

## An Open Letter to Attorneys on Continuous Improvement in Government

From Alfredo Mycye, Director of Business Transformation at Texas Workforce Commission

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The day before yesterday, I attended the State Agency Coordinating Council's Legal Subcommittee. I wanted to hear the Sunset Commission's General Counsel discuss Sunset Bills that will be addressed this legislative session in Texas. I also wanted to tell the Texas general counsels about some upcoming events that our own Subcommittee for Quality, Process Improvement, and Innovation was holding in the coming weeks. I had spoken to the Legal Subcommittee group before about continuous improvement, but this was before our own General Counsel at Texas Workforce Commission, Les Trobman, completed a continuous improvement project with his team. He told the Subcommittee about his positive experience and I added the most recent performance analysis encapsulating the improvements in the area of contract reviews. It was as follows: if you submit a contract, any contract (regardless of complexity), to the General Counsel Office for review, there is an 84% chance that any contract submitted will be completed in 6 days or less. There is a 96% chance that any contract submitted to General Counsel will be completed in 10 days or less. And there is a 100% chance that, if a contract review takes longer than 10 days, the General Counsel and his Deputy General Counsel will know about the lengthy review and will have gained an appreciation for why it has taken so long (because of complexity for example; or other (legitimate) reasons for delay).

I looked about the room when Les and I were done summarizing the improvement effort and results. There were nods of approval and some murmuring, but I knew what they were thinking: How did they really get those results? Did quality drop? Did important contracts get neglected because of an emphasis on speed? Were the attorneys pressured into incomplete or hasty reviews? Did the whip unfairly crack above the shoulders of staff attorneys? They were thinking: "Legal analysis, debate, and conclusion is a difficult and weighty business that shouldn't be rushed or measured with a stopwatch. You must have enough staff resources to accommodate the work demanded by the agency—or, they will have to wait until the existing staff gets to their particular contract and wait until the review is complete."

Before I move off the first page in this letter I want to stress my thesis: *Operational improvement concepts, methods, and tools apply and work in a government legal environment. The high-level, critical thinking, and professional judgement work that attorneys do all benefit from continuous improvement efforts: they get better, faster, more effective, and more efficient. You can achieve more with less effort when you deploy continuous improvement.*

Lean, Six Sigma, and Theory of Constraints have finally been combined into a cohesive government improvement system that is as effective on our complex legal mechanisms (like policy and contract reviews) as it is on high-repetition transactional processes (like open records and permitting). Let's take a closer look with some more examples.

When I was at Texas Department of Housing, we conducted a concerted effort to reduce attorney review times. This effort reduced the turn-around-average dropping from 18 days to 7.8 days (where, I am told, it has remained). But the most startling discovery during our project was that most of the slow reviews had actually been sent back to program for clarification and were in program hands. The

attorneys, we discovered, were being unfairly criticized for long turn-around-times when they were, in reality, functioning as “document quality-control” for the entire agency.

It is important to note that the legal continuous improvement effort at TWC involved two specific improvement aspects and an overall office-wide initiative to design and adopt a portal system to support the agency, streamline the request-handling process from the perspective of general counsel staff, and measure that system of support. The two specific aspects of “rapid process improvement” (RPI) that TWC’s Office of General Counsel undertook was Open Records and Contract Reviews. Both have been very successful; Open records took a 37-day customer wait time to well under 10 days; and Contract Reviews have resulted in full broad-band support for all agency programs, with specific focus and attention on valid “hot-expedited” requests that truly need ASAP legal attention. The 86% reviews completed within 6 business days, the 96% completed w/in 10 days and 100% oversight-review of over-10 days review requests is indicative of the excellent contract review legal support provided to the agency.

I have now had an opportunity to improve over a dozen law offices and work with over 100 attorneys. I now have enough experience to know the answer to the question: “How did they make that improvement”? And I think the General Counsels of Texas deserve an answer to that question.

I propose to answer in three parts: to make a list of all the reasons for improvement and techniques employed to gain that improvement; to reflect on the cumulative benefit to our General Counsel office; and to make what I hope is a cogent argument to all general counsels and attorney leaders asking them to consider undertaking an improvement project.

A listing reasons and explanations for why the improvement technique worked:

- 1) Have a good office goal: Provide legal support to the Commission and Agency by ensuring its policy decisions and procedures are legally sufficient. Provide accurate, timely, and concise opinions, advice, and legal action. Provide TWC elements the full range of legal options. Clear and concise. The Office of General Counsel team can fully explain the reasons for a legal decision and is prepared to represent the Agency and its decisions.
- 2) Educate all parties of the principle of early legal consultation. The attorney-client relationship, and fruitful results of this relationship, rests upon the principle of early consultation. If attorneys are not offered the opportunity to advise and consult on possible program and agency courses of action early in the process, then the attorney-client relationship is stunted. It is relegated to a veto step for legal sufficiency at the end of the contract or planning process. On the other hand, if customers embrace the idea of seeking legal guidance early the decision-making process, they will also increase their legally sufficient options (*thus contributing overwhelmingly toward program success*).
- 3) Recognize that improvement is not a zero-sum game. As you lean into and contemplate list of improvement techniques below, please understand that there is a cumulative beneficial effect which defies our conventional zero-sum mathematical notions which tell us it is impossible to simultaneously improve speed, quality, timeliness, and productivity. That is just not true in continuous improvement. You do not take away quality or thoroughness when you are able to speed up. Instead, streamlining, focus, and “professional standard work” all save time and energy which, in turn, create capacity for your organization. This capacity can be redeployed to improve quality, productivity, legal sufficiency, customer service, etc.

- 4) Create professional standard work that creates an organizational body of knowledge which benefits all attorneys and future customers. These include category-specific checklists, templates, and category-specific questions on legal sufficiency. These memory jogs make high-repetition tasks easier and quicker. But more importantly they free up our attorney's minds for critical thinking, decision making, and other task that require a high-level of judgement. Sure, we will eventually remember all the important points that a good HIPPA/FIRPA/PII data-sharing contract must address, but who needs to remember that when we can construct a checklist. Take the time to write up "best practices." Best practices, specific to certain legal situations, are often the best types of legal professional standard work. Think of them as precedent guidance created in the wake of an important court decision. When a best practice is written and adopted, we should celebrate both the author and the excellent work. We should recognize that the best practice will enrich all our work and has the potential to reduce our work-time on similar cases.

Here is an example of deploying professional standard work in a law office. A private law office recently sought my advice because their family law attorney was overwhelmed by potential clients and existing clients seeking family law advice. The law office provided one-time advice to potential clients who often became clients. All the office attorneys would forward any question or case to the family law attorney if the issue concerned children or a family aspect. I advised that the family law attorney write out the answer to the 5 most frequently asked questions and hold an office workshop on how to treat and triage family law questions. The "ask" for the office attorneys was straightforward:

- If you get one of these 5 questions (or other answers placed on the common electronic drive), then go ahead and answer the questions.
- If you don't know the answer or fully comprehend the situation, then forward them to the family law attorney for consideration. The general guidance to the office attorneys was "when in doubt, refer it out," in other words, when a question was complex and exceeded the 5 common questions, they should forward the question to the family law attorney for her review.

Potential clients were pleased and became clients. Existing clients were also very satisfied with the prompt replies and sound advice. The volume of questions the family law attorney had to field fell to reasonable levels. The family law attorney obtained more work-focus and achieved more favorable outcomes. Success and law office growth ensued.

- 5) Have attorneys responsible for what they can and should be working on, not work that is pending some external action or future date – examples would be incomplete casework, cases under appeal, pending litigation, pending a judicial decision, or "on-hold" contracts. The principle here is that work on the desk of attorneys should be their primary focus work (i.e. "blue light" in improvement terminology). Attorney's desks should not be "holding pens" for cases and issues that they cannot physically work on because the work is waiting for something else that the attorney cannot immediately request or trigger. Tracking pending actions, court dates, and appeal deadlines is not attorney work. Attorneys performing administrative-type work will likely be multitasked more, distracting them from their core competency (legal analysis and legal duties). Administrative staff can efficiently track such casework and set trigger-date "flags" to remind attorneys of work that has become active because a deadline was reached or because the case has moved to a different point in the legal system and needs the attorney's attention.

- 6) Keep track of who is expediting requests and why. Once we begin to collect and analyze this data, we begin to learn who are misusing the expedite option and why. Knowing which departments and directors are expediting the most is enlightening; this is true for the general counsel office and for the department that is always submitting their legal requests with “their hair on fire.” Tracking the data enables the General Counsel office to work with the departments who expedite the most and to help them submit routine requests more timely. Remember, expedited requests cause your attorney to engage in bad multitasking. They must stop work on a task before they are at a stopping point in order to refocus on a new, urgent task. Bad multitasking has a scientifically demonstrated penalty of slowing down work by up to 50%. And we got an extra boost; our executive director heard we were tracking expedites and asked to see the report every month.
- 7) Measure the time it takes to accomplish work, from the time it enters our legal office until the time the work leaves completed. Time-in is recorded at customer submittal and time-out is recorded when the customer gets their legal review or decision back. It is important to recognize that this total “cycle time” is also called “customer wait time.” Endeavor to ensure it is clear “who has the ball” and the client is not thinking “we are waiting on them,” when, in actuality, we sent it back for clarification two week ago. Most “lost” or misplaced requests fall into this category.
- 8) Team-review the “old dog” tasks that are lagging. If a customer request is taking longer than is expected or is delaying program action, then the requested action would likely benefit from the wisdom of the team and senior leadership. Old dog reviews are team aged-case reviews to ensure attorneys, especially new attorneys, do not suffer in silence and gets them the peer support they need (and director support too!). In many ways, Legal support is really a team sport, not simply a craft activity. Long and difficult reviews benefit from team attention and assistance.
- 9) Keep track of legal requests that are not “full kit.” In other words, if our attorneys get requests that are not ready to work on (complete, not correct, or not up-to-date) then, as an agency, we are not setting them up for success. Customers need thoughtful and data-based feedback when they are routinely submitting legal requests that requires an inordinate amount of attorney completion-work (full-kit work that should have been accomplished upstream by the submitting customer).
- 10) Keep long-term track of legal work that did not meet our own office standards, standards of our legal peers, and expectations of our customers. Fully recognizing that analysis of shortcomings is difficult or charged with strong perspectives, it is nonetheless important for the organization to reflect on what we have been able to accomplish for the agency and areas where we might want to develop further. This honest introspection is often best accomplished with a year’s worth of situations and customer feedback in the form of data (and not anecdotal). I suggest you keep an electronic (or paper) file of all program produced documents and actions that:
  - a. Could have been legally stronger or better (less than desired legal sufficiency)
  - b. Could have benefited from earlier legal consultation
  - c. Lacked the desired “cause level” criteria or proof (for example, elements such as willful, material, or knowledgeable did not meet desirable criteria level for whatever standard of proof the organization was trying to reach: Preponderance of evidence, clear and convincing, or beyond a reasonable doubt.
  - d. Were poorly written or could have been written better
  - e. Might offer us a lesson-learned or a best practice for the future
  - f. May be a paragon of excellence on which to build a future template or use as an example

Then, take a look at the file(s) once or twice a year and reflect on the contents by types, severity, and legal functions. How do the pejorative situations stack up? What are the most frequent categories of mistakes we encounter? It may be in our interest to improve the 20% of our challenges that are causing 80% of our hiccups. (This is called Pareto analysis.) Which of these challenges, omissions, or errors should be brought up with program? The Office of General Counsel can use these observations and issues (collected over the year) to illustrate to program the need to address the most challenging areas. This is the foundation of organizational learning: reflecting on past frictions to pave a more streamlined future. This can ultimately develop into recommendations and needed program training, thus establishing a positive feedback loop. Also, newfound solutions, ideas, and proven techniques can and should be included in the training and recommendations. In every legal situation I have observed, program needs thoughtful and supportive constructive criticism (*trends*, not anecdotes) from their attorneys about once or twice a year to improve and shore up shortcomings. Overall, this observing, recording and learning loop makes a huge difference in legal office performance and the strength of program thinking and decision-making.

- 11) Always strive to ask the question: what is constraining our system? What is the bottleneck in our process that is slowing down all our functions, even the faster one. Focus improvement at the bottleneck that defines our flow of work. The 5 focusing steps are 1) identify the constraint 2) focus improving the constraint 3) subordinate other processes to the point of constraint 4) elevate the constraint with additional resources if necessary, and 5) go back to step 1.
- 12) Always strive for improvement. Is it possible for our attorneys, without undue stress or late evenings, complete their work in a measured and quality manner? Can they complete their daily work each week and still reserve 2 hours of time for continuous improvement or professional development? We think so. We recommend you strive to carve out these two hours whenever possible. Some weeks are too busy, but 2 hours on improvement and professional development is a noble goal.
- 13) Define what good looks like for client support: General Counsel attorneys involve themselves early in division decision-making process by attending meetings and proactively communicating.
  - a. *When the stakeholder is considering or re-evaluating risk, they should involve General Counsel as early and often as possible.* Attorneys, armed with the latest changes and information, have full-kit and context to assist the stakeholders in developing definitive legal questions.
  - b. *Critical evaluation enables the objectives of TWC stakeholders resulting in accurate, timely, and concise legal opinion, advice, and action.* We make “getting to yes” possible through risk assessment and by providing a full range of legal options. Engagement with program results in management providing sufficient context for the legal question at hand. Attorneys ask and answer the right questions.
  - c. *Legal authority of a decision or action is clearly defined. Analysis is complete and well thought-out.* Legal opinions and advice are clearly communicated and understood. Legal advice, opinions and proposed actions are efficiently vetted and provided to the stakeholders in a timely fashion. Accurate, timely, and concise opinions, advice, and legal action is provided to the TWC stakeholder to benefit their mission.
- 14) Establish a sustainable organizational rhythm in your Office of General Counsel to manage requested legal reviews, solicitations, contracts, review legal performance dashboards, make thoughtful decisions, and accomplish other legal work.

