

**NEW YORK CITY COUNCIL  
COMMITTEE ON OVERSIGHT AND INVESTIGATIONS**

**TESTIMONY OF MARGARET GARNETT  
COMMISSIONER, NEW YORK CITY DEPARTMENT OF INVESTIGATION**

**CONCERNING INTRO BILL No. 1770 IN RELATION TO  
WHISTLEBLOWER PROTECTIONS FOR INDIVIDUALS FACING  
ADVERSE PERSONNEL ACTIONS**

**Committee Room  
City Hall, 10 a.m.**

**JANUARY 13, 2020**

Good morning Chair Torres and members of the Committee on Oversight and Investigations. My name is Margaret Garnett and I am the Commissioner of the New York City Department of Investigation ("DOI"). Thank you for inviting me to address the Committee on Intro No. 1770, the proposed legislation in relation to whistleblower protections for employees facing adverse personnel actions.

New York City's Whistleblower scheme is foundational to DOI's mission of rooting out corruption, fraud, waste and other wrongdoing from City government. New York City is a leader in fighting municipal corruption because of its comprehensive system of duties to report and cooperate, strong protections for employees when they act on those duties, and an independent and robust inspector general system in the Department of Investigation.

In my testimony today, I'd like to first provide the Committee with an understanding of the rules that currently guide how and when wrongdoing must be reported; second, explain how the current whistleblower protection statute functions; third, summarize DOI's recent experience with the current whistleblower statute; and, finally, highlight some concerns and recommendations that I hope the Committee will consider as it evaluates the proposed legislation.

**I. Overview of the Rules that Currently Govern Reporting Wrongdoing**

There are currently three places in the City's governing documents that set out important aspects of the City's system for reporting wrongdoing. One is Executive Order 16, which mandates the affirmative obligation of all public officers and employees to report corruption, fraud and other wrongdoing or risk their jobs and professional advancement if they do not. Executive Order 16 also mandates that all public officers and employees

cooperate fully with DOI investigations. This duty to cooperate with DOI investigations is also included in Chapter 49 of the City Charter, within the list of duties of public officers and employees. The third place is Section 12-113 of the New York City Administrative Code, also known as the Whistleblower Protection statute, which protects public servants from retaliation when they act on their duty to report wrongdoing, as amended by Local Law 33, which expanded whistleblower protections to include complaints about children's educational welfare, health and safety, and to include officers and employees of vendors who have contracts with the City valued at \$100,000 or more.

## **II. How the Current Whistleblower Protection Law Functions**

The current whistleblower protection law, codified in Section 12-113 of the Administrative Code, has five elements that must be satisfied in order for an individual employee to be protected by the Law. First, the complainant must be an officer or employee of a City agency, or of a contractor with City contracts over \$100,000. Second, the complaint must involve corruption, criminal activity, conflict of interest, gross mismanagement, abuse of authority, or the health, safety or welfare of a child. Ordinary mismanagement, disagreements about policy or procedures, or objections to decisions within the lawful discretion of agency heads or elected officials are not covered. Third, individuals must make these complaints to DOI, or to a member of the City Council, the Public Advocate, or the City Comptroller, each of whom has a duty to refer the complaints to DOI. Employees and officers of contractors may also qualify for protection if they make such a report to the City Chief Procurement Officer, Agency Chief Contracting Officer or an agency head or Commissioner of the contracting agency, who then must refer the complaint to DOI. Individuals making a report concerning conduct involving the health,

safety or educational welfare of a child by another City officer or employee may also be covered by the statute if they report wrongdoing to a superior officer or to the Mayor. Fourth, the complainant must have suffered an adverse personnel action, which can potentially include things like termination, demotion, suspension, disciplinary action, negative performance evaluation, salary reduction, denial of promotions or raises, or significant unwanted changes in duties or work environment. Fifth and finally, the adverse personnel action must have been the result of the individual's report of the wrongdoing at issue.

When DOI receives a complaint that alleges retaliation, even if it does not specifically reference whistleblower protection or the statute, we conduct a thorough inquiry. The current law requires that DOI acknowledge the receipt of the complaint within 15 days, provide a final written statement to the complainant explaining how the matter was resolved, and, if the complaint of retaliation is substantiated, provide a report of our findings and recommendations to the relevant agency.

