

THE COUNCIL OF THE CITY OF NEW YORK

Hon. Corey Johnson
Speaker of the Council

Hon. Fernando Cabrera
Chair, Committee on Governmental Operations



Report of the Finance Division on the
Fiscal 2019 Preliminary Budget and the
Fiscal 2018 Preliminary Mayor's Management Report for the

Office of Administrative Trials and Hearings

March 19, 2018

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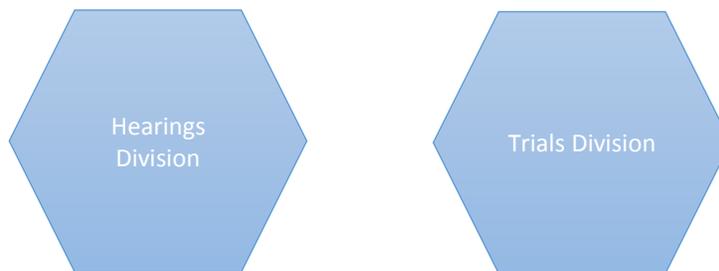
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Office of Administrative Trials and Hearings Services Overview

The Office of Administrative Trials and Hearings (OATH) is the City’s central, independent administrative law court. OATH has two divisions: the OATH Trials Division and the OATH Hearings Division.

Divisions



OATH Hearings Division.

The Hearings Division conducts hearings on summonses issued by enforcement agencies for alleged violations of City rules and regulations. The Hearings Division represents the consolidation of three previously separate tribunals: the Environmental Control Board (ECB); the Department of Health and Mental Hygiene (DoHMH) Health Tribunal and the Taxi & Limousine Commission (TLC) Tribunal. Under the management of current OATH commissioner Fidel Del Valle, these three tribunals have been gradually streamlined into a single Hearings Division, which manages cases that were formerly overseen by these tribunals under an integrated system with a unified hearing process. In addition, hearings formerly adjudicated by the Department of Consumer Affairs were also streamlined into the OATH Hearings Division beginning in September 2016.

OATH Trials Division.

Formerly the OATH Tribunal, the OATH Trials Division adjudicates a wide range of issues that can be referred by any City agency, board or commission. Hearings conducted by the Trials Division include: disciplinary cases brought by City agencies against civil service employees; matters pertaining to licensing, regulatory and enforcement authority, including cases involving City contractors; cases involving holders of various City licenses and loft tenants and their landlords; and hearings conducted after the New York City Police Department (NYPD) seizes vehicles of drivers accused of crimes.

Budget Issues

Environmental Control Board Debt

OATH miscellaneous revenue figures discussed in the “Miscellaneous Revenue” section of this report underrepresent the quantity of fines levied in ECB courts because a major share of OATH fines are not collected. Unpaid fines are recategorized as OATH/ECB debt, which the Department of Finance is responsible for collecting. In response to growth in unpaid OATH/ECB debt, the Department of Finance established the “NYC Amnesty Program for Office of Administrative Trials and Hearings (OATH)/Environmental Control Board (ECB) judgements violations.” This program, which ran from September through December 2016, allowed violators with OATH/ECB debt to have a portion of their debt forgiven if part of their debt was paid off over the period of the amnesty. This resulted in the generation of \$45 million in debt payments over the amnesty period.

The Department of Finance has also been more assertive in its efforts to collect OATH/ECB debt, with debt collections rising from \$41.5 million in Fiscal 2014 to \$90.7 million in Fiscal 2017. For more information on the Department of Finance’s efforts to collect ECB debt, please see the [“FY17 Annual Report on DOF Collection of ECB Judgement Debt,”](#) a report the DOF must submit to City Council following the passage of Local Law 11.

Criminal Justice Reform Act (CJRA)

Criminal Justice Reform Act (CJRA) is a series of bills passed by the City Council and signed by the Mayor in June 2016 that diverted a number of low level offenses (such as public urination and public consumption of alcohol) from criminal court to OATH. OATH’s Fiscal 2019 Preliminary Budget includes \$7 million and 51 staff allocated towards the implementation of the CJRA, with funding going towards staff salaries, facility renovations to accommodate the increased volume of hearings, security guard coverage, community service programs, and additional supplies and equipment.

Following the implementation of CJRA in June 2017, the number of summonses OATH received from the Police Department grew substantially, as shown in the chart below. While monthly police OATH summonses spiked to 13,054 in August 2017, they have subsequently tapered off.