- 15) Good leadership matters and leadership contributed heavily to the success and methods described above. In TWC's case, the General Counsel and the Deputy General Counsel (a three-time veteran of improvement projects) provided the emphasis and focus for the office team. When senior decisions were needed, these two leaders made them. When project meetings were sparsely attended, these two leaders insisted that improvement was a priority. The list of how involved and positive leadership goes on.
- 16) Good leadership is important and necessary, but it is rarely sufficient to achieve improvement unilaterally (without some or all of the improvement activities described above).

There has been a significant cumulative benefit to our General Counsel office in TWC. In fact, to give you an example of this benefit, I just witnessed a group of program and contracting staff use the phrase "it's in legal" as a very positive way of saying that "all our work is done and the product is in the final phase of completion and the final product is forthcoming." In other words, "it's in legal" is actually now indicative of staff saying "hooray! Our collective work is almost done." However, in the not-too-distant past, "it's in legal" had a very different connotation, more akin to "the check is in the mail." It was a pejorative comment indicating the likely whereabouts of a delayed action that we had lost track of. In the past, people would say, "it's in legal" with a shrug and an eye roll. Now they say it proudly and positively as an indication that a complex project is nearly completed. What a tremendous difference in just a few years.

My aspiration in writing and circulating this letter is to bring positive awareness to the potential of continuous improvement in government legal offices across Texas. Effective and timely support for government operations and agency decision-making is well within our wherewithal.

I hope that I have convinced you that operational improvement concepts, methods, and tools apply and work in a government legal environment. If you use the techniques discussed above, and resident in continuous improvement methodologies, then your legal offices can improve their services substantially, even if they are already (currently) good and timely. Legal operations, even individual legal review, can benefit from continuous improvement because high-level, critical thinking, and professional judgement work that attorneys do can get better, faster, more effective, and more efficient. If you believe what I am saying has merit, then please consider undertaking an improvement project in a governmental system or office which involves attorney work.

More resources are available for you and your legal team at the SACC Quality, Process Improvement, and Innovation Subcommittee chaired by Carrie Green, the senior improvement director at DPS. Another resource is Jonathan Coneby at Texas Workforce Commission, the Manager of Business Transformation ([jonathan.coneby@twc.state.tx.us](mailto:jonathan.coneby@twc.state.tx.us)).

With sincere regards and best wishes for all legal enterprises in government, Alfredo J. Mycue

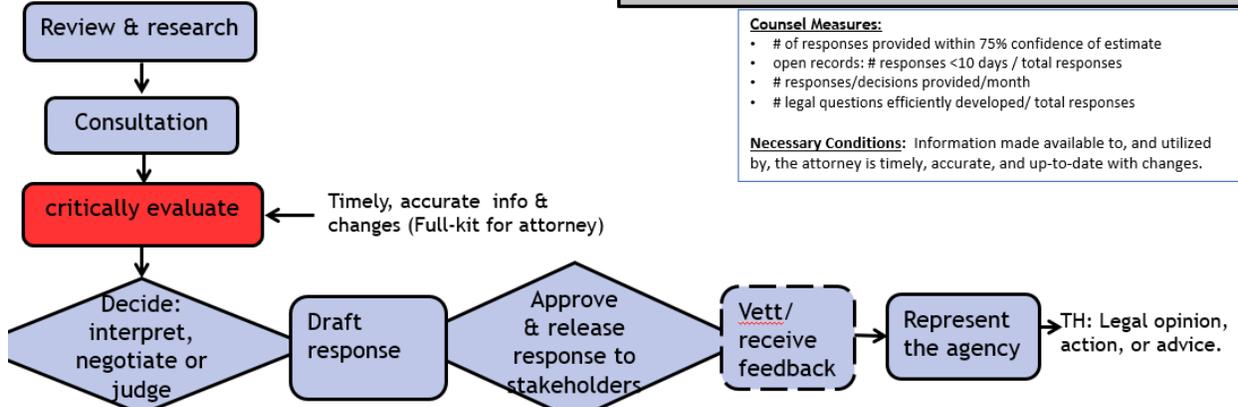
Two documents follow: A Throughput Operating Strategy (TOS) for Office of General Counsel and a TOS for Open Records. They are pictures of "what good looks like" as a legal organization works to accomplish its purpose and achieve its mission. Enjoy.

**Office of General Counsel Division Goal:** Provide legal support to the Commission and Agency by ensuring its policy decisions and procedures are legally sufficient. Provide accurate, timely, and concise opinions, advice, and legal action. Provide TWC elements the full range of legal options. Clear and concise. The OGC team can fully explain the reasons for a legal decision and is prepared to represent the agency and its decisions.

**Feeding Control Point:** OGC attorneys involve themselves early in division decision-making process by attending meetings and proactively communicating. When the stakeholder is considering or re-evaluating risk, they should involve OGC as early and often as possible. Attorneys, armed with the latest changes and information, have full-kit and context to assist the stakeholders in developing definitive legal questions.

**After Control Point:** Legal opinions and advice are clearly communicated and understood. Legal advice, opinions and proposed actions are efficiently vetted and provided to the stakeholders in a timely fashion. Accurate, timely, and concise opinions, advice, and legal action is provided to the TWC stakeholder to benefit their mission.

Requests/ID need for legal action, opinion, or advice



- Counsel Measures:**
- # of responses provided within 75% confidence of estimate
  - open records: # responses <10 days / total responses
  - # responses/decisions provided/month
  - # legal questions efficiently developed/ total responses

**Necessary Conditions:** Information made available to, and utilized by, the attorney is timely, accurate, and up-to-date with changes.

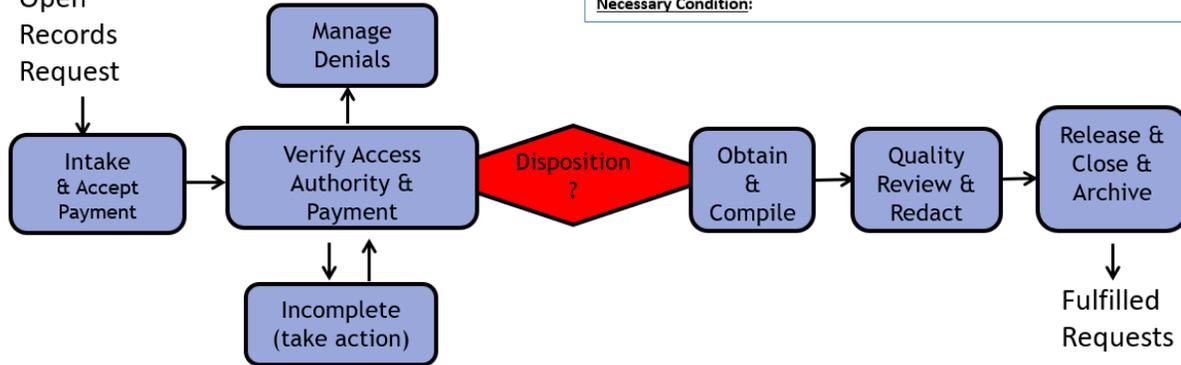
**Control Point:** Critical evaluation enables the objectives of TWC stakeholders resulting in accurate, timely, and concise legal opinion, advice, and action. We make “getting to yes” possible at the CP through risk assessment and by providing a full range of legal options. Engagement with program results in management providing sufficient context for the legal question at hand. Attorneys ask and answer the right questions. Legal authority of a decision or action is clearly defined. Analysis is complete and well thought-out.

**Open Records Goal**  
To provide quality documents to the requestors in an efficient, timely manner.

**Feeding Control Point:** We always have open records requests ready for the DO's to make disposition. DO's have all necessary information and requirements to make disposition (SSN, Auth., complete & clear requests, payment, photo ID, etc.). Data entry into the system happens faster and smoother.

**Measures** Requests are responded within 15 business days (including initial response within 10 days and final records release within 15 days, excluding time when we are awaiting payment).  
**Necessary Condition:**

Open  
Records  
Request



**Open Records Control Point** (what does good look like?): Disclosure officers have full kit to make disposition and ability to focus on the decision. DO's are spending their time making disposition and have clear guidance on how to dispose of all types of cases. DO decides how to obtain documents. Disposition is made faster and faster and better and better.

**After the Control Point:** No delays after disposition is made; requests are obtained faster and faster, without back and forth clarifications. No backlogs or bottlenecks. Only quality disclosures are released.