The Law also calls for DOI to conduct public education efforts so employees and officers of covered agencies and contractors are aware of their rights and responsibilities under this Law. In addition to our other public outreach efforts, DOI conducts regular outreach to the City's workforce through both in-person and online corruption prevention trainings. In Fiscal Year 2019, we conducted 449 in-person corruption prevention and outreach lectures that reached over 16,000 City employees, an increase of 15 percent from the previous fiscal year. More than 33,000 employees completed on-line anti-corruption training through DOI's Citywide e-learning module. I believe these efforts are key to increasing awareness among the City workforce about corruption risks, their

obligation to report wrongdoing, and the related whistleblower protections when they do so.

Before I move on to discuss DOI's most recent whistleblower annual report, I'd like to clarify the meaning of "whistleblower" as I have generally used it in my testimony so far. New York City's laws classify individuals as a "whistleblower" only when they raise a claim of retaliation in their employment as a result of reporting wrongdoing. In contrast, the term "whistleblower" is often used colloquially or in the media to describe any individual who reports wrongdoing. We are very fortunate in New York City that, thanks in part to DOI's long and storied history as an effective anti-corruption investigator, hundreds of City employees step forward to report corruption, fraud, criminality, waste, and abuse of authority to DOI each year. Many more public servants voluntarily provide crucial information about these issues to DOI in the course of our investigations, even if those investigations were not initiated by a report from a City employee. These actions are vital to DOI's effectiveness and these individuals should be commended for embracing good government principles, promoting integrity and confidence in City government, and ensuring that City operations and services are not damaged by the corrosive effects of corruption, fraud and waste. The fact that the law does not label an individual a "whistleblower" until there is an allegation of retaliation in no way diminishes the significant contribution to government integrity made by the officers and employees in the City who report wrongdoing every day. Indeed, as I will discuss in a moment, a very small fraction of these "whistleblowing" individuals allege or suffer workplace retaliation for reporting wrongdoing. I view this as a tremendously positive sign, because it indicates that a wide range of City employees understand their duty to report and duty

to cooperate, that DOI's commitment to complainant confidentiality is effective and respected, and that where the identity of a complainant becomes known, there is widespread understanding among City supervisors that workplace retaliation for reporting wrongdoing is illegal in New York City and will not be tolerated.

### **III. DOI's Most Recent Whistleblower Annual Report**

By October 31 each year, DOI submits a letter-report to the Mayor and City Council Speaker describing the complaints from the previous fiscal year that fall within the Whistleblower Law. I have attached a copy of the Fiscal Year 2019 Whistleblower letter to my testimony today so the Committee members can see those statistics in detail. DOI began posting these letters to our public website in 2019, to further government transparency and public education on whistleblower issues in New York City.

In Fiscal Year 2019, which covers the period from July 1, 2018 through June 30, 2019, DOI received 32 whistleblower retaliation complaints, two more than the prior fiscal year. These complaints came from individuals who alleged job-related retaliation or sought workplace protection for reporting misconduct in City government. To substantiate a complaint, DOI must find that all five elements of the law have been met, as I described them a moment ago. Although the law has very specific requirements, DOI applies a broad lens in this area, meaning that DOI carefully reviews all complaints of alleged retaliation regardless of whether the complainant specifically invokes the Law or identifies themselves as a whistleblower.

In Fiscal Year 2019, DOI substantiated five whistleblower complaints, the highest number of substantiated whistleblower retaliation complaints in a single year since at least 2014. The previous year, for instance, saw no substantiated investigations. Given that the

numbers have historically been small, I do not believe there is any particular reason for this one-year uptick, or any conclusion that should be drawn from a single year's statistics, other than that this was a year with complaints that merited substantiation.

Our statistics include whistleblower complaints received and investigated by DOI and by the Special Commissioner of Investigation (SCI) for the New York City School District, which has a reporting function to DOI. In Fiscal Year 2019, three of the five substantiated matters were within the jurisdiction of DOI, and two within the jurisdiction of SCI. The five substantiated matters were remedied in the following ways:

- two of the five individuals were reinstated to their positions, with back pay;
- for one additional individual, DOI directed the agency to cease adverse, unwarranted personnel actions against the individual;
- and in the case of two Department of Education employees, SCI directed schools officials to reinstate the two employees to their position with back pay and remove disciplinary and other relevant documents from their personnel files.

#### **IV. Concerns and Recommendations**

I turn now to highlighting some concerns and recommendations for the Committee's consideration as it evaluates Intro. 1770 and the state of New York City's whistleblower regime in general.