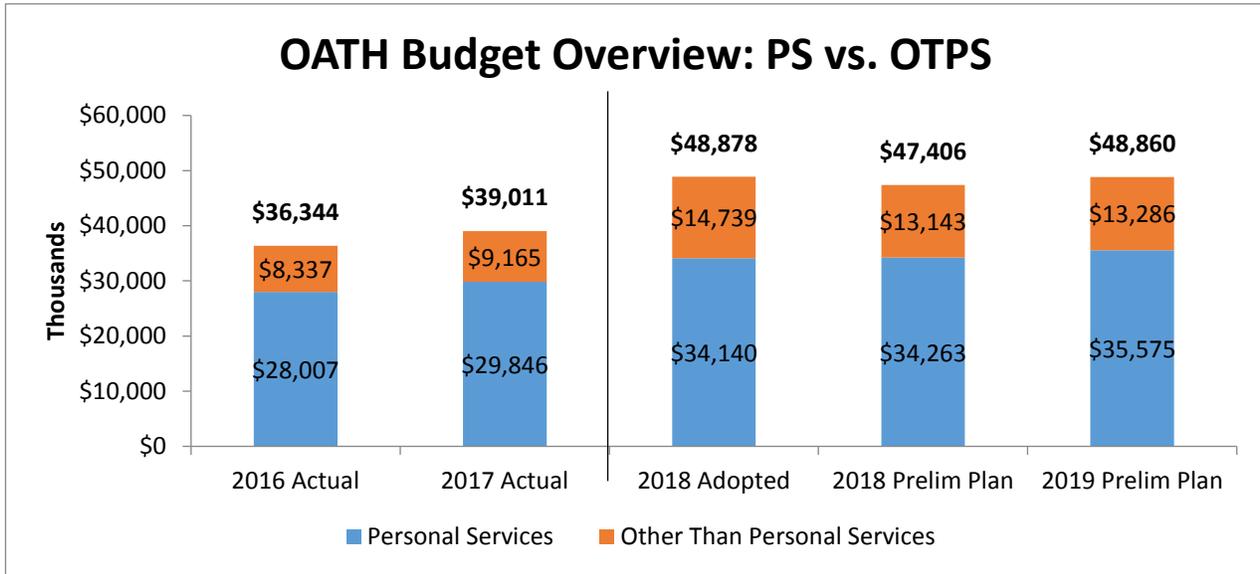
It should be noted that, despite this growth, police summonses nonetheless make up a relatively small share of OATH’s over 800,000 annual summonses. In Fiscal 2017, 22,695 police summonses¹ represented 2.7 percent of all OATH summonses, while over the seven months of Fiscal 2018, coinciding with the implementation of CJRA, 53,058 police summonses represented 10.1 percent of all OATH summonses. Comparatively, over the first seven months of Fiscal 2018, the Department of Sanitation and Department of Buildings issued 224,412 and 51,728 OATH summonses, respectively.

¹ Excludes summons from Port Authority Police, which are a separate entity under the jurisdiction of the Port Authority. Includes police summonses issued to drivers not licensed by the Taxi and Limousine Commission, such as for unlicensed operation of a cab.

Fiscal 2019 Preliminary Budget Highlights

The Office of Administrative Trials and Hearings Fiscal 2019 Preliminary Budget totals \$48.9 million, including \$35.6 million in Personal Services (PS) funding to support 315 full-time positions. The entirety of OATH’s budget is funded through City tax-levies. While OATH’s operations are separated into the Hearings and Trials Divisions, the agency’s budget is organized into only two units of appropriation² (U/A’s): Personal Services and Other Than Personal Services (OTPS).

Figure 1



OATH’s Fiscal 2019 Preliminary Budget totals \$48.9 million, including \$35.6 million in Personal Services (PS) funding to support 315 full-time positions. The Office is funded entirely with City tax-levy funds. The decrease in OATH’s Fiscal 2018 Budget is primarily a result of OATH’s Citywide Savings Program, which totals \$1.4 million for Fiscal 2018 and \$1.2 million for Fiscal 2019.

Highlights of OATH’s Fiscal 2019 Preliminary Budget

- **New Needs.** Since the Adoption of the Fiscal 2018 Budget, the Office of Administrative Trials and Hearings has identified \$123,000 in New Needs for Fiscal 2019.
- **Citywide Savings Program.** The Office of Administrative Trials and Hearings will generate budget savings of \$1.4 million in Fiscal 2018 and \$1.2 million in Fiscal 2019 as part of the Citywide Savings Program introduced in the November 2017 and Fiscal 2019 Preliminary Plans. These savings represent three percent of OATH’s total Fiscal 2018 Budget and 2.5 percent of OATH’s total budget in Fiscal 2019.
- **Miscellaneous Revenue.** The Financial Plan projects that the Office of Administrative Trials and Hearings will generate Miscellaneous Revenue totaling \$139 million in Fiscal 2019, almost entirely from the collection of fines issued at OATH courts.
- **Contract Budget.** OATH’s Fiscal 2019 Preliminary Contract Budget totals \$4.7 million for 20 contracts, accounting for 35.5 percent of the Department’s OTPS Budget.

² Units of Appropriation are the subdivisions of the City Expense Budget that the City Council votes upon.

- **Preliminary Mayor's Management Report (PMMR) Highlights.** Notable performance metrics reported by the Office of Administrative Trials and Hearings in the 2018 PMMR include the following:
 - ✓ Total summonses received from the issuing agencies at the OATH Hearings Division;
 - ✓ Total summonses processed at the OATH Hearings Division; and
 - ✓ Average time from OATH Hearings Division hearing assignment to decision rendered (days).

