

August 23, 2016

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

Honorable Melissa Mark-Viverito  
Speaker  
The New York City Council  
250 Broadway, 18<sup>th</sup> Floor  
New York, NY 10007

Honorable Mark G. Peters  
Commissioner  
Department of Investigation  
80 Maiden Lane  
New York, NY 10038

Honorable Phil Eure  
Inspector General  
Office of the Inspector General – NYPD  
80 Maiden Lane  
New York, NY 10038

Dear Mayor de Blasio, Speaker Mark-Viverito, Commissioner Peters and Inspector General Eure:

Pursuant to Local Law 70 and the New York City Charter, the New York City Police Department (the “NYPD”) hereby submits its response to the August 23, 2016 report of the Office of the Inspector General for the NYPD (“OIG”) entitled “An Investigation of NYPD’s Compliance with Rules Governing Investigations of Political Activity” (the “Report”).

First, the NYPD appreciates the work of the Inspector General for its audit of the practices of the NYPD's Intelligence Bureau as relates to compliance with the court-ordered "Handschu Guidelines," which govern the investigation of possible unlawful or terrorist-related activity that involves political activity.<sup>1</sup>

The OIG Report includes significant positive conclusions regarding the NYPD's compliance with the Guidelines and recognizes the essential nature of the NYPD's role in preventing and detecting terrorism. Specifically, the Report acknowledges that protecting New York City residents from terrorism is a prime responsibility of the NYPD<sup>2</sup> and finds that the NYPD has carried out this responsibility "with remarkable and commendable success."<sup>3</sup> The Report recognizes that the nature of threats and criminal activity changes over time<sup>4</sup> and that each investigation is unique.<sup>5</sup> Most importantly, the OIG has found that the NYPD had a valid basis to open and extend all of the Handschu investigations randomly selected for its audit. Furthermore, the OIG found, based on its review of Intelligence Bureau records, that nothing in the documents suggested improper motives<sup>6</sup> on the part of the NYPD. The Report also acknowledges that the Intelligence Bureau takes a thoughtful approach to how such investigations should be handled.<sup>7</sup>

The Report concludes that 95% of the investigations OIG reviewed involve individuals who were predominantly associated with Muslims and/or engaged in political activity that those individuals associated with Islam. It should be noted that the NYPD

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<sup>1</sup> Although the Report consistently states "investigations of political activity", this is not accurate, as the Handschu Guidelines govern investigations that *may involve* political activity.

<sup>2</sup> OIG Report Page 2.

<sup>3</sup> *Id.*

<sup>4</sup> OIG Report Page 10.

<sup>5</sup> *Id.*

<sup>6</sup> OIG Report Page 7, Page 32.

<sup>7</sup> OIG Report Page 33.

does not characterize individuals by religion in its investigations or documents.<sup>8</sup> Notably, however, the OIG also found a valid basis for 100% of the investigations it reviewed. Given this, and the fact that the majority of terrorist plots targeting New York City have been inspired by, or directed by, al-Qaida, Tariq-e-Taliban or the Islamic State of Iraq and the Levant (ISIL), highlighting that most of the investigations involve individuals who were predominantly associated with Muslims and/or engaged in political activity those individuals associated with Islam, seems to reach for something with uncertain purpose.

Second, the NYPD also thanks the OIG for the various recommendations for improvements in tracking procedures regarding the time limits set under the Handschu Guidelines for the timely renewal or discontinuance of authorized investigations, and the use of undercover officers and confidential informants. As explained in the Appendix, some of these have already been recognized and addressed, or were in the process of being implemented before the OIG audit was shared with the Intelligence Bureau.

In 2013, the Intelligence Bureau recognized that there had been issues with the timeliness of obtaining approval to extend authorized Handschu investigations and undertook an effort to ensure that such investigations were presented to the Handschu Committee at least within the same calendar month as their renewal date, with the goal of having the presentation occur in advance of that date. Since 2013, the timely renewal of investigations has significantly improved, and the Intelligence Bureau continues to strive for the presentation of investigations to the Committee in advance of the renewal date.

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<sup>8</sup> Although the OIG acknowledges this for “approval documents,” it is true for all documents and all investigations.

Finally, the NYPD must address a basic misconception regarding the Intelligence Bureau policies and practices contained in the Report.  OIG suggests that because some extension documents were late, investigative activity, including the use of confidential informants and undercover officers, necessarily occurred without authorization in the interim between expiration and renewal of the investigation.  This, however, was not reflected in the documents that OIG reviewed.  Moreover, at no point during its inquiry did OIG ask the NYPD to determine whether in fact investigative activity had occurred during that time interval.  Thus, in those cases that they reviewed, OIG had no factual basis for declaring that “unauthorized activity” or “unauthorized conduct” inevitably occurred.

That said, the NYPD agrees with the overall conclusion of the report, that Handschu investigations by the NYPD are well founded and adhere to the overall standards contained within the Handschu Guidelines.  The NYPD also appreciates the work and insight that went into the development of recommendations to improve tracking and record processes.  The NYPD will continue the work that is already in progress to improve on what we consider to be already high standards of compliance, while protecting New York City and its inhabitants from the threat of terrorism.  The NYPD continues to look forward to working collaboratively with the OIG going forward.