First, as I mentioned earlier, currently, the foundational duties that underlie whistleblower protections, including the affirmative duty to report and the duty to cooperate, and the details of what those protections mean, are found in three separate places. Any revision of the whistleblower protection statute provides an opportunity to

integrate those various elements in a single place, as well as give legislative status to the duty to report. Doing so would incorporate the full scope of New York City's anti-corruption whistleblower system into one comprehensive piece of legislation. It would also provide an opportunity to specify that the duty to report and duty to cooperate on matters relating to corruption or criminality applies to officers and employees of contractors with contracts above \$100,000 with the City. Currently, a version of these duties is standard language in the City's contracts, but is not required by law. Under current law, employees and officers of contractors are protected by the whistleblower law if they report corruption or fraud in connection with their City contract, but they are not legally bound to report or to cooperate in any investigation. Including those duties alongside the protections would better mirror what we require and expect of City employees. The opportunity to create parity on these matters is particularly important as the City relies more each year on private entities to provide a variety of public services, and as we embark on several major infrastructure projects that will involve significant private contracts such as the construction of Borough-based Jails and the East Side Resiliency Project.

These proposed revisions would clarify for City employees and contractors that they have specific mandates to report corruption and cooperate with corruption investigations, and pair those duties in one statute with what is necessary to effectuate them, which are the legal protections when employees are retaliated against for reporting or cooperating. The duties and the protections go hand-in-hand, and placing them in the same piece of legislation would provide clarity as well as make any future needed revisions or amendments to the whistleblower rules easier and more comprehensive. Consolidating these existing concepts in the same piece of legislation would also support



the addition of clear language in the statute requiring all City agencies and those City contractors subject to the law to notify their employees of this coherent set of duties, responsibilities, and protections.

Second, DOI would also recommend that the statute be revised in the relevant places to clarify that full whistleblower protections are afforded to those individuals who make reports to the Special Commissioner of Investigation for the New York City School District regarding matters within the school district. In a similar vein, DOI also does not object to the language in the proposed bill that extends whistleblower protection to those who are subject to workplace retaliation when they cooperate with the City Council as a legislative or oversight body, regarding the type of complaints covered by the current law – in other words, those matters that relate to corruption, criminal activity, conflict of interest, gross mismanagement, or abuse of authority.

Third, DOI recommends that a time limitation be placed on when retaliation complaints can be made. The longer an allegation goes unreported, the harder it is to uncover the facts and ensure that valid claims are vindicated. Based on a review of similar state and federal statutes, and our own experience as the City's whistleblower investigator, DOI submits that the appropriate time period in which to report claims of retaliation should be two years from the date that the complainant was informed of the alleged adverse personnel action.

Fourth, DOI does not oppose the addition of some requirements that DOI provide regular updates regarding its whistleblower investigations to the complainant, and also to the Council Speaker where the claim of retaliation arises from cooperation with a Council investigation. However, we would recommend that the proposed language be revised to require only that whistleblower investigations be completed as promptly as practicable,

and that the 90-day period apply only to the frequency at which DOI will provide required status updates. Based on our experience conducting these investigations, it is not realistic to assume as a default that such investigations can be completed in 90 days. As in all of our investigations, DOI is focused on finding the facts and leaving no stone unturned. However, we recognize the anxiety that workplace retaliation creates for whistleblower complainants, and do not oppose the transparency and increased sense of urgency that a 90-day status reporting requirement could bring.

Fifth, DOI supports the addition of language that establishes a clear plan of action when allegations of retaliatory action are made against the DOI Commissioner or executive-level DOI personnel. We agree with the proposed language that such allegations would be referred to the City's Corporation Counsel, but recommend including specific language that the Corporation Counsel would be empowered to hire a qualified outside attorney to serve as an acting deputy commissioner for the purposes of investigation and recommending action on the allegation, if the nature of the allegation warranted such appointment. We respectfully submit that this procedure should not apply to allegations that relate to adverse personnel action taken by DOI supervisors below the Commissioner-title executive level. DOI currently has its own internal IG who is capable of carrying out DOI's obligation to fairly investigate and take action on this type of lower-level retaliation complaint, as it would for any other City agency.

With the revisions and additions I have suggested here, the City's Whistleblower statute would be a robust, comprehensive law, one that could be a national model for what is expected of those who witness corruption and what is expected of government when whistleblowers step forward and suffer retaliation.

I cannot stress enough how important and distinctive New York City's overall whistleblower system is, composed of both strong obligations and robust protections. It has important symbolic value as a signal of the City's commitment to the ideal of honest government, and it also yields results. DOI regularly initiates important investigations based on public servants who heed their affirmative obligation to report corruption; and our investigations into retaliation complaints have restored the livelihoods of those who honored that duty. A comprehensive and effective whistleblower statute is good government in action: holding public servants accountable and protecting them when they do the right thing, and fostering a culture that does not tolerate corruption, fraud, self-dealing, or waste of public funds.