Financial Plan Summary

Table 1

OATH Financial Summary						
	FY16	FY17	FY18	Preliminary Plan		*Difference
<i>Dollars in Thousands</i>	Actual	Actual	Adopted	FY18	FY19	FY18-FY19
Spending						
Personal Services	\$28,007	\$29,846	\$34,140	\$34,263	\$35,575	\$1,435
Other Than Personal Services	8,337	9,165	14,739	13,143	13,286	(1,453)
TOTAL	\$36,344	\$39,011	\$48,878	\$47,406	\$48,860	(\$18)
Personal Services						
Additional Gross Pay	\$564	\$539	\$468	\$468	\$468	\$0
Full-Time Salaried - Civilian	16,682	17,898	20,603	20,603	22,080	1,477
Unsalaries	10,710	11,357	12,890	13,013	12,977	86
Overtime - Civilian	50	51	179	179	50	(129)
SUBTOTAL	\$28,007	\$29,846	\$34,140	\$34,263	\$35,575	\$1,435
Other Than Personal Services						
Contractual Services	\$2,780	\$2,900	\$5,781	\$5,703	\$4,717	(\$1,064)
Other Services & Charges	4,102	4,792	6,787	5,804	6,575	(212)
Property & Equipment	185	319	216	485	158	(58)
Supplies & Materials	1,269	1,154	1,955	1,152	1,836	(119)
SUBTOTAL	\$8,337	\$9,165	\$14,739	\$13,143	\$13,286	(\$1,453)
TOTAL	\$36,344	\$39,011	\$48,878	\$47,406	\$48,860	(\$18)
Funding						
City Funds			\$48,878	\$47,406	\$48,860	(\$18)
TOTAL	\$36,344	\$39,011	\$48,878	\$47,406	\$48,860	(\$18)
Budgeted Headcount						
Full-Time Positions - Civilian	241	274	315	315	315	0
TOTAL	241	274	315	315	315	0

**The difference of Fiscal 2018 Adopted Budget compared to Fiscal 2019 Preliminary Budget.*

Citywide Savings Program

OATH's Citywide Savings Program includes, among others, the following savings:

- Lease savings of \$583,000 in Fiscal 2018 and \$211,000 in Fiscal 2019 from the delay in the build out and occupancy of OATH's new office in the Bronx;
- Lease savings of \$362,000 in Fiscal 2018 as a result of delays in consolidating OATH's Jamaica office into its Long Island City office;

- Data capture and mail fulfillment service contract savings of \$342,000 in Fiscal 2018 and Fiscal 2019 from an existing service provider through competitive bidding. Savings will be generated through lower pricing and a reduction in volume from original projections;
- Savings of \$514,000 in Fiscal 2019 from delays in filling vacant positions; and
- Savings of \$115,000 in Fiscal 2018 and \$104,000 in Fiscal 2019 from re-estimates of the contractual services and bonded courier service requirements for the implementation of the Criminal Justice Reform Act. Please see the section “Criminal Justice Reform Act” in this report for more information.

New Needs

The singular new need to OATH’s budget in the Fiscal 2019 Preliminary Plan is the addition of \$123,000 in Personal Services funding in Fiscal 2018, Fiscal 2019 and Fiscal 2020 for hearing officers for the Hearings Division. This funding will be used to fund an increased number of work hours for per diem hearing officers in order to manage an increased case load of summonses from the Department of Buildings.

Former Tribunals of the OATH Hearings Division

The Hearings Division conducts hearings on summonses issued by enforcement agencies for alleged violations of City rules and regulations. The Hearings Division represents the consolidation of three previously separate tribunals: the Environmental Control Board (ECB); the Department of Health and Mental Hygiene (DoHMH) Health Tribunal and the Taxi & Limousine Commission (TLC) Tribunal. Under the management of current OATH commissioner Fidel Del Valle, these three tribunals have been gradually streamlined into a single Hearings Division, which manages cases that were formerly overseen by these tribunals under an integrated system with a unified hearing process. In addition, hearings formerly adjudicated by the Department of Consumer Affairs were also streamlined into the OATH Hearings Division beginning in September 2016.

Health Tribunal

The OATH Health Tribunal provides hearings for individuals and businesses charged with violating laws related to, or affecting health within New York City. The Health Tribunal does not issue Notices of Violation (NOVs) and does not conduct inspections. The Tribunal schedules about 65,000 cases each year. Most of the cases involve public health and environmental sanitation, with the largest number of cases coming from inspections of food service establishments.

Taxi and Limousine Commission Tribunal

The TLC Tribunal is responsible for holding hearings on tickets that are issued by the TLC, NYPD and the Port Authority of NY/NJ. These tickets are issued to TLC licensees and non-licensees for violations of NYC laws and TLC rules and regulations. The TLC Tribunal is not a part of the TLC. Tribunal judges do not work for the TLC and are independent, impartial decision-makers.

