

**Report 15-13
August 2015**

Complaints Considered by the Government Accountability Board

STATE OF WISCONSIN



Legislative Audit Bureau ■

Complaints Considered by the Government Accountability Board

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Joe Chrisman
State Auditor

August 20, 2015

Senator Robert Cowles and
Representative Samantha Kerkman, Co-chairpersons
Joint Legislative Audit Committee
State Capitol
Madison, Wisconsin 53702

Dear Senator Cowles and Representative Kerkman:

In December 2014, we released a comprehensive evaluation (report 14-14) of the Government Accountability Board (GAB). However, our evaluation's scope was limited because the Attorney General opined in July 2014 that existing statutes prohibited GAB from providing us with certain confidential records. Statutes were subsequently modified to specify that we have access to such records. After statutes were modified, the Joint Legislative Audit Committee directed us to complete the audit work that we could not finish in report 14-14. We have now completed an evaluation of complaints considered by GAB.

From fiscal year (FY) 2010-11 through FY 2012-13, GAB's Ethics and Accountability Division initiated an estimated 204 inquiries involving campaign finance, lobbying, code of ethics, and election complaints and concerns. These inquiries resulted in GAB initiating 21 investigations. Statutes allow GAB to retain special investigators to conduct investigations. From FY 2010-11 through FY 2013-14, GAB executed 11 contracts with special investigators.

If GAB votes to initiate an investigation and is considering retaining a special investigator, statutes require staff to provide GAB with the names of three qualified individuals who may be retained in that capacity. Because the available information indicates staff did not consistently provide GAB with three such names from FY 2010-11 through FY 2012-13, we include a recommendation that staff consistently do so.

From FY 2010-11 through FY 2012-13, an estimated 1,894 election-related complaints were filed with GAB's Elections Division. Staff recently closed 277 complaints because they believed no further action was warranted. Staff did so in some instances because the complaints pertained to incidents that had occurred several years ago. We include a recommendation that staff consistently resolve complaints in a timely manner.

We appreciate the courtesy and cooperation extended to us by GAB's staff. A response from GAB's Director and General Counsel follows our report.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Joe Chrisman".

Joe Chrisman
State Auditor

JC/DS/ss

Introduction ■

GAB oversees and investigates alleged violations of Wisconsin's election, campaign finance, lobbying, and code of ethics laws.

The Government Accountability Board (GAB), which was created by 2007 Wisconsin Act 1 and began operation in January 2008, oversees and investigates alleged violations of Wisconsin's election, campaign finance, lobbying, and code of ethics laws. GAB's six members are each appointed for a six-year term and must have formerly been elected to and served as a judge of a court of record in Wisconsin. Members are statutorily prohibited from holding another state or local public office or position, except that a member may serve as a reserve judge in a circuit court or a court of appeals; being a member of a political party or engaging in certain other partisan activities; becoming a candidate for state or local office; contributing to political campaigns; and being involved in lobbying activities.

Statutes require GAB to employ an individual to serve as its legal counsel, and GAB has designated its Director and General Counsel to serve in this capacity. Statutes also create two divisions within the agency and require GAB to appoint an administrator to oversee each division. The Elections Division helps to administer elections, and the Ethics and Accountability Division oversees campaign finance, lobbying, and code of ethics laws. Both divisions consider complaints that are filed with GAB. Statutes require GAB's staff to be nonpartisan.

The scope of our comprehensive evaluation of GAB (report 14-14) was limited by a July 2014 Attorney General's opinion.

In December 2014, we completed a comprehensive evaluation of GAB (report 14-14), including GAB's efforts to consider complaints filed from fiscal year (FY) 2010-11 through FY 2012-13, but the scope of our evaluation was limited. In July 2014, the Attorney General opined that existing statutes prohibited GAB from providing the Legislative Audit Bureau with certain confidential records. As a result, GAB's staff did not provide us with complete information about all complaints GAB had received during our three-year review period and GAB's use of special investigators to conduct investigations.

In January 2015, the Joint Legislative Audit Committee introduced legislation relating to the Legislative Audit Bureau's access to confidential records. 2015 Wisconsin Act 2, which became effective in March 2015, requires GAB to provide investigatory records to the Legislative Audit Bureau in order for us to carry out our statutory responsibilities. Act 2 also reaffirms that the Legislative Audit Bureau has access to all records and documents, including those that are confidential by law.

In April 2015, the Joint Legislative Audit Committee directed us to complete the audit work that we could not finish in report 14-14 because the scope of that evaluation was limited. To complete our current report, we analyzed complaints filed with GAB from FY 2010-11 through FY 2012-13, which was the three-year period that we had used in report 14-14 to analyze filed complaints. We also interviewed GAB's staff, reviewed GAB's contracts with special investigators, determined the amounts GAB paid special investigators, and determined the extent to which staff have implemented certain complaint-related recommendations that we made in report 14-14. In addition, we reviewed materials and minutes from the closed portions of GAB meetings held from FY 2010-11 through FY 2012-13.

Although Act 2 allows us to access confidential records and documents, the confidential nature of these records remains unchanged for purposes of our audit work. Therefore, specific information from confidential records cannot be disclosed by the Legislative Audit Bureau, unless permitted by law.

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Complaints ■

GAB may investigate alleged violations of election, campaign finance, lobbying, and code of ethics laws.

Any individual may file a complaint with GAB alleging a violation of election, campaign finance, lobbying, and code of ethics laws. By resolution, GAB may authorize an investigation if it believes there is reasonable suspicion a violation has occurred or is occurring. In addition to bringing civil actions for violations of these laws, which may result in courts assessing forfeitures, statutes allow GAB to compromise and settle any civil action or potential action that it considers to be a minor violation or a violation caused by excusable neglect. When GAB does so, it may assess a financial penalty. In certain instances, GAB may refer information related to an alleged criminal violation of election, campaign finance, lobbying, and code of ethics laws to a district attorney or the Attorney General. From FY 2010-11 through FY 2012-13, GAB's staff determined whether they were able to consider a complaint informally, or whether a complaint merited GAB's involvement. We found that staff recently closed 277 complaints that had been filed from FY 2010-11 through FY 2012-13 because they believed no further action was warranted.

Complaints Filed with the Ethics and Accountability Division

SECTION 5.05(2m), Wis. Stats., allows GAB to investigate complaints alleging violations of campaign finance, lobbying, and code of ethics laws. In response to complaints filed with GAB or as a result of staff identifying potential concerns while completing their job duties, the administrator of the Ethics and Accountability Division sometimes

initiated inquiries that were conducted by staff. Depending on the results of a given inquiry, GAB could vote to initiate an investigation. Statutes allow GAB to retain special investigators to conduct investigations. We found that GAB executed 11 contracts with special investigators from FY 2010-11 through FY 2013-14. The available information indicates the administrator of the Ethics and Accountability Division did not consistently provide GAB with the names of three qualified individuals who could be retained as special investigators, as required by statutes.

In report 14-14, we examined complaints filed with the Ethics and Accountability Division from FY 2010-11 through FY 2012-13. GAB's staff indicated that they reviewed each complaint in order to determine whether the complaint should be dismissed immediately, typically because the issue was unrelated to GAB's statutory authority. For example, inmates filed complaints with GAB about the quality of their legal representation and their treatment in correctional facilities. Staff did not track how many complaints they received and dismissed immediately from FY 2010-11 through FY 2012-13.

The division's administrator divided into two categories the complaints that warranted consideration. The first category included complaints that could be resolved quickly. For example, if an individual alleged that a yard sign placed in support of a candidate for political office did not comply with statutes because the yard sign failed to indicate who paid for it, GAB's staff may have instructed the candidate to alter the sign to include the required information. If the candidate agreed to do so, staff considered the complaint to be resolved without needing to involve GAB. From FY 2010-11 through FY 2012-13, staff did not track the complaints filed in this category.

The second category included complaints that could not be resolved quickly but that instead warranted an inquiry by GAB's staff, who attempted to contact the relevant individuals and request the information necessary to assess the complaint's validity. These complaints involved instances in which staff believed a reasonable suspicion existed that a statutory violation may have occurred, such as the misuse of campaign finance funds, violations of lobbying laws, or the misuse of public office for political purposes. In addition, when staff identified a potential concern while completing their job duties, the division's administrator sometimes initiated an inquiry even if a complaint had not been filed. For example, an audit of a candidate's campaign finance report may have suggested that some required information had been excluded.

Based on the information provided to us at that time, we indicated in report 14-14 that the Ethics and Accountability Division initiated 189 inquiries from FY 2010-11 through FY 2012-13. To complete our current report, GAB's staff provided us with additional, confidential information indicating that a total of 204 inquiries had been initiated during this three-year period. This information allowed us to categorize the inquiries more accurately. However, as we noted in report 14-14, GAB's staff lacked written procedures from FY 2010-11 through FY 2012-13 for considering complaints, and they did not maintain complete, centralized information about all complaints received, including how they resolved complaints. As a result, we cannot be assured that no inquiries beyond the 204 identified were initiated by staff during this three-year period.

From FY 2010-11 through FY 2012-13, the Ethics and Accountability Division initiated an estimated 204 inquiries.

As shown in Table 1, the estimated 204 inquiries initiated by the Ethics and Accountability Division from FY 2010-11 through FY 2012-13 included 122 inquiries initiated as a result of potential concerns identified by GAB's staff and 82 inquiries initiated because of complaints. In some instances, the Ethics and Accountability Division initiated inquiries regarding complaints that had been filed with the Elections Division. Staff indicated that this occurred when the complaints involved issues overseen by the Ethics and Accountability Division.

Table 1

**Estimated Number of Inquiries Initiated by GAB's Ethics and Accountability Division¹
FY 2010-11 through FY 2012-13**

Category	Inquiries Initiated as a Result of:		Total
	Potential Concerns Identified by GAB's Staff	Complaints Filed by Individuals	
Campaign Finance	106	52	158
Ethics	3	16	19
Lobbying	10	2	12
Elections	1	8	9
Ethics/Campaign Finance	2	4	6
Total	122	82	204

¹ Based on information provided by GAB's staff.

We determined the entities involved in 204 inquiries initiated by the Ethics and Accountability Division from FY 2010-11 through FY 2012-13, as shown in Table 2. Some inquiries involved multiple entities. For example, a number of inquiries pertained to complaints alleging that a candidate for elected office accepted campaign contributions in excess of statutory limits from various individuals. In 87 instances, inquiries involved individuals. Most of these 87 instances pertained to campaign finance contributions.

Table 2

**Inquiries Initiated by GAB’s Ethics and Accountability Division,
by Type of Entity Involved¹
FY 2010-11 through FY 2012-13**

Entity	Number of Instances
Individuals	87
Campaign Finance Entities	47
Candidates, Elected Officials, or Public Officials	40
Advocacy Groups	26
Businesses	17
Political Parties	11
Labor Unions	6
Licensed Lobbyists	4
Unknown	3

¹ Based on information provided by GAB’s staff. Some inquiries involved multiple entities.

GAB’s staff took an average of 121 days to complete inquiries initiated from FY 2010-11 through FY 2012-13.

Table 3 shows the amount of time GAB’s staff took to complete 204 inquiries initiated from FY 2010-11 through FY 2012-13. Staff took an average of 121 days to complete 201 of 204 inquiries, but the amount of time it took to complete 3 inquiries was unknown.

Table 3

**Length of Time to Complete Inquiries Initiated by GAB's
Ethics and Accountability Division¹**

Days	Inquiries	Percentage of Total
1 to 10	13	6.4%
11 through 30	27	13.2
31 through 60	38	18.6
61 through 90	27	13.2
91 through 180	64	31.4
181 or More	32	15.7
Unknown	3	1.5
Total	204	100.0%

¹ Based on information provided by GAB's staff. Includes inquiries initiated from FY 2010-11 through FY 2012-13.

After considering the results of a given inquiry, the division's administrator:

- ended the inquiry without taking any further action;
- assessed a penalty as part of a settlement agreement that typically required an individual or organization to pay the penalty and follow all relevant statutory requirements; or
- referred the issue to GAB for its consideration.

Staff referred an issue to GAB if completing an inquiry, for example, involved a sensitive issue or would have required a significant amount of staff time or the use of GAB's statutorily authorized subpoena powers in order to obtain needed information. GAB could then vote to initiate an investigation if reasonable suspicion existed that a statutory violation may have occurred.

Staff provided us information indicating that 21 of the 204 inquiries (10.3 percent) resulted in GAB initiating investigations, including 12 campaign finance investigations, 4 ethics investigations, 4 elections investigations, and 1 lobbying investigation.

Special Investigators

Statutes allow GAB to retain special investigators to conduct investigations, but they do not authorize staff to retain them. Staff indicated that GAB retained special investigators in recent years when an investigation was expected to be time-consuming or required special expertise.

Staff provided us with information on 11 contracts that GAB executed with 9 special investigators from FY 2010-11 through FY 2013-14, including 1 contract executed in FY 2010-11; 2 contracts executed in FY 2011-12; 1 contract executed in FY 2012-13; 5 contracts executed in FY 2013-14; and 2 unsigned, undated contracts that staff indicated were executed during this four-year period. Staff were unable to provide us with signed, dated versions of these two contracts. The 11 contracts specified that GAB would pay the special investigators an hourly rate that averaged \$99 and ranged from \$65 to \$167. The contracts indicated that the special investigators agreed to inquire into possible violations of laws that GAB administers, but none of the contracts specified particular services to be provided for particular investigations.

From FY 2010-11 through FY 2013-14, GAB's expenditures for investigations totaled \$315,800.

As shown in Table 4, GAB's expenditures for investigations totaled \$315,800 from FY 2010-11 through FY 2013-14 and included seven investigations. Over this four-year period, expenditures per investigation ranged from \$700 to \$173,300. Six investigations involved special investigators, but one did not because GAB closed the investigation without retaining a special investigator. The expenditures include amounts paid to special investigators and amounts GAB's staff spent on related services, such as for court reporters and data processing, but they exclude staff salaries and fringe benefits because staff did not track the amount of time they spent on tasks related to these investigations. We cannot disclose more specific information about the investigations because although 2015 Wisconsin Act 2 allows us to access confidential records, the confidential nature of these records remains unchanged for purposes of our audit work. Through mid-July 2015, GAB recorded no expenditures in FY 2014-15 for investigations involving special investigators.

Table 4

GAB's Expenditures for Investigations¹

Fiscal Year	Amount
2010-11	\$ 43,100
2011-12	46,100
2012-13	47,700
2013-14	178,900
Total	\$315,800

¹ Includes the costs of seven investigations, six of which involved special investigators.

If GAB votes to initiate an investigation and is considering retaining a special investigator, statutes require the administrator of the Ethics and Accountability Division to provide GAB with the names of three qualified individuals who may be retained in that capacity. Statutes permit GAB to retain one or more of these individuals.

Staff did not consistently provide GAB with the names of three individuals who could be retained as special investigators.

The materials and minutes for the closed portions of GAB's meetings from FY 2010-11 through FY 2012-13 indicate that the administrator of the Ethics and Accountability Division did not consistently provide GAB with the names of three individuals who could be retained as special investigators. For example:

- In one instance, the division's administrator recommended that GAB hire a particular individual as a special investigator, and the name of only that individual was provided to GAB, which then retained that individual.
- In a second instance, staff recommended that GAB authorize an investigation and that it retain a special investigator, and they provided GAB with the names of three individuals. GAB authorized an investigation but did not vote at that meeting to retain a special investigator. At GAB's next meeting, the division's administrator recommended that GAB hire two individuals as special investigators, and the names of only those two individuals were provided to GAB, which then retained both individuals. The two individuals recommended by the division

administrator were not among the three names that staff had provided GAB at the prior meeting.

- In a third instance, a GAB member suggested that three particular individuals be retained as special investigators, the division's administrator provided GAB with no names, and GAB retained all three individuals. The division's administrator indicated that more than three names were verbally provided for GAB's consideration, but the meeting materials and minutes do not indicate that the division administrator provided any names.
- In a fourth instance, a GAB member suggested that a particular individual could be retained as a special investigator, and the division's administrator provided GAB with no names. At a subsequent GAB meeting, the division's administrator indicated that the individual had declined to conduct the investigation, a GAB member suggested two individuals who could be retained, the division's administrator provided GAB with no names, and GAB then retained one of the two individuals suggested by the member. The division administrator indicated that because GAB members suggested particular individuals who could be retained, there was no need to provide GAB with the names of three individuals, as is statutorily required.

Although GAB may sometimes prefer to retain a particular individual as a special investigator, based at least in part on that individual's expertise or prior work for GAB, statutes require the administrator of the Ethics and Accountability Division to provide GAB with the names of three qualified individuals. Doing so helps to ensure that GAB is able to consider the expertise of several individuals and retain the most qualified individual.

Recommendation

We recommend the administrator of the Ethics and Accountability Division comply with statutes by consistently providing the Government Accountability Board with the names of three qualified individuals who may be retained as a special investigator.

Statutes require GAB to meet at least once every 90 days to review the progress of an ongoing investigation. Either the special investigator or the administrator of the Ethics and Accountability Division is required to report in person at the meeting about an investigation's progress. If GAB does not vote to continue an investigation for an additional period not exceeding 90 days, statutes require the investigation to terminate. In order to determine whether GAB complied with these statutory requirements from FY 2010-11 through FY 2012-13, we reviewed the available information pertaining to three investigations involving four special investigators. This information indicates that the statutorily required reports were typically provided to GAB in a timely manner and that GAB typically voted or discussed whether to continue the investigations.

Complaints Filed with the Elections Division

SECTION 5.06, Wis. Stats., permits GAB to investigate written, sworn complaints filed by electors who believe election officials have acted contrary to the law in administering elections. These are non-confidential complaints. In addition, GAB's general statutory authority under s. 5.05(2m), Wis. Stats., allows it to investigate complaints alleging violations of election laws. These are confidential complaints. We found that 94.8 percent of the 1,318 confidential complaints filed with GAB from FY 2010-11 through FY 2012-13 pertained to three incidents. GAB's staff recently closed a total of 277 confidential and non-confidential complaints filed during this three-year period because they believed no further action was warranted.

In report 14-14, we reviewed non-confidential complaints filed with the Elections Division from FY 2010-11 through FY 2012-13. Staff indicated that they typically handled election-related complaints informally, such as by contacting the complainant and the subject of the complaint in order to obtain more information, and that they were often able to resolve complaints quickly and without taking any enforcement actions or involving GAB. For example, in response to a complaint alleging that a municipal clerk running for reelection lingered at a polling place, staff contacted the clerk, who denied the allegation and stated awareness that lingering at the polling place was not permitted. Staff were instructed to refer complex issues to the division's administrator, legal staff, or the Director and General Counsel.

In completing report 14-14, GAB's staff provided us with information on 576 non-confidential complaints and indicated 1,334 confidential complaints had been filed during our three-year review period. However, we were not provided any information about the confidential complaints because the Attorney General had opined that

statutes prohibited GAB from providing us with this information. As a result, our report indicated that we could not independently confirm the number of confidential complaints. Because 2015 Wisconsin Act 2 requires GAB to provide us confidential records, during our current audit staff provided us information on confidential complaints filed with the Elections Division from FY 2010-11 through FY 2012-13. In reviewing this information, we found that some complaints were duplicated. In total, staff provided us with 1,318 unduplicated confidential complaints.

Confidential complaints were reviewed by the Ethics and Accountability Division.

GAB's staff indicated that they considered complaints filed with the Elections Division to be confidential when individuals alleged potentially criminal violations of ch. 12, Wis. Stats., which concerns prohibited election practices. Complaints were also considered to be confidential when they were filed through the Elections Division's complaint forms on GAB's website but actually involved issues overseen by the Ethics and Accountability Division. These confidential complaints were reviewed by the Ethics and Accountability Division.

Based on information provided by GAB's staff, we categorized the 1,318 confidential complaints that staff provided to us. This information included the dates when 1,196 of the confidential complaints (90.7 percent) were filed. For the remaining confidential complaints, the information included only the dates when the corresponding incidents were alleged to have occurred. Individuals who submitted the 576 non-confidential complaints chose among four categories to classify their complaints. However, as we noted in report 14-14, staff lacked written procedures from FY 2010-11 through FY 2012-13 for considering complaints, and they did not maintain complete, centralized information about all complaints received, including how they resolved complaints. As a result, we cannot be assured that no complaints beyond the 1,318 confidential complaints and the 576 non-confidential complaints provided to us were filed with GAB during this three-year period.

An estimated 1,894 complaints were filed with the Elections Division from FY 2010-11 through FY 2012-13.

As shown in Table 5, an estimated 1,894 complaints were filed with the Elections Division from FY 2010-11 through FY 2012-13. We found that 1,249 of the 1,318 confidential complaints (94.8 percent) pertained to three incidents, including 1,149 confidential complaints that pertained to one incident. These three incidents pertained to the actions of the then-Waukesha County clerk, a prank telephone call to the Governor, and 2011 Wisconsin Act 10. Staff indicated that because GAB previously disclosed publicly that it had received and considered complaints related to these three incidents, GAB's involvement with these three incidents is no longer confidential and can be disclosed by the Legislative Audit Bureau. Because the Ethics and Accountability Division considered the 1,318 confidential

complaints, some of the 1,318 confidential complaints were also included in the 204 inquiries initiated by the Ethics and Accountability Division.