Thank you again for the opportunity to comment on this important issue.

I am happy to answer any questions the Councilmembers have for me on this matter.





The City of New York  
Department of Investigation

MARGARET GARNETT  
COMMISSIONER

180 MAIDEN LANE  
NEW YORK, NY 10038  
TEL 212-825-5913

October 31, 2019

**BY HAND DELIVERY**

Honorable Bill de Blasio  
Mayor  
City of New York  
City Hall  
New York, New York 10007

Honorable Corey Johnson  
Speaker  
New York City Council  
City Hall  
New York, New York 10007

Re: Whistleblower Law Complaints for Fiscal Year 2019

Dear Mr. Mayor and Mr. Speaker:

The New York City Department of Investigation (DOI) is submitting this report pursuant to Section 12-113 of the New York City Administrative Code, the City's "Whistleblower Law." Subsection (i) of the Whistleblower Law provides that, "[n]ot later than October thirty-first of each year, the commissioner [of investigation] shall prepare and forward to the mayor and the council a report on the complaints governed by this section during the preceding fiscal year. The report shall include, but not be limited to, the number of complaints received pursuant to this section, and the disposition of such complaints."

The Whistleblower Law protects City employees, as well as officers and employees of vendors who have contracts with the City valued at \$100,000 or more, from retaliation for reporting misconduct, corruption, criminal activity, conflicts of interest, gross mismanagement and abuse of authority in City government. In order to be protected by the Whistleblower Law, individuals must make these complaints to DOI, a member of the City Council, the Public Advocate, or the City Comptroller – each of whom has a duty to refer the complaints to DOI. Individuals who report wrongdoing at their workplace may all be colloquially referred to as

“whistleblowers.” As discussed further below, DOI receives and investigates hundreds of such reports from City employees and vendors each year. However, pursuant to Section 12-113, this report is primarily focused on only a small subset of those individuals—those who allege that they have suffered retaliation as a result of reporting wrongdoing and seek a remedy under the Whistleblower Law.

Public servants in this City have an affirmative obligation to report wrongdoing or jeopardize their jobs and professional advancement if they do not. This uncommon and important ‘duty to report’ is codified in Mayoral Executive Order 16.<sup>1</sup> MEO 16 operates in tandem with the Whistleblower Law, with the latter providing essential protections to individuals who step forward as part of their ‘duty to report’ and suffer adverse actions as a result. Public servants who report wrongdoing are vital to DOI’s mission to root out corruption, instill public confidence in government, promote integrity, and ensure that City services and operations are not undermined by misconduct, fraud, or waste. For example, since January 2017, DOI has received more than 1,400 complaints from City employees. Many more City employees have provided valuable information in the course of DOI investigations, even if those investigations did not originate with an employee complaint.

To ensure that City employees understand their obligations and the associated protections for them, DOI has continued to educate the City’s workforce with in-person and online corruption prevention lectures. In Fiscal Year 2019, we conducted 449 in-person corruption prevention and outreach lectures to 16,166 City employees, an increase of 15 percent over the previous fiscal year. Moreover, an additional 33,539 employees completed on-line anti-corruption training through DOI’s Citywide e-learning module. We believe that the increased number of lectures and training has increased awareness among the City workforce about corruption risks, City employees’ obligations to report corruption and wrongdoing, and the protections afforded to employees who act on those obligations.

In Fiscal Year 2019, DOI received 32 complaints – two more than the prior fiscal year – from individuals who alleged job-related retaliation or sought protection for reporting misconduct in City government. Although not all individuals explicitly referenced the City’s Whistleblower Law, DOI reviews all complaints of alleged retaliation in any form regardless of whether the complainant specifically invokes the Law.

---

<sup>1</sup> Mayoral Executive Order 16, Section 4(d) states, “Every officer and employee of the City shall have the affirmative obligation to report, directly and without undue delay, to the Commissioner or an Inspector General any and all information concerning conduct which they know or should reasonably know to involve corrupt or other criminal activity or conflict of interest, (i) by another City officer or employee, which concerns his or her office or employment, or (ii) by persons dealing with the City, which concerns their dealings with the City. The knowing failure of any officer or employee to report as required above shall constitute cause for removal from office or employment or other appropriate penalty.”