Environmental Control Board (ECB)

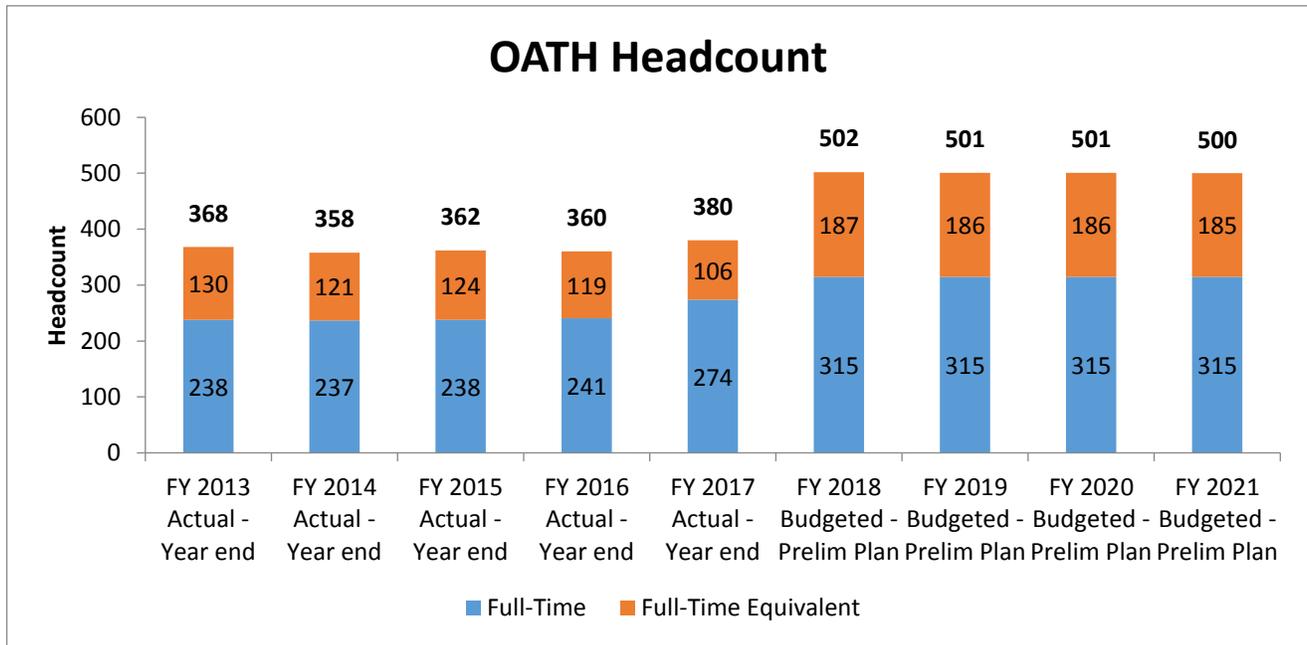
ECB is the City’s largest tribunal, and holds approximately 200,000 hearings annually on quality of life and public safety charges that are filed by 13 different agencies, including the Department of Buildings, the Fire Department, the Department of Environmental Protection and the Department of Sanitation.

Department of Consumer Affairs (DCA) Hearings

In September 2016, the OATH Hearings Division began hearing summonses issued from the Department of Consumer Affairs, which DCA formerly heard themselves. DCA is responsible for inspecting and licensing businesses in New York City in order to ensure that labor, consumer protection and other business regulations are being adhered to. The OATH Hearings Division now conducts hearings on the alleged violation of DCA business regulations.