Table 5

Estimated Number of Complaints Filed with GAB's Elections Division¹

Category	FY 2010-11	FY 2011-12	FY 2012-13	Unknown	Total
Confidential					
Local Election Officials	1,124	33	4	1	1,162
Elected Officials	101	2	1	0	104
Election Fraud	7	19	4	1	31
Voter Intimidation	1	15	1	1	18
Other or Unknown	2	1	0	0	3
Subtotal	1,235	70	10	3	1,318
Non-Confidential					
Local Election Officials	90	99	72	0	261
Voter Intimidation	37	99	32	0	168
Election Fraud	30	54	12	0	96
Candidacy Issues	14	33	4	0	51
Subtotal	171	285	120	0	576
Total	1,406	355	130	3	1,894

¹ Based on information provided by GAB's staff. We categorized confidential complaints based on available information, while non-confidential complaints were categorized by the individuals who submitted them. Excludes complaints that staff handled informally.

GAB's staff recently closed 277 complaints filed from FY 2010-11 through FY 2012-13.

We determined the extent to which the complaints filed with the Elections Division during our three-year review period were resolved. We found that GAB's staff recently closed 277 complaints filed from FY 2010-11 through FY 2012-13, including 26 confidential complaints and 251 non-confidential complaints.

GAB's staff indicated that as of July 2015, they had closed all 1,318 confidential complaints. Staff indicated that they had recently closed 26 confidential complaints because they believed no further action was warranted. Staff indicated they did so, in part, because the confidential complaints pertained to incidents that had occurred several years ago. We reviewed the 26 complaints and categorized more than half of them as allegations concerning voter intimidation. In report 14-14, we noted that 251 of the 576 non-confidential

complaints filed from FY 2010-11 through FY 2012-13 remained unresolved as of November 2013. As we noted in report 14-14, staff indicated that they did not have the necessary staff and time during this three-year period to resolve complaints on a regular basis, in part, because they were busy with other tasks. GAB's staff recently closed these 251 complaints because they believed no further action was warranted. Staff indicated that they did so for several reasons. Some complaints pertained to incidents that had occurred several years ago, and staff decided to prioritize their efforts on considering more recently filed complaints. Staff also indicated that some complaints alleged actions outside of GAB's jurisdiction. We reviewed the 251 complaints and found that many of them concerned allegations pertaining to the recall elections in 2012.

It is important for GAB's staff to consistently resolve complaints in a timely manner. Not doing so can result in staff closing complaints because too much time elapsed since the complaints were filed. Because staff did not consider the 277 complaints in a timely manner, it is not known whether some of them would have been substantiated.

Recommendation

We recommend the Government Accountability Board's staff consistently resolve complaints in a timely manner.

GAB Decision-Making

Questions have been raised about how GAB makes decisions based on staff recommendations, particularly during the closed portions of its meetings. From FY 2010-11 through FY 2012-13, staff provided GAB with written materials to review before meetings, and at the meetings they typically provided oral reports and presentations on various issues. During this three-year period, the materials and minutes from the closed portions of GAB's meetings indicate staff recommended that GAB authorize 22 investigations. We reviewed the information and found that GAB:

- agreed with the recommendations of its staff and authorized 19 investigations;
- disagreed with the recommendation of its staff and did not authorize 1 investigation;
- initially disagreed with the recommendation of its staff and did not authorize an investigation, but at a subsequent meeting considered additional information related to the matter and authorized an investigation; and

- asked its staff to provide additional information related to one matter. At a subsequent meeting, staff provided this information and recommended that GAB not initiate an investigation. GAB agreed with the recommendation and did not authorize an investigation.

In making 21 decisions related to complaints and inquiries in FY 2012-13, GAB agreed with 13 staff recommendations.

The materials and minutes of the closed portions of GAB's meetings in FY 2012-13 indicate that GAB made 21 other decisions related to complaints and inquiries. Such decisions included, for example, whether to hire a special investigator or dismiss a complaint. The information indicates that GAB agreed with 13 staff recommendations, disagreed with 1 staff recommendation, and made 7 decisions in the absence of staff recommendations.

We attended part of the closed portion of one GAB meeting and observed the discussions of five confidential matters related to complaints and inquiries. GAB members discussed the matters among themselves, questioned staff and considered their responses, sometimes consulted statutes and a court decision during the discussions, and did not always agree with each other or with all aspects of staff responses to their questions. After discussing a given matter at this meeting, GAB agreed with three of four recommendations provided by its staff and voted to approve them, although GAB did not always agree completely with the logic its staff had used to provide a given recommendation. In one instance, GAB modified a staff recommendation before approving it. In another instance, which did not involve a staff recommendation, GAB considered new information pertaining to a matter and changed the decision it had made at a prior meeting.

Improving Complaint Procedures

In report 14-14, which examined how GAB's staff considered complaints from FY 2010-11 through FY 2012-13, we found that the Ethics and Accountability Division and the Elections Division lacked written procedures, did not track all complaints received or how complaints were resolved, and did not report regularly to GAB with complete information on the status and resolution of all complaints. Therefore, we recommended that staff improve the procedures used to consider complaints, including by:

- presenting to GAB for its approval written policies for considering complaints filed with the Ethics and Accountability Division and the Elections Division;

- maintaining complete, centralized information about all complaints received and inquiries undertaken, including the resolution of these issues;
- reporting regularly to GAB on the status and resolution of all complaints and inquiries; and
- reporting to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement these recommendations.

To complete our current report, we assessed the efforts of GAB's staff to create written policies for considering complaints filed and to maintain complete, centralized information about all complaints received and inquiries undertaken.

In response to our recommendations, GAB's staff developed written complaint procedures and a database for tracking complaints.

On April 15, 2015, GAB's staff reported to the Joint Legislative Audit Committee that they had developed written complaint procedures and a database for tracking complaints, both of which GAB had approved in March 2015. The procedures include steps for recording complaints in the new database, criteria for staff to use in determining whether to resolve complaints formally or informally, and steps for resolving complaints. In addition, the procedures provide time goals for staff to dismiss a given complaint, contact the complainant and relevant parties, and review open complaints, and the procedures require the two division administrators to review the status of open complaints on a weekly basis to monitor the progress of complaint resolution and to provide GAB at each of its meetings a summary report regarding the status of complaints that are open or that have been closed since the prior meeting. The database allows staff to record and track complaints in a complete, centralized manner. In addition, it allows staff to establish time goals in accordance with the complaint procedures, attach relevant documentation to a given complaint, and categorize complaints.

Too little time has elapsed for us to assess whether GAB's staff are consistently complying with the newly developed complaint procedures, are using the new database to track all complaints, and are reporting regularly to GAB on the status and resolution of all complaints and inquiries. In the future, it will be important for staff to consistently follow the written procedures and use the database to track all complaints. Similarly, it will be important for staff to resolve complaints in a timely manner so that there is no longer any need to close complaints because too much time elapsed since the complaints were filed.

Response ■

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Director and General Counsel

August 18, 2015

Joe Chrisman, State Auditor
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Madison, WI 53703

Subject: Government Accountability Board Audit

Dear Mr. Chrisman:

The purpose of this letter is to respond to the findings and recommendations contained in the Legislative Audit Bureau's (LAB) audit of confidential complaints filed with the nonpartisan Government Accountability Board (G.A.B.) from FY 2010-11 through FY 2012-13. It was prepared by G.A.B. staff under the direction of Director and General Counsel Kevin J. Kennedy, but does not represent a formal position taken by the Board.

LAB Audit Report 14-14 identified areas where the agency was unable to meet certain statutory requirements or could improve its operations. The G.A.B. quickly addressed those recommendations to bring the agency into full compliance with statutory requirements and further improve its operations.

This second audit report covers areas the LAB could not finish in report 14-14 due to statutory restrictions on access to confidential complaints and investigatory records, which the Legislature has now removed.

Response to Recommendations

The LAB made two findings that resulted in recommendations.

- Staff did not consistently provide Board Members with the names of three potential special investigator candidates, as required by statute, which resulted in a recommendation to comply with statutes. We believe there is only one instance where staff may not have provided three names, and that the staff has substantially complied with the requirement.
- Staff recently closed 277 complaints because they believed that no further action was warranted, which resulted in a recommendation for staff to "consistently resolve complaints in a timely manner." Most of these complaints were reviewed and analyzed as the G.A.B. received them, though they were not formally documented as closed matters until recently. We now have improved and formalized our complaint handling procedures to ensure timely resolution of complaints.

The LAB's recommendations are set out in italics, followed by the agency's detailed response.

Complaints Filed with the Ethics & Accountability Division

We recommend the administrator of the Ethics and Accountability Division comply with statutes by consistently providing the Government Accountability Board with the names of three qualified individuals who may be retained as a special investigator.

The LAB's basis for this recommendation is a finding that staff "did not consistently provide GAB with the names of three individuals who could be retained as special investigators." LAB cited four instances in which

it believes this requirement was not satisfied. In making these findings, LAB relied on Board meeting materials and on closed session minutes which are not designed to be transcripts of everything considered during the meetings.

- In the first instance cited, minutes indicate that staff may have provided the Board with only one name of a potential special investigator.
- In the second instance cited, the evidence provided to LAB shows that the division administrator complied with the statutory requirement to provide three names, and in fact provided two additional names at a subsequent meeting.
- In the third instance cited, the Board considered approximately 20 special investigator candidates. Prior to the meeting when the investigation was authorized, two Board Members were actively involved in vetting investigator candidates. When the investigation was authorized, the division administrator presented the Board with the names of 10 possible candidates. Although this was not documented in the minutes, G.A.B. staff provided LAB with a copy of staff notes containing a list of 10 names presented for the Board's consideration.
- The fourth instance involved a case that Board Members initially put on hold but resurrected several months later. The Board considered three special investigator candidates suggested by Board Members. The Board and staff treated those names as the list to be provided by the division administrator.

While statutes establish a formal requirement that staff present the Board with the names of three potential investigator candidates, at times Board Members have suggestions of investigators they want considered. This results in a more robust process and more fully vetted selection than a pro-forma list of three candidates presented by staff. In no case was the Board's consideration of investigator qualifications limited by the staff's presentation.

It is clear that the staff has substantially complied with the statutory requirement. Staff will ensure that the agency's compliance with the statutory requirement is more clearly documented in the future.

Complaints Filed with the Elections Division

We recommend the Government Accountability Board's staff consistently resolve complaints in a timely manner.

The LAB's basis for this recommendation is a finding that the G.A.B.'s staff recently closed 26 confidential and 251 non-confidential complaints from FY 2010-11 through FY 2012-13. LAB goes on to state that, "Because staff did not consider the 277 complaints in a timely manner, it is not known whether some of them would have been substantiated."

Each complaint was reviewed upon receipt by a staff member who determined that the complaint was either outside the Board's jurisdiction, did not contain enough factual information to warrant dedicating staff time and resources to the matter, or involved matters which the G.A.B. knew were already being addressed by local election officials or law enforcement. Where appropriate, complaints were also reviewed by staff counsel, a division administrator or the director. However, as an administrative matter, these complaints were not closed until recently.

The audit report also states that "more than half" of the recently closed confidential complaints related to voter intimidation; however, none of these involved claims the complainant was threatened with force or violence to discourage voting. Eleven of the 26 complaints were about an anonymous Facebook page encouraging the firing of employees who signed recall petitions. One third of these complaints came from outside Wisconsin.

G.A.B. Decision Making

The key finding of this report is LAB's description of an engaged Board that in closed session considers the facts and analysis provided by the staff, yet makes its own independent decisions regarding confidential complaint and investigation matters. The Board actively examines staff's reasoning and recommendations. A majority of the Board sometimes agrees and sometimes disagrees with those recommendations. What LAB observed in closed session reflects the Board Members' level of engagement since the agency's inception, in both open and closed sessions.

Improving Complaint Procedures

Statutes lay out detailed and complex procedures for the agency to handle politically-sensitive and highly-charged complaints about campaign finance, elections, ethics and lobbying that come before the Board. The report confirms the staff has developed written complaint procedures and a database for tracking complaints, both of which the Board approved in March 2015. Since then, staff has provided the Board with reports at each of its three subsequent meetings on the status and resolution of complaints, and will continue to do so at future meetings. For a more detailed explanation of the G.A.B.'s complaint process, please visit the agency website: <http://www.gab.wi.gov/complaints/about-process>.

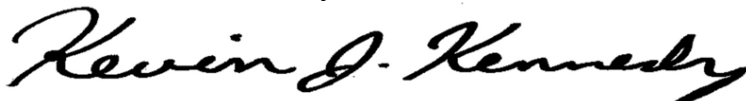
Conclusion

We appreciate the observations and analysis of the LAB, which provide the public and the Legislature with new insights into the agency, including the Board's confidential proceedings and interactions with staff. The agency will continue to ensure compliance with the recommendations in the LAB's reports.

The report describes an engaged Board that probes, evaluates and considers the materials and recommendations presented by staff. It puts to rest any questions as to whether the six Board Members exercise independent judgment when they make decisions about complaints, investigations and penalties.

Thank you again for your thorough review of the Government Accountability Board's complaint resolution process. We appreciate the courteous and professional approach your staff brought to the audit.

Government Accountability Board



Kevin J. Kennedy
Director and General Counsel