Broken down by the agencies where the complainants worked, either as an employee or for a vendor contracted by a City agency, the whistleblower retaliation complaints DOI received in Fiscal Year 2019 are as follows:

Agency	Number of Complaints
Administration for Children's Services	2
Department for the Aging	1
Department of Buildings	2
Comptroller's Office	1
Board of Elections	1
Department of Education	11
Fire Department	1
Health + Hospitals	1
Department of Health and Mental Hygiene	1
Department of Homeless Services	1
Department of Housing Preservation & Development	2
New York City Housing Authority	3
Department of Information Technology and Telecommunications	2
Department of Parks and Recreation	3

The 32 complaints were handled in one of the following ways, depending on the allegations and supporting facts: (a) opened as a whistleblower retaliation investigation (20 complaints); (b) merged into an existing investigation unrelated to whistleblower allegations (two complaints); (c) referred to another agency for appropriate action (five complaints); or (d) filed for intelligence purposes (five complaints).

Of the 20 complaints that were opened as a whistleblower retaliation investigation in Fiscal Year 2019, four matters were closed and 16 remained open and under investigation as of the end of the reporting year. In total, DOI closed 25 such investigations in Fiscal Year 2019, including 21 investigations opened in a prior fiscal year<sup>2</sup>.

Three of these complaints were made against the then-Commissioner of DOI, the agency mandated under the Law to investigate such matters. Recognizing that DOI could not investigate a complaint made against its Commissioner, an outside attorney, deputized as an Acting Deputy Commissioner of Investigation, was appointed to conduct the investigation and issue findings. This investigation determined that two of the three complainants were entitled to protection under the Whistleblower Law, and the effects of the adverse personnel action taken against these employees were reversed. In three other investigations, DOI also substantiated the allegations of retaliation filed by the complainants, and so informed the City agency where those employees

<sup>2</sup> Due to a data entry error in DOI's Case Management System, our previous Fiscal Year 2018 Whistleblower letter failed to include information about one investigation closed as unsubstantiated. This error only affects the statistic of whistleblower retaliation investigations closed in FY 2018, which now increases by one to a total of 19 investigations closed.

Honorable Bill de Blasio  
Honorable Corey Johnson  
October 31, 2019  
Page 4 of 4

worked.

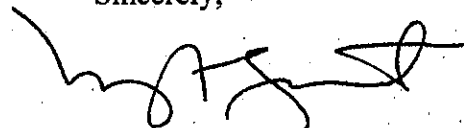
Of the remaining 20 investigations closed in the reporting year – two of which DOI closed when the individuals withdrew the complaint or failed to cooperate with an investigation – the cases were closed without a finding that the complainants were entitled to protection under the City's Whistleblower Law. Even when a complainant is found not to have met the technical requirements for protection under the Law, DOI will still make recommendations to an agency to redress any problematic conduct, where warranted.

In the two instances where DOI merged the complaint into an existing investigation, it was determined that the retaliation allegations should be part of an inquiry separate from the basic complaint underlying the claim of retaliation. With respect to the five complaints referred to other agencies, DOI determined that while the complaints, even if true, did not make out claims for protection under the City's Whistleblower Law, the allegations were such that the relevant agency should be informed so that they could take whatever action they deemed appropriate.

With respect to two of the five matters where DOI filed complaints for intelligence purposes, DOI staff spoke with each individual and explained that their complaint did not make out a claim under the City's Whistleblower Law. In two other instances, DOI determined that the relevant agencies (to whom referrals would otherwise be made) were already investigating the allegations, and in the fifth matter, the complainant stated that he/she did not want DOI to refer the complaint to the relevant agency.

The mandate that City employees report corruption, and the protections afforded when they do, strengthens City government and increases public trust. DOI is proud to play a central role in this process. As Commissioner, I am committed to upholding this vital Law and its role in good government.

Sincerely,

A handwritten signature in black ink, appearing to read 'Margaret Garnett', written in a cursive style.

Margaret Garnett



**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1770 Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Margaret Garnett Comm'r of DOJ

Address: 180 Maiden Lane

I represent: Department of Investigation

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Ricardo Morales

Address: \_\_\_\_\_

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: 2/13/2020

(PLEASE PRINT)

Name: ROBERT KRAUS

Address: 60 E 42<sup>nd</sup> Street

I represent: Ricardo Morales

Address: clo me

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: PAT RUSSO

Address: 1051 UTICA Ave

I represent: Chefs Choice Food Dist. 9 A DOE W/B

Address: 1051 UTICA Ave Bklyn NY

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1770 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 7/13/2020

(PLEASE PRINT)

Name: BREGONY M. KARAKOWER

Address: 530 E 76th ST # 31K NY NY 10021

I represent: Invited by CM Torres

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms