHR provides technical assistance to employers to inform them of laws, policies, and practices they could employ to ensure compliance. The commission also conducts workshops on fair housing practices for tenants, homeowners, first-time home buyers, real estate brokers, and landlords. Additionally, the commission provides training in conflict resolution, provides forums for groups to discuss and settle conflicts, and assists local governments in developing human relations councils.

FCHR is administratively housed within the Department of Management Services, but is not subject to the control, supervision, or direction of the department. FCHR is composed of 12 commissioners who are appointed by the Governor, subject to Senate confirmation, for four-year terms.⁹ Commissioners are volunteers who are paid a stipend of \$50 for each day the commission convenes and reimbursement for per diem and other travel expenses.

Resources. FCHR is funded predominantly from general revenue. For Fiscal Year 2005-06, the commission was appropriated \$5.2 million, of which \$3.8 million (73.8%) was from general revenue and \$1.4 million was from trust funds. The primary sources of FCHR's trust fund revenues are federal reimbursements from the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Housing and Urban Development (HUD) for cases the commission processes on the agencies' behalf.¹⁰ The commission has 71 authorized positions.

Questions and Answers —

Is there duplication between the Commission on Human Relations and other federal, state, and local entities that also process discrimination complaints?

Although other state, federal, and local agencies enforce anti-discrimination laws, FCHR does not duplicate the functions of these entities due to differences in jurisdiction, types of complaints processed, and provisions of applicable laws. Duplication also is avoided through cooperative agreements between the commission and these entities.

As shown in Exhibit 3, other agencies at the federal, state, and local level enforce anti-discrimination and whistle-blower laws. For example, the U.S. Equal Employment Opportunity Commission and

⁹ Members of the commission must be broadly representative of various racial, religious, ethnic, social, economic, political, and professional groups within the state. At least one member must be 60 years of age or older.

¹⁰ The EEOC provides at least \$500 per case for a predetermined number of cases, and may increase the contract depending on federal funding appropriations. HUD reimburses FCHR for cases closed within the parameters of HUD guidelines. HUD provides a maximum of \$2,400 per no cause case and \$2,900 per cause case.

the U.S. Department of Housing and Urban Development enforce anti-discrimination laws at the federal level, while the Attorney General's Office of Civil Rights and the Office of the Chief Inspector General are state level agencies that address these issues. Some Florida municipalities and counties also have offices that perform similar functions.

Exhibit 3 State, Federal, and Local Entities Enforce Anti-Discrimination Laws

	Entity	Types of Cases Handled	Jurisdiction
FEDERAL	U.S. Equal Employment Opportunity Commission	Employment	19 Counties
	U.S. Department of Housing & Urban Development	Housing	Complaints alleging violations by entities receiving federal funding
STATE	Attorney General	Employment	If a pattern or practice of discrimination exists or case raises an issue of great public interest
		Housing	If a pattern or practice of discrimination exists or case raises an issue of great public interest
		Public Accommodations	If a pattern or practice of discrimination exists or case raises an issue of great public interest
	Chief Inspector General	Whistle-blower	All counties
	Florida Commission on Human Relations ¹	Employment	42 counties ²
		Housing	59 counties
		Public Accommodation	Areas not served by local entities
LOCAL	City Government Agencies	Whistle-blower Retaliation	All counties
		Varies according to local ordinances and contracts with EEOC or HUD	Within city only
	County Government Agencies	Varies according to local ordinances and contracts with EEOC or HUD	Within county only

¹ Persons under the jurisdiction of local offices may choose to file their complaint with the commission if the allegations are also prohibited by state law. However, to eliminate the duplication of efforts, the commission notifies the other entity of such a filing.

² FCHR processes complaints from the other 25 counties only under special circumstances, such as if a complaint alleges more than one basis of discrimination where at least one basis is not covered by federal laws but is covered by the Florida Civil Rights Act.

Source: OPPAGA analysis.

FCHR has agreements with federal entities to avoid duplication. The U.S. Equal Employment Opportunity Commission and the U.S. Department of Housing and Urban Development enforce federal laws prohibiting discrimination in employment and housing. FCHR has cooperative agreements with both federal agencies under which it provides case processing services and receives funding for these activities. The commission received \$1.6 million in Fiscal Year 2004-05 for providing services for these federal agencies through such cooperative agreements.

The U.S. Equal Employment Opportunity Commission (EEOC) enforces federal laws prohibiting discrimination in employment and also provides oversight and coordination of all federal equal employment opportunity regulations, practices, and policies. ¹¹ Federal laws prohibit employment discrimination based on race, color, religion, sex, national origin, age, or disability. Any individual who believes his/her employment rights have been violated may file a charge of discrimination with the EEOC. ¹² Two EEOC offices are located in Florida, in Miami and Tampa.

The EEOC contracts with FCHR to receive and process complaints alleging violations of federal discrimination laws. ¹³ This contract enables persons in 42 of Florida's counties to file a single complaint alleging violations of both federal and state law rather than separate complaints with the two agencies. ¹⁴ Under the contract, FCHR receives at least \$500 per case it closes. FCHR closed 1,385 cases in Fiscal Year 2004-05 and received \$716,200 from the EEOC for these services.

¹¹ Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, Title I and Title V of the Americans with Disabilities Act of 1990, Sections 501 and 505 of the Rehabilitation Act of 1973, and the Civil Rights Act of 1991.

¹² All laws enforced by the EEOC, except the Equal Pay Act, require filing a charge with the EEOC before a private lawsuit may be filed in court and generally requires that a charge be filed within 180 days from the date of the alleged violation.

¹³ The EEOC uses contractual agreements to provide funding and support to state and local Fair Employment Practice Agencies nationwide. These agencies process discrimination charges which raise claims under state or local laws prohibiting employment discrimination as well as the federal laws enforced by the EEOC.

¹⁴ The EEOC generally processes employment complaints from the remaining 25 counties. However, FCHR may process certain complaints from these counties that address special circumstances such as a complaint alleging more than one basis of discrimination where at least one basis is not covered by federal laws but is covered by the Florida Civil Rights Act.

Under the contract, FCHR automatically dual-files charges of discrimination covered under federal as well as applicable state laws. When it receives complaints alleging violations of federal law, FCHR forwards the complaints, as well as the affidavits taken at the time of intake, to the EEOC, which protects the complainant's federal rights. However, EEOC does not process the complaint pending the outcome of FCHR's investigation. This arrangement avoids duplication of effort while ensuring that a complainant's rights are protected under all applicable laws. FCHR also refers complaints that are not within its jurisdiction to the EEOC.

FCHR has a somewhat similar agreement with the U.S. Department of Housing and Urban Development (HUD). This federal agency's Office of Fair Housing and Equal Opportunity administers and enforces the Fair Housing Act (Title VIII of the Civil Rights Act of 1968) and other civil rights laws to ensure equal access to housing.¹⁵ These laws prohibit housing discrimination based on race, color, national origin, religion, sex, familial status, or disability. Individuals who believe their rights have been violated can file a fair housing complaint with the Office of Fair Housing and Equal Opportunity. Four HUD offices are located in Florida, in Jacksonville, Miami, Orlando, and Tampa.

Through its Fair Housing Assistance Program, HUD provides grants to FCHR to enforce federal housing laws.¹⁶ Under this agreement, FCHR processes housing complaints for most areas of the state.¹⁷ In Fiscal Year 2004-05, the commission closed 329 housing cases and received \$928,939 from HUD for these services.¹⁸

¹⁵ Includes Title VI of the Civil Rights Act of 1964, Section 109 of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments Act of 1972, and the Architectural Barriers Act of 1968.

¹⁶ To be eligible for this program, an agency must demonstrate that its fair housing law is substantially equivalent to Title VIII of the Civil Rights Act of 1964 (Fair Housing Act). This means the law must provide substantive rights, procedures, remedies and judicial review provisions equivalent to federal law.

¹⁷ CHR does not process complaints from Bradenton, Broward County, Hillsborough County, Lee County, Jacksonville, Orlando, Palm Beach County, Pinellas County, St. Petersburg, and Tampa. Housing complaints from these areas are processed by local agencies certified by HUD.

¹⁸ HUD provides a maximum of \$2,400 per no cause case and \$2,900

FCHR's responsibilities differ from other state entities. Although the Attorney General and the Chief Inspector General also accept and resolve certain civil rights complaints filed by Florida citizens, the commission's statutory obligations and services differ from these entities.

The Florida Civil Rights Act authorizes the Attorney General to commence civil action against any person or group believed to have engaged in a pattern or practice of discrimination or when discrimination raises an issue of great public interest. For such cases, its Office of Civil Rights enforces civil rights laws on behalf of the state of Florida through litigation. Conversely, FCHR is primarily responsible for receiving, investigating, and conciliating individual complaints alleging discrimination.

FCHR can refer some cases to the Attorney General for prosecution. For example, if the commission determines that there is reasonable cause that a discriminatory housing practice has occurred that is prohibited under the Florida Fair Housing Act, complainants are given the option of allowing the commission to initiate a lawsuit on their behalf or have the case referred to the Office of the Attorney General for prosecution. In Fiscal Year 2004-05, the commission referred 11 housing cases to the Attorney General for prosecution. Similarly, if FCHR receives a charge of discrimination that contains an issue of great public importance or a pattern or practice of discrimination, the commission may refer the case to the Attorney General. The commission did not refer any such complaints to the Attorney General in Fiscal Year 2004-05.

The Chief Inspector General and FCHR share responsibility for implementing the provisions of the Florida Whistle-blower's Act.¹⁹ The Chief Inspector General is primarily responsible for accepting and coordinating the investigation of "whistle-blower complaints," which allege improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee.²⁰

per cause case closed within its guidelines.

¹⁹ Sections 112.3187-112.31895, *F.S.*

²⁰ The Office of the Chief Inspector General conducts a preliminary assessment of complaints received to determine if there is sufficient information for whistle blower designation and investigation. However, complaints are then referred to the respective agency

FCHR is the sole agency responsible for investigating complaints of retaliation against people who have made whistle-blower complaints.

While state law authorizes both the Chief Inspector General and FCHR to accept complaints of retaliation by an employer against whistleblowers, the two entities coordinate their efforts to avoid duplication. FCHR refers whistle-blower complaints to the Chief Inspector General, which in turn forwards complaints of retaliation to FCHR for investigation. The commission did not refer any whistle-blower complaints to the Chief Inspector General in Fiscal Year 2004-05 and did not receive any referrals of retaliation against whistle-blowers from the Chief Inspector General.²¹

Jurisdiction determines responsibility of FCHR and local entities. Several cities and counties in Florida have local ordinances prohibiting discriminatory practices. Local agencies are responsible for and only have jurisdiction to process complaints from their respective geographic areas, while the commission is responsible for all other areas of the state that are not under the jurisdiction of such local agencies. FCHR will receive and process complaints alleging violations prohibited by the Florida Civil Rights Act but not by local ordinances. FCHR also does not typically process EEOC or HUD complaints from cities and counties that have contracted with the federal agencies to handle these cases locally.²² However, these local agencies may dual file complaints that also allege violations of Florida law with FCHR in order to protect the complainant's state rights. These processes avoid duplication of effort while ensuring the complainant's rights are protected under all applicable laws.

inspector general for investigation.

²¹ As a matter of procedure, FCHR sends a copy of every whistle-blower retaliation complaint to the Chief inspector General upon receipt.

²² Broward County, Orlando, St. Petersburg, Tampa, Miami-Dade County, Hillsborough County, Jacksonville, Lee County, Palm Beach County, and Pinellas County have Fair Employment Practices agencies authorized to receive referral cases from the EEOC. Persons under the jurisdiction of local offices may choose to file their complaint with the commission if the allegations are also prohibited by state law. However, to eliminate the duplication of efforts, the commission notifies the other entity of such a filing.

Does FCHR provide an efficient method for citizens to resolve complaints?

FCHR provides an efficient method for resolving discrimination complaints, timely disposing of most cases that proceed to the determination of reasonable cause. However, stakeholder feedback indicates that the commission's investigation process could be improved.

The commission provides a time-efficient method for resolving cases, closing most cases within statutory timeframes. According to state law, within 180 days of complaint filing, FCHR must determine whether there is reasonable cause that a violation of the Florida Civil Rights Act has occurred.²³ When a determination is not made within this period, FCHR issues a notice of right to sue, which allows the complainant to file a lawsuit in civil court or request an administrative hearing. Of the 3,794 complaints closed in Fiscal Year 2004-05, FCHR issued a notice of right to sue for 310, which indicates that for 92% of its cases, the commission closed the case or made its determination within the statutory timeframe. The number of complaints for which FCHR issued a notice of right to sue was higher in previous years when the commission had an ongoing case backlog problem. FCHR issued a right to sue for 585 (21%) of the cases closed during Fiscal Years 1999-00 and 2000-01.²⁴

The commission may be unable to make a determination within 180 days of complaint filing for several reasons. For example, complex cases with multiple parties, cases that spend time in mediation but were unsuccessful, and cases that involve issuing or enforcing subpoenas affect the commission's ability to make a determination within 180 days. The commission also may be incapable of making a determination within 180 days when parties do not cooperate or fail to timely provide information requested during an investigation.

Although FCHR provides an efficient method to resolve discrimination complaints, until recently it has not been conducting a legal review of

²³ Section 760.11(3), *F.S.*

²⁴ *Commission on Human Relations, Operational Audit*, Florida Auditor General, Report No. 2002-102, November 2001.

investigation reports as required by administrative rule. Rule 60Y-5.004, *Florida Administrative Code*, requires the commission's Office of Employment Investigations to send completed investigation reports and associated recommendations to its Office of General Counsel if complaints were not settled or withdrawn. The Office of General Counsel is required to review the report and make a recommendation to the executive director as to whether there is reasonable cause. However, until May 2005, FCHR investigators were submitting investigation reports for legal review only if they recommended that a finding of reasonable cause be made or that the case be dismissed because the commission lacked jurisdiction. Under this process, 87% of the cases for which FCHR issued a determination in Fiscal Year 2004-05 were not subject to the Office of General Counsel's review.²⁵ According to FCHR officials, the commission did not have the staff necessary to review completed investigation reports as required.

Stakeholders within the legal community expressed concerns to us regarding the quality of the investigations conducted by FCHR staff. These stakeholders generally believed that FCHR investigations were not thorough, and investigators lacked the knowledge to perform their duties. Improper or incomplete investigations can affect the commission's decisions, thus affecting both the complainant and the respondent.²⁶

In May 2005, the commission began conducting legal review of completed investigation reports with no cause recommendations, as required by administrative rule. Since it began reviewing investigation reports of cases with no cause recommendations, the commission has identified deficiencies in the documentation presented by investigators to support their recommendations. To address these deficiencies, the commission now returns cases to investigators for additional documentation and has increased the training it provides to investigators. The commission hired two additional attorneys to assist with its review

of investigation reports. This increased scrutiny ensures complaints are investigated properly and evidence necessary to support FCHR's determination has been obtained.

Would it be cost-effective to authorize FCHR to hold administrative hearings in-house rather than using the Division of Administrative Hearings?

FCHR pays the Division of Administrative Hearings (DOAH) for conducting hearings, and over the years administrative hearing costs have increased significantly. To reduce its costs, the commission has considered requesting authorization to conduct administrative hearings in-house rather than using DOAH services. However, this action likely would increase the state's overall costs.

Complainants may request an administrative hearing after FCHR determines whether there is reasonable cause to believe a discriminatory practice has occurred. When FCHR determines there is reasonable cause, the administrative hearing provides remedy to the aggrieved person. When FCHR determines there is no reasonable cause, an administrative hearing serves as an appeal of the commission's decision.²⁷

DOAH conducts these hearings and issues recommended orders to FCHR that either uphold or overturn the commission's reasonable cause determination. DOAH bills FCHR for these hearings based on the amount of time spent on its cases. In Fiscal Year 2004-05, DOAH issued 122 recommended orders to FCHR and billed it for 517.75 hearing hours. The commission paid \$559,328 for DOAH hearing services during Fiscal Year 2004-05.²⁸

²⁷ If the complainant requests an administrative hearing after the commission determines there is reasonable cause, the commission can hear the case or request that it be heard by a DOAH administrative law judge. However, if an administrative hearing is requested after the commission determines there is not reasonable cause, the complaint can only be heard by a DOAH administrative law judge and not by the commission.

²⁸ DOAH conducts administrative hearings for numerous non-state entities and state agencies, in addition to FCHR. DOAH bills agencies for hearing services using data from two fiscal years prior to the year of billing. As a result, this amount is FCHR's cost for hearings held in FY 2002-03. DOAH has requested that FCHR pay \$981,794 during Fiscal Year 2006-07 for hearings held during Fiscal Year 2004-05.

²⁵ FCHR issued a determination of no cause for 1,319 cases of the 1,512 cases for which it issued a determination during this period.

²⁶ Investigators perform various tasks to gather and provide information needed by the commissioners to determine whether there is a reasonable cause to believe that discrimination has occurred, including conducting interviews, researching case law, and requesting documents and other evidence relevant to the complaint.

Over the past five years, FCHR's payments to DOAH have increased from \$197,636 to \$918,665 (see Exhibit 4); DOAH has requested \$981,794 from FCHR for Fiscal Year 2006-07. During this period, the percentage of total commission appropriations allocated to DOAH hearings rose from 5% to almost 18%. According to FCHR officials, these costs have increased primarily because the commission reduced its case backlog and now processes complaints more timely, which has resulted in more cases being heard by DOAH. The commission stated that its inventory of cases has begun to level off and should stabilize the number of cases heard by DOAH. However, due to DOAH's method for assessing fees to state agencies, this will not be reflected in the commission's appropriations for hearings until Fiscal Year 2006-07.

Exhibit 4

FCHR Was Appropriated Almost \$1 Million for DOAH Hearings in Fiscal Year 2005-06

Fiscal Year	Total Appropriations	Appropriations for Hearings	Percent of Total
2001-02	\$4,144,291	\$197,636	4.77%
2002-03	4,451,029	371,296	8.34%
2003-04	4,788,277	595,029	12.43%
2004-05	4,877,375	559,328	11.47%
2005-06	5,240,784	918,665	17.53%

Source: OPPAGA analysis.

FCHR estimates that it could conduct these hearings in-house at a cost of \$375,403 per year.²⁹ To accomplish this, the commission proposes hiring two administrative law judges and a clerk, as well as establishing policies and implementing internal controls.³⁰ Some other states use in-house hearings to resolve discrimination complaints. For example, in Massachusetts, complainants appealing a determination of lack of probable cause receive an informal hearing before the investigating commissioner and a public

²⁹ FCHR estimates that this cost would be reduced by approximately \$100,000 if it used hearing officers instead of administrative judges.

³⁰ FCHR made 222 requests to DOAH for administrative hearings. Although DOAH spent 517.75 hours on FCHR cases and issued 122 recommended orders during Fiscal Year 2004-05, this accounts for only a portion of all hearings conducted for state and non-state entities during that period. Because FCHR would only conduct hearings for its own cases, generally it can be anticipated that FCHR would be able to conduct hearings for more of its cases during a similar time period.

hearing before three commissioners when a determination of probable cause is made and parties are unable to resolve the dispute. Similarly, complainants in Montana appealing a no cause determination receive a hearing before the state's Human Rights Commission rather than an administrative hearing by an outside entity.

Authorizing FCHR to conduct administrative hearings in-house would reduce the commission's costs and could result in more timely resolution of cases if the commission's hearings were held earlier than DOAH hearings.³¹ As the FCHR administrative judges would hear only discrimination-related cases, they could develop more specialized expertise in this area of law than DOAH administrative judges, which must hear a wide variety of cases. Finally, removing FCHR cases from DOAH's workload could enable the division to provide more timely hearings to other entities.

However, authorizing FCHR to conduct in-house hearings would also produce two important disadvantages. First, as the administrative judges must rule on the probable cause determinations made by the executive director, placing these judges within FCHR would reduce their independence. This would result in the same entity conducting investigations, making determinations, and judging the merit of these determinations. Second, the action would not produce net cost savings for the state unless the Legislature reduced DOAH's budget by an equal or greater amount.³² This could be difficult to accomplish as DOAH does not have administrative judges specifically assigned to FCHR's cases.

What would be the advantages and disadvantages of eliminating FCHR?

As federal law does not require states to have an agency for enforcing anti-discrimination laws, the Legislature could eliminate FCHR. Eliminating the commission could simplify the process for

³¹ Hearings are generally held within 120 days after the case is referred to DOAH.

³² OPPAGA has examined DOAH's fee assessment method in two reports. See *Division of Administrative Hearings Significantly Improves Method of Assessing Fees*, [Report No. 04-48](#), July 2004 and *Division of Administrative Hearings Method of Assessing Fees Needs Significant Revision*, [Report No. 02-70](#), December 2002.

pursuing discrimination complaints but would produce several adverse effects, including restricting options for Florida's citizens to address discrimination complaints, increased court costs, and lengthened resolution time.

Some states do not have a state-level entity to enforce anti-discrimination laws. While most states (48) have established a state-level entity to enforce anti-discrimination laws, some states have not done so or the jurisdiction of these entities varies. Currently, Alabama and Mississippi do not have state agencies to enforce anti-discrimination laws in employment and housing. Some other states have entities with more limited jurisdiction than FCHR. For example, the Georgia Commission on Equal Opportunity enforces employment anti-discrimination laws only for state employees, and the North Carolina Human Relations Commission enforces anti-discrimination laws only in housing. Residents of such states must file a lawsuit in court to enforce discrimination claims under provisions of state laws that go beyond the provisions of federal law.

Eliminating FCHR would simplify case processing. FCHR's complaint handling process includes numerous steps that result in decisions being made by multiple entities. For example, after FCHR's executive director determines whether there is reasonable cause, DOAH issues a recommended order if an administrative hearing is held, and then a panel of commissioners issues a final order. Eliminating the commission would leave civil action as the primary option for citizens to obtain state remedies for discrimination. Court decisions in civil actions to resolve discrimination complaints represent a less complex resolution process. In addition, eliminating FCHR's role would enable complainants who eventually file in civil court after going through the commission and DOAH processes to take this step earlier in the process.³³

Eliminating FCHR would produce several disadvantages. However, eliminating the commission would reduce citizens' options for addressing discrimination complaints. While

individuals could file some discrimination complaints with the EEOC, HUD, and local government agencies, these agencies do not have jurisdiction to accept complaints for discrimination practices only covered by the Florida Civil Rights Act. This act provides citizens with protection from discrimination beyond the provisions of federal law and local ordinances. For example, the act prohibits employment discrimination based on marital status and in public accommodations, while federal law does not, and most local ordinances do not cover age discrimination or marital status. In Fiscal Year 2004-05, FCHR received 37 complaints alleging discrimination based on marital status, 462 complaints alleging discrimination based on age and 83 complaints alleging discrimination in public accommodations. If the commission were eliminated, civil action would be the only option for citizens to obtain remedy for these discriminatory practices.

The need to file discrimination cases with the courts likely would increase costs to both citizens and the state. FCHR, which is primarily funded by general revenue, does not charge a filing fee or require legal representation in its actions.³⁴ In contrast, citizens generally must pay filing fees and court costs, and obtain legal representation to file lawsuits in civil court. Current filing fees for civil court cases range from \$50 to \$250 and attorney's fees could reach several thousand dollars for representing a complainant. In addition, members of the legal community reported that some attorneys do not accept discrimination cases because they are difficult to litigate. Due to these constraints and litigation costs, fewer individuals may be able to seek remedy for discrimination claims.³⁵

In addition, shifting discrimination cases to the court system would increase the courts' workload, creating a need for additional judges, court staff, and courtroom space. If all complaints filed with FCHR during Fiscal Year 2004-05 had been filed in court, it would have added over 3,000 cases to the

³³ FCHR has 180 days from the date of filing to determine whether there is reasonable cause, DOAH hears cases within 120 days, the administrative law judge has 30 days after the hearing to issue a recommended order, and the commission has 90 days of the date of the recommended order to issue a final order.

³⁴ Although not required, some complainants obtain legal representation for administrative hearings.

³⁵ Attorneys who represent complainants in discrimination cases reported that typically they agree to that representation only after complainants have received a cause determination from the commission.

court system's existing caseload.³⁶ As a result, eliminating the commission could result in costs that exceed the potential savings of eliminating its \$5.2 million appropriation.

Requiring citizens to pursue discrimination cases through the courts would shorten the time that they have to file complaints but also likely delay obtaining remedies in these cases. Citizens currently have 365 days to file a complaint with the commission under the Florida Civil Rights Act. In contrast, they would have only 180 days to file complaints with the EEOC if the commission were eliminated. While the commission generally determines whether there is reasonable cause for discrimination cases within 180 days, Florida Rules of Judicial Administration time standards provide that most civil court cases should be completed within 18 months from filing to disposition for jury trials and 12 months for non-jury civil cases.³⁷

Finally, responsibility for processing whistleblower retaliation complaints would have to be transferred to another agency if FCHR were eliminated. Although the Office of the Chief Inspector General performs duties relating to the Whistle-blower Act by accepting and investigating whistle-blower complaints, it could not assume responsibility for processing retaliation complaints. To do so would require taking on a legal adversarial role with agencies when performing certain functions, such as bringing actions concerning allegations of retaliation.

³⁶ Because some complaints may be settled or mediated, all of these cases may not get to court.

³⁷ FCHR closed or made its determination within 180 days of filing for 92% of the cases closed in Fiscal Year 2004-05.

Conclusions and Recommendations

FCHR does not duplicate the efforts of other agencies responsible for enforcing anti-discrimination laws. The commission could be eliminated without violating federal law, but abolishment has several disadvantages and likely would result in higher costs for both the state and citizens who pursue discrimination complaints.

To ensure appropriate investigation of complaints, we recommend that FCHR analyze the results of its new legal reviews of completed investigation reports with no cause recommendations. The commission should assess whether these reviews identify patterns of investigation deficiencies and develop strategies for resolving these problems through steps such as increased investigator training and modification of investigative procedures.

Agency Response

In accordance with the provisions of s. 11.51(6), *Florida Statutes*, a draft of our report was submitted to the Executive Director of the Florida Commission on Human Relations for his review and response.

The Executive Director's written response is included in Appendix C, beginning on page 14.

OPPAGA supports the Florida Legislature by providing evaluative research and objective analyses to promote government accountability and the efficient and effective use of public resources. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021 or 800/531-2477), by FAX (850/487-3804), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475). Cover photo by Mark Foley.

Florida Monitor: www.oppaga.state.fl.us

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Gary R. VanLandingham, OPPAGA Director

Appendix A

Most Violations Received by FCHR Allege Discrimination in Employment

Florida law prohibits discrimination in employment, housing and places of public accommodation. The Florida Civil Rights Act prohibits employment discrimination on the basis of race, color, religion, sex, national origin, age, handicap, and marital status and prohibits discrimination in places of public accommodation on the basis of race, color, national origin, sex, handicap, familial status, or religion. The Fair Housing Act prohibits discriminatory practices in housing on the basis of race, color, national origin, sex, handicap, familial status, or religion.

Some discrimination complaints received by the Florida Commission on Human Relations allege violations of more than one basis. During Fiscal Year 2004-05, the commission received 3,153 complaints alleging 4,856 violations. Approximately 88% of these complaints allege discrimination violations in employment.

Basis	Employment	Housing	Public Accommodation	Total
Race	832	112	35	979
Sex	953	23	4	980
Retaliation	1,056	0	0	1,056
Age	462	0	0	462
Disability	579	103	27	709
National Origin	320	46	21	387
Religion	100	6	2	108
Marital Status	36	0	1	37
Color	71	10	3	84
Familial Status	0	54	0	54
Total Violations	4,409	354	93	4,856
Total Complaints	2,766	304	83	3,153

Source: Florida Commission on Human Relations.

Appendix B

FCHR's Cost for Administrative Hearings Has Substantially Increased

FCHR's cost for administrative hearings has significantly increased over the past five years and the amount of general revenue appropriated for hearing costs has also increased.¹ Total appropriations to FCHR for administrative hearings increased from \$197,636 in Fiscal Year 2001-02 to \$918,665 in Fiscal Year 2005-06, an increase of 365%.² Likewise, the amount of general revenue appropriated for administrative hearings increased from \$185,729 in Fiscal Year 2001-02 to \$656,851 in Fiscal Year 2005-06, an increase of 254%.

Appropriations for administrative hearings also represent an increasing portion of all funds appropriated to FCHR. The cost of administrative hearings represented 5% of FCHR's Fiscal Year 2001-02 appropriations but accounts for almost 18% of appropriations for Fiscal Year 2005-06.

According to FCHR officials, these costs have increased primarily because the commission reduced its case backlog and now processes complaints more timely, which has resulted in more cases being heard by DOAH. The commission stated that its inventory of cases has begun to level off and should stabilize the number of cases heard by DOAH. However, due to DOAH's method for assessing fees to state agencies, this will not be reflected in the commission's appropriations for hearings until Fiscal Year 2006-07.

	Total FCHR Appropriations	Appropriations for Hearings				Percent of Total FCHR Appropriations
		General Revenue	Trust Funds	Total	Percent General Revenue	
FY 2001-02	\$4,144,291	\$185,729	\$11,907	\$197,636	93.98%	4.77%
FY 2002-03	4,451,029	185,729	185,567	371,296	50.02%	8.34%
FY 2003-04	4,788,277	297,514	297,515	595,029	50.00%	12.43%
FY 2004-05	4,877,375	297,514	261,814	559,328	53.19%	1.471%
FY 2005-06	5,240,784	656,851	261,814	918,665	71.50%	17.53%

¹ When complainants in discrimination cases request an administrative hearing, DOAH conducts the hearing and bills FCHR based on the amount of time spent on its cases.

² DOAH estimated that FCHR's hearing costs will be \$981,794 in Fiscal Year 2006-07.

Source: OPPAGA analysis.



Jeb Bush
Governor

State of Florida

Florida Commission on Human Relations

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Rita Barreto Craig
Chair

Derick Daniel
Executive Director

January 25, 2005

Mr. Gary VanLandingham, Director
Office of Program Policy Analysis and Government Accountability
The Florida Legislature
111 West Madison, Room 312
Tallahassee, FL 32399-1475

Dear Mr. VanLandingham:

The Florida Commission on Human Relations has reviewed OPPAGA's Final Report on the Commission.

We would like to express our sincere appreciation for the professionalism of your staff while working with us to gather information for the report. They made every effort to ensure that the information they gathered was in-depth and comprehensive. Your staff was very responsive to our questions and attentive to our concerns.

On the following pages is our response to the OPPAGA report. We would appreciate you including this response in the final published report.

If you have any questions or need further information, please call me at 488-7082.

Sincerely,

Derick Daniel
Executive Director

DD/

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FCHR has already implemented steps to improve the quality of its investigations.

The OPPAGA report (page 8) states: "Although FCHR provides an efficient method to resolve discrimination complaints, until recently it has not been conducting a legal review of investigation reports as required by . . . Rule 60Y-5.004."

As the report points out, the Commission did not have sufficient legal staff to review these cases. ***However, as the report states, the Commission had already, in May 2005 (prior to the initial meeting with OPPAGA), hired two attorneys to assume this responsibility.*** The Commission hired these attorneys because management, through the Commission's normal quality assessment process, had identified areas in which investigations could be improved. In addition to hiring two attorneys, the Commission also developed more specific documentation and increased its training efforts for investigators to ensure that a higher quality of case investigations would be maintained.

The OPPAGA report (page 8) also states: "Stakeholders within the legal community . . . generally believed that FCHR investigations were not thorough, and investigators lacked the knowledge to perform their duties."

As stated above, the Commission, with the hiring of additional legal staff and increased training for its investigators, will continue identifying opportunities for improvement in case investigations, and, as such, will provide any documentation and training as needed to its investigators to ensure their proficiency in conducting quality investigations. The Commission will continue reviewing its investigative processes and accountability measures to ensure they both focus on work quality.

Processing discrimination cases in court may not necessarily be more simplified or less complex than the process available through FCHR.

The OPPAGA report (page 10) states: "Eliminating FCHR would simplify case processing," and "Court decisions in civil actions to resolve discrimination complaints represent a less complex resolution process."

The Commission believes that filing a civil suit in a court of law is not a more simplified or a less complex resolution process than the process provided by the FCHR. Some persons will be intimidated by what is perceived to be the inaccessibility and complexity of the court system and thus might be hesitant to pursue civil action in order to gain relief. In most instances, individuals would need to hire legal counsel to represent them in court and to pay court fees and costs; many persons do not have the financial means to do so. A person does not need an attorney to file a complaint with the Commission nor does the Commission charge individuals to file a complaint. The Commission also offers technical assistance and information to individuals so that they have an opportunity to better understand the complaint process and to obtain information about their rights and responsibilities. The Commission provides an avenue for every individual, regardless of their economic means to hire an attorney or their level of knowledge and understanding of the judicial system, to gain knowledge about and seek relief for any discrimination they may have experienced.

The OPPAGA report (pages 1 and 11) states that eliminating the FCHR "would reduce citizens' options for addressing discrimination complaints, likely increase costs to Florida citizens and the state, and lengthen resolution time."

The Commission agrees with the disadvantages listed in the report. Overburdening the court system with a potential increase in its caseload could ultimately raise costs for the court system and the state as a whole. More importantly, limiting individuals in Florida to seek relief only through the court system could be viewed as a major step backward in the protection of human and civil rights since some individuals, not wishing to pursue civil action,, would have no other remedy available to them.

FCHR, unlike federal and local agencies, has the authority to enforce the Florida Civil Rights Act.

The OPPAGA report (page 11) states: "While individuals could file some discrimination complaints with federal or local government agencies, the EEOC, HUD, and local government agencies do not have jurisdiction to accept complaints of discrimination practices only covered by the Florida Civil Rights Act."

There are bases covered under the Florida Civil Rights Act that provide citizens with protection from discrimination that, in a number of respects, differ from or are not covered by either federal law or local ordinances: For instance, the Act:

- Protects individuals from age discrimination regardless of their age, whereas several of the local governments use a 40-year threshold
- Provides protection for marital status discrimination; neither the federal government nor most of the local governments provide this protection
- Covers discrimination in certain public accommodations, such as hotels, motels, restaurants, and places of public entertainment; this protection differs in some respects from federal and local laws
- Allows for a longer period of time in which an individual can file a complaint. Persons filing with the Commission are allowed up to 365 days to file after an alleged act of discrimination has occurred; filing with most local entities is limited to between 60 and 180 days

In addition, the Commission has exclusive statutory authority to accept whistleblower retaliation complaints from state employees, whereas neither the federal government nor any local entity has this authority.

Lastly, the Commission covers Florida localities in which no human rights agency has been established and for which no specific ordinance protecting individuals' human and civil rights exists. The Commission ensures that there is continuity, consistency, and fairness in the protection of rights for all individuals in Florida.

FCHR's recent investigative efforts to significantly reduce case backlog have contributed to increased DOAH costs.

The OPPAGA report (page 14) states: "FCHR's costs for administrative hearings has significantly increased over the past five years." The OPPAGA report (page 9) further states that, "these costs have increased because the Commission reduced its case backlog and now processes complaints more timely, which has resulted in more cases being heard by DOA H."

As the report states, the increase in costs to DOAH -- especially for the past two fiscal years -- is a direct result of the Commission's successful efforts at reducing its case backlog from 87% in FY 99-00 to 4% (as of November 2005). With an increase in the number of cases closed by the Commission during this time, there was a correlative increase in the number of cases that were referred to DOAH, thus causing an increase in the amount of hearing hours DOAH spent on the Commission's cases. DOAH assesses each agency's budget an amount based on the number of hearing hours tracked during the previous two years. Because of the Commission's efforts to significantly reduce its case backlog and close more cases, it is understandable that amounts for DOAH in the Commission's budget for FY 05-06 and FY 06-07 are much higher than amounts in prior fiscal years. However, as the backlog of cases continues to decline, the Commission anticipates that fewer cases will be referred to DOAH, which could lead to fewer hearing hours by DOAH. (It is important to note that, although the number of cases being referred to DOAH is anticipated to decline, the number of hours DOAH will actually spend on Commission cases could remain the same or even increase, depending upon the complexity of the cases referred. Therefore, the funds for DOAH in the Commission's budget may not necessarily decrease even though there are fewer cases being referred to DOAH.)