Headcount

Figure 2

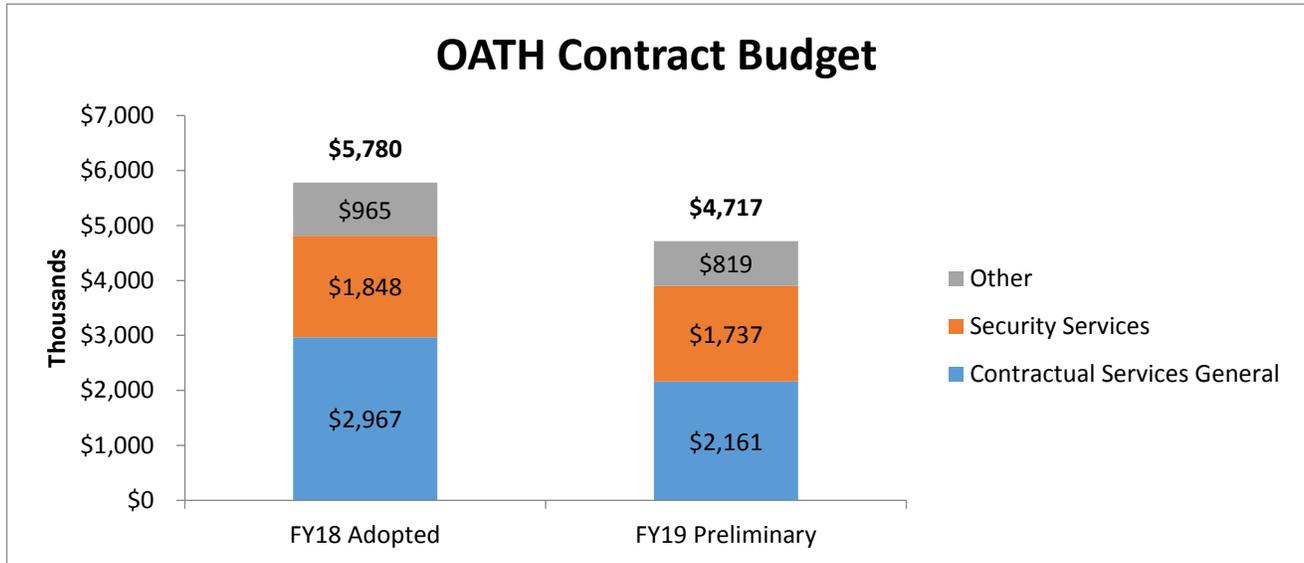


In the Fiscal 2019 Preliminary Plan, the Office of Administrative Trials and Hearings’ Fiscal 2019 Budget provides for \$35.6 million to support a headcount of 315 full-time positions and 187 full-time equivalent positions. As of December 2017, OATH actually employs 292 full-time staff and 99 full-time equivalent staff, representing a full-time vacancy rate of 7.3 percent and a full-time equivalent vacancy rate of 47.1 percent. OATH’s headcount has expanded in recent years in order to accommodate several changes to the Agency: the reorganization of OATH from four tribunals into the Trials and Hearing Divisions; the addition of new offices such as the Office of the Ombudsman and the Center for Creative Conflict Resolution; and most recently, to accommodate an increasing case load following the passage of the Criminal Justice Reform Act. OATH’s staff vacancy rate has therefore been relatively large as the Agency gradually fills these positions. Please see Appendix B for more detail regarding OATH’s headcount.

Contract Budget

The New York City Charter mandates the preparation of a Contract Budget to identify expenditures for contractual services, which are defined as any technical, consultant or personnel service provided to the City by means of a contract. The Contract Budget is a subset of the OTPS portion of the City’s Expense Budget. The Administration prepares a Contract Budget twice each fiscal year. The Fiscal 2019 Preliminary Contract Budget totals \$15.6 billion for procurement expenditures across all agencies.

Figure 3



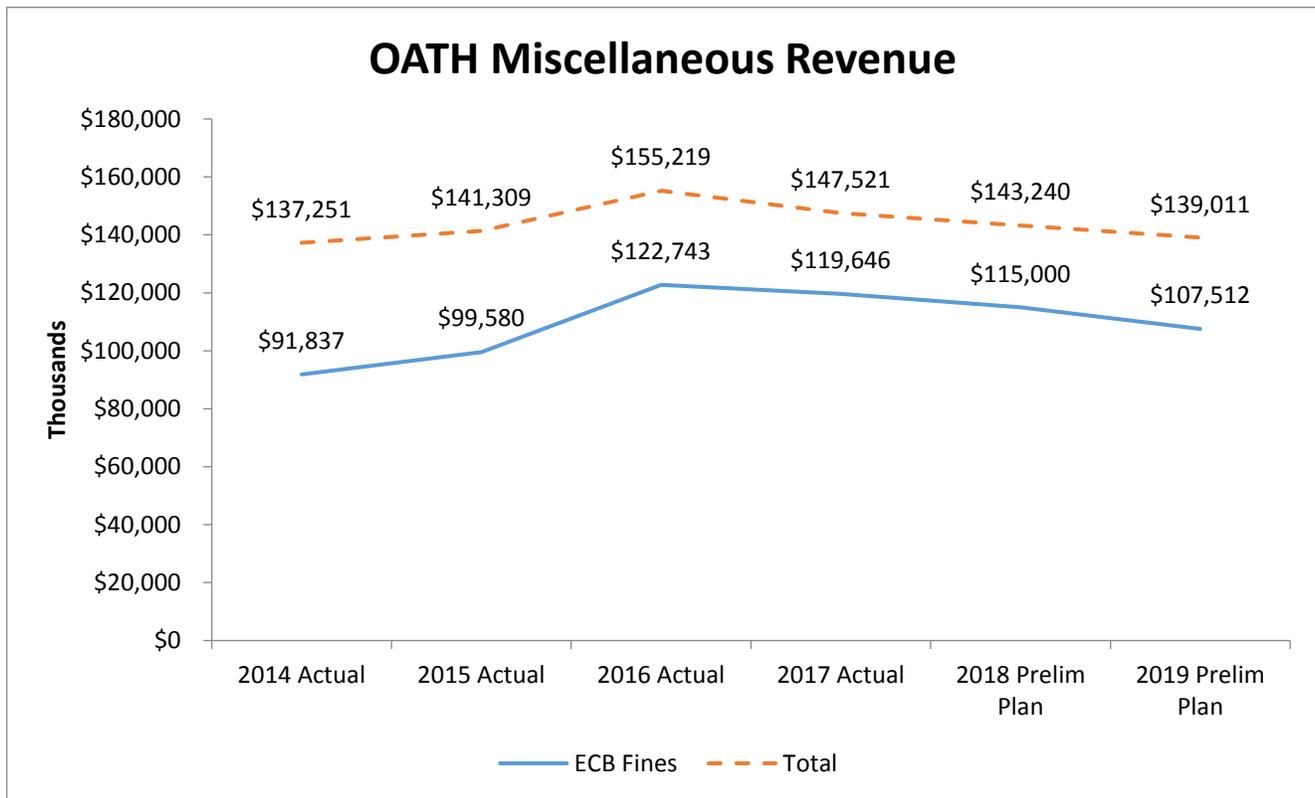
The Office of Administrative Trials and Hearing’s Fiscal 2019 Contract Budget totals \$4.7 million for 20 contracts, accounting for 35.5 percent of the Department’s OTPS Budget. OATH’s Fiscal 2019 Budget includes \$2.2 million for general services contracts, accounting for 45.8 percent of OATH’s total Fiscal 2019 Preliminary Contract Budget. These contracts are related to summons processing, language services, community service and lockbox services. In addition, OATH’s Fiscal 2019 Budget includes \$1.7 million for contracted security services, representing 36.8 percent of OATH’s Fiscal 2019 Preliminary Contract Budget, contracted to provide security at OATH tribunals.

OATH’s Contract Budget expanded significantly in Fiscal 2018 as the Agency prepared for an increase in the Hearings Division’s caseload as a result of the implementation of the Criminal Justice Reform Act. While OATH’s Fiscal 2019 Preliminary Contract Budget is \$1.1 million smaller than its Fiscal 2018 Adopted Contract Budget of \$5.8 million, the Agency’s Contract Budget is still relatively larger than in previous fiscal years. Please see Appendix C for more detail regarding OATH’s Contract Budget.

Miscellaneous Revenue

The OATH Hearings Division generates revenues for the City through the collection of fines issued for various violations. Even though the Health Tribunal, TLC Tribunal and ECB have been consolidated into the Hearings Division, revenue generated from Hearings Division fines are still subdivided by the types of cases these tribunals previously adjudicated. In addition to fine revenue, a smaller share of agency revenue is generated through fees charged at the OATH Hearings Division. OATH revenues totaled \$147.5 million in Fiscal 2017. Please see Appendix D for more information.

Figure 4



It is projected that OATH will generate combined tribunal fine revenue of \$139 million in Fiscal 2019. ECB fine revenue stems from violations issued by the Department of Sanitation, Department of Buildings, Department of Environmental Protection, Fire Department, Police Department, Department of Transportation, and several other agencies. Revenue generated from ECB fines is expected to represent 77.3 percent of OATH’s total miscellaneous revenue in Fiscal 2019, a percentage in line with actual revenue generation in recent fiscal years. ECB revenue has grown over the past several fiscal years as the number of ECB hearings has increased with the greater inflow of summonses. In contrast, revenue generated through Health Department fines has declined in recent fiscal years. This decrease is due in large part to the Council’s efforts to reform the City’s restaurant grading system. In October 2013, the Council passed legislation that improved the oversight and performance of the restaurant inspection system. In March of 2014, the Council and the Department of Health and Mental Hygiene announced new restaurant grading rules designed to reduce fines and provide additional educational resources to help restaurants maintain high health standards throughout New York City. Please see Appendix D for more detail regarding OATH’s Miscellaneous Revenue.

Preliminary Mayor’s Management Report (PMMR)

Figure 5

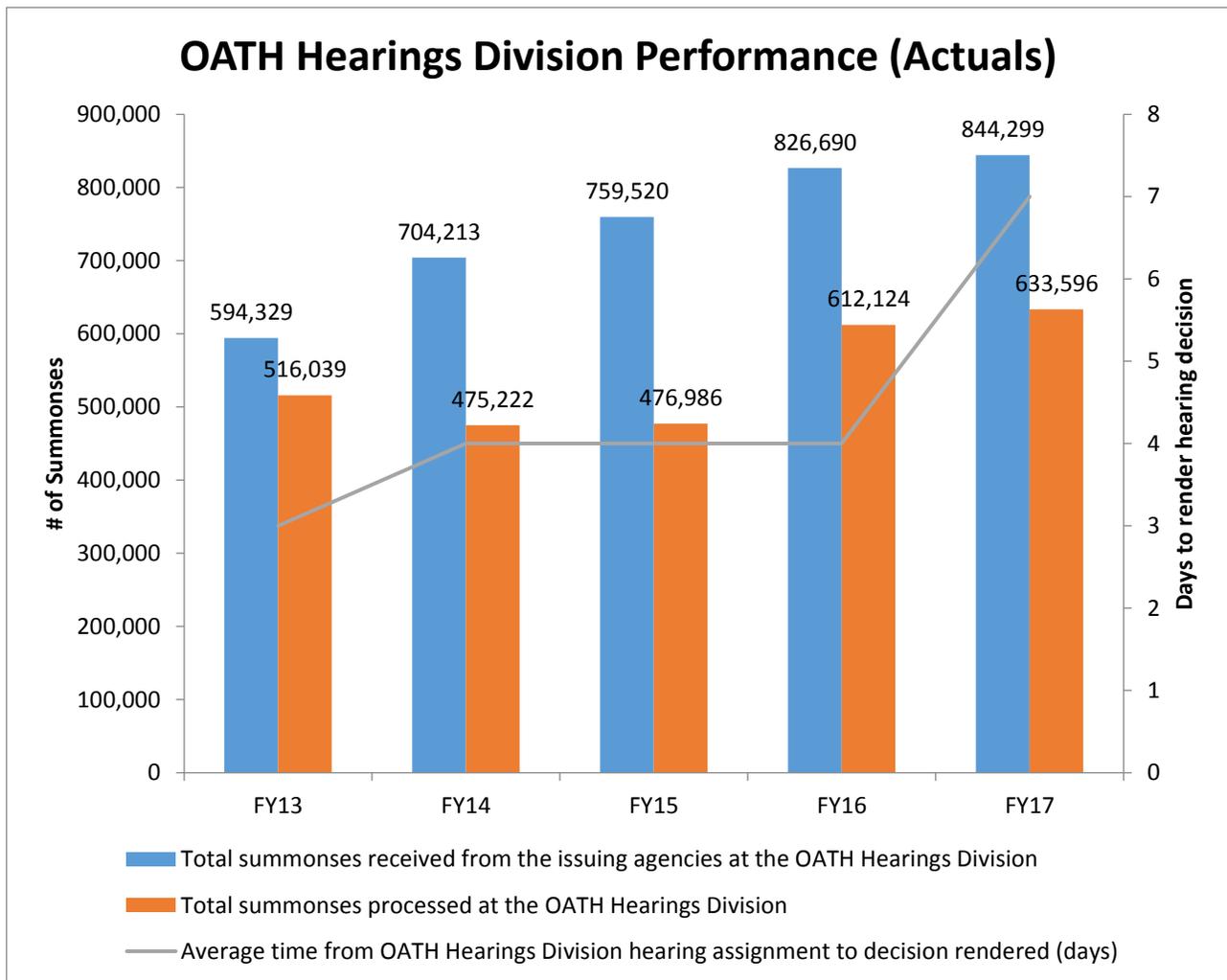


Figure 5 above highlights the OATH Hearings Division’s performance over the past several fiscal years using indicators sourced from the 2018 PMMR. The Hearing Division has seen the number of summonses it receives increase over the past several fiscal years. The number of summonses grew between Fiscal 2013 and Fiscal 2014 primarily due to the effects of Hurricane Sandy, the impact of which resulted in a lower issuance of summonses in Fiscal 2013. The number of summonses grew between Fiscal 2014 and Fiscal 2017 primarily because of an increased caseload from the Department of Buildings and Department of Sanitation, as well as due to a transfer of case jurisdiction from the Department of Consumer Affairs to OATH in Fiscal 2017.

The Hearings Division has been able to process more summonses as a result of increased resources and efficiency gains from OATH’s internal restructuring, as well as the increased usage of mail, phone and online hearings. Nonetheless, the Division has not been able to fully keep pace with the growth in summonses received. Consequently, the average time OATH requires to render a hearing decision has increased over the past several fiscal years. Please see Appendices E and F for a complete list of OATH’s 2018 PMMR indicators.

Appendices

A: Budget Actions in the November and the Preliminary Plans

<i>Dollars in Thousands</i>	FY18			FY19		
	City	Non-City	Total	City	Non-City	Total
OATH Budget as of the FY18 Adopted Budget	\$48,878	\$0	\$48,878	\$49,944	\$0	\$49,944
New Needs						
Hearing Officers for Hearings Division	\$123	\$0	\$123	\$123	\$0	\$123
Subtotal, New Needs	\$123	\$0	\$123	\$123	\$0	\$123
Other Adjustments						
Citywide Lease Savings	(194)	0	(194)	0	0	0
Subtotal, Other Adjustments	(\$194)	\$0	(\$194)	\$0	\$0	\$0
Citywide Savings						
Lease Savings	(\$945)	\$0	(\$945)	(\$211)	\$0	(\$211)
Contractual Savings	(342)	0	(342)	(342)	0	(342)
Electronic Records Management	0	0	0	(5)	0	(5)
Security Savings from Office Consolidation	0	0	0	(30)	0	(30)
Criminal Justice Reform Contractual Savings	(79)	0	(79)	(74)	0	(74)
Criminal Justice Reform Courier Service Savings	(36)	0	(36)	(30)	0	(30)
PS Savings	0	0	0	(514)	0	(514)
Subtotal, Citywide Savings	(\$1,402)	\$0	(\$1,402)	(\$1,206)	\$0	(\$1,206)
TOTAL, All Changes	(\$1,473)	\$0	(\$1,473)	(\$1,083)	\$0	(\$1,083)
OATH Budget as of the FY19 Preliminary Budget	\$47,406	\$0	\$47,406	\$48,860	\$0	\$48,860

B: OATH Headcount

	Actual - Year end					Budgeted - FY19 Prelim Plan			
	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Full-Time	238	237	238	241	274	315	315	315	315
Full-Time Equivalent	130	121	124	119	106	187	186	186	185
TOTAL	368	358	362	360	380	502	501	501	500

C: OATH Contract Budget

OATH FY19 Preliminary Contract Budget				
<i>Dollars in Thousands</i>				
Category	FY18 Adopted	Number of Contracts	FY19 Preliminary	Number of Contracts
Contractual Services General	\$2,967	4	\$2,161	4
Telecommunications Maintenance	240	1	80	1
Office Equipment Maintenance	75	3	75	3
Printing Contracts	124	1	124	1
Security Services	1,848	2	1,737	2
Temporary Services	175	1	195	1
Cleaning Services	166	2	160	2
Training Program City Employees	83	2	83	2
Professional Services - Computer Services	18	1	18	1
Professional Services - Direct Education Services	22	1	22	1
Professional Services - Other	62	2	62	2
TOTAL	\$5,781	20	\$4,717	20

D: OATH Miscellaneous Revenue

OATH Miscellaneous Revenue Budget Overview								
<i>Dollars in Thousands</i>								
Revenue Sources	FY14	FY15	FY16	FY17	FY18	Preliminary Plan		*Difference
	Actual	Actual	Actual	Actual	Adopted	FY18	FY19	FY18-FY19
OATH Hearing Fees	\$15	\$15	\$3	\$33	\$11	\$11	\$11	\$0
DOHMH Fines	38,744	33,082	27,324	24,813	26,288	25,029	26,288	0
ECB Fines	91,837	99,580	122,743	119,646	95,512	115,000	107,512	12,000
TAXI Fines	6,655	8,632	5,149	3,029	5,200	3,200	5,200	0
TOTAL	\$137,251	\$141,309	\$155,219	\$147,521	\$127,011	\$143,240	\$139,011	\$12,000

**The difference of Fiscal 2018 Adopted Budget compared to Fiscal 2019 Preliminary Budget.*

E: OATH 2018 PMMR Indicators: Trials Division

OATH Trials Division Indicators	Actual			Target		4-Month Actual	
	FY15	FY16	FY17	FY18	FY19	FY17	FY18
OATH Trials Division cases with decisions issued within 45 business days (%)	93%	93%	93%	*	*	90%	88%
OATH Trials Division facts and conclusions adopted by agencies (%)	99%	99%	99%	96%	96%	100%	99%
OATH Trials Division settlement rate (%)	57%	57%	59%	55%	55%	59%	56%
Cases filed at the OATH Trials Division (total)	2,754	2,553	2,661	*	*	871	992
Cases closed at the OATH Trials Division (total)	2,724	2,560	2,668	*	*	829	871
Cases processed per ALJ (total)	188	188.6	189.6	UP	UP	59.2	67.5
Average time for the OATH Trials Division to issue decisions after records closed (business days)	7.5	5.4	5.2	15	15	5.3	5.5

F: OATH 2018 PMMR Indicators: Hearings Division

OATH Hearings Division Indicators	Actual			Target		4-Month Actual	
	FY15	FY16	FY17	FY18	FY19	FY17	FY18
Total summonses received from the issuing agencies at the OATH Hearings Division	759,520	826,690	844,299	*	*	292,734	322,859
Total hearings at the OATH Hearings Division	281,704	271,920	298,571	*	*	95,833	103,157
Total number of pre-hearing activities at the OATH Hearings Division	250,911	298,819	313,665	*	*	104,020	98,709
Total summonses processed at the OATH Hearings Division	476,986	612,124	633,596	*	*	215,526	218,348
Summonses with decision rendered at the OATH Hearings Division	206,867	195,290	207,723	*	*	69,063	75,913
Average time from OATH Hearings Division hearing assignment to decision rendered (days)	4	4	7	*	*	6	8
OATH hearings by mail (% of total remote hearings)	31.20%	24.40%	32.30%	*	*	31.60%	22.40%
OATH hearings by phone (% of total remote hearings)	13.80%	16.70%	15.50%	*	*	15.70%	19.90%
OATH one-click hearings (% of total remote hearings)	55.00%	58.90%	52.20%	*	*	52.70%	58.40%
Completed customer requests for interpretation	9,419	10,185	11,842	*	*	3,761	5,910
Letters responded to in 14 days (%)	100%	100%	100%	*	*	100%	100%
E-mails responded to in 14 days (%)	100%	100%	100%	*	*	100%	95.10%
CORE customer experience rating (0-100)	94	98	97	*	*	NA	NA