Sincerely,

John J. Miller  
**Deputy Commissioner,  
Intelligence & Counterterrorism**

## APPENDIX

### **OIG RECOMMENDATION #1:**

For investigations of political activity, NYPD should use a formal mechanism for tracking investigative deadlines and should ensure that, where needed, extensions are approved prior to required deadlines. Given the percentage of Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations that continued without the appropriate documented authorization, NYPD should take greater steps to ensure that investigations are either renewed in a timely manner or closed once the investigative period has expired. Such steps include establishing and using a more robust system to track and alert the Intelligence Bureau of upcoming deadlines, as well as better coordination to secure the appropriate authorizations before the scheduled expiration of an investigation.

### **NYPD RESPONSE:**

The Intelligence Bureau began discussing the development of an electronic case tracking system for Handschu investigations in February 2016 to assist in complying with the proposed modifications to the Handschu Guidelines as part of the settlement in the *Handschu* and *Raza* litigations. The contemplated system included automated alerts which would notify certain Intelligence Bureau and Legal Bureau personnel when investigations and human source authorizations are due for renewal. The system became active on July 1<sup>st</sup> and the integration of active investigations is occurring on a rolling basis.

### **OIG RECOMMENDATION #2:**

**NYPD should use a formal case tracking mechanism that identifies when investigations advance to the next investigative level.** While the level of investigation can change over time (e.g. Preliminary Inquiries can advance into Full Investigations, Terrorism Enterprise Investigations can change to Full Investigations, etc.), NYPD's system for assigning and tracking case numbers did not effectively trace the full history of the investigation. For example, a Preliminary Inquiry may escalate to a Full Investigation, but separate case numbers are assigned such that a review of the Preliminary Inquiry may not identify the subsequent Full Investigation. Case tracking terminology should more clearly capture all investigations related to the same core set of facts.

**NYPD RESPONSE:**

While the prior history of a case and/or its proposed subject(s) is set forth in the Investigative Statement, the Intelligence Bureau will consider if there is a more effective way to trace the full history of an investigation, including other levels of investigation (i.e., checking of leads, Preliminary Inquiries, etc.) which may have occurred related to its underlying facts.

**OIG RECOMMENDATION #3:**

**For the use of confidential informants and undercover officers in investigations of political activity, NYPD should use a formal mechanism for tracking expiration deadlines and ensure that extensions are approved prior to the expiration of an authorization.** Given the percentage of instances where confidential informants and undercover officers may have been utilized on investigations without appropriate authorization, NYPD should take greater steps to ensure that the use of a

human source in an investigation is either renewed in a timely manner or closed once the authorization expires. Such steps include establishing and using a more robust system to track and alert the Intelligence Bureau of upcoming deadlines, as well as better coordination to secure appropriate authorizations before the scheduled expiration of an authorization.

**NYPD RESPONSE:**

The electronic case tracking system for Handschu investigations referenced above includes alerts for the renewal of authorizations to use human sources.

**OIG RECOMMENDATION #4:**

**For requests to extend a Preliminary Inquiry, NYPD should ensure that Investigative Statements capture fact-specific reasons why further investigative steps are warranted.** In consideration of the justification requirement attached to extensions of Preliminary Inquiries, requests for extending Preliminary Inquiries should include specific, fact-based reasons why further investigative steps are necessary and should not be limited to boilerplate statements.

**NYPD RESPONSE:**

The NYPD disagrees with the Report's characterization that the extensions of Preliminary Inquiries contain "boilerplate language." To the contrary, extension requests include a full and detailed recitation of the key facts justifying investigation, including any new facts/updates learned since the investigation was opened. Often, the added facts learned since the opening of an investigation strengthen the original predicate. The Intelligence Bureau recognizes that the Handschu Guidelines direct that requests to extend Preliminary Inquiries "shall include a statement of the reasons why further

investigative steps are warranted.” Because requests to extend Preliminary Inquiries already include information which illustrate why further investigation is necessary, the Intelligence Bureau considers this requirement satisfied.

**OIG RECOMMENDATION #5:**

**For authorizations and renewals of investigations, NYPD should create controls to ensure that authorizations to renew or extend investigations properly capture the date, signature, and approval of the authorizing officials.** To avoid errors and facilitate compliance with all applicable rules and internal practices, NYPD should create controls so that all written authorizations and renewals properly capture the date and the name, signature and authorizing action of the requisite supervisor.

**NYPD RESPONSE:**

The approval of requests to conduct and extend investigations by the Deputy Commissioner of Intelligence generally takes place at the monthly meetings of the Handschu Committee. The approval of the Deputy Commissioner is given orally at the meeting and documented in the meeting minutes, and has been for at least the past decade. Thus, we view the minutes taken at the Handschu meeting as satisfying the requirements in the Handschu Guidelines, and providing the date of Deputy Commissioner approval. After the meeting, the Deputy Commissioner will provide written documentation (i.e. signature and date) of his or her prior approval. Where investigations are presented outside of meetings of the Handschu Committee, the Deputy Commissioner will generally provide their approval orally or via e-mail with written documentation to follow.

**OIG RECOMMENDATION #6:**

**NYPD's Human Source Authorization Form should require members of NYPD's Intelligence Bureau to specify the role of the undercover officer or confidential informant.** Consistent with the applicable rules, requests to use undercover officers and confidential informants should not be limited to boilerplate language but instead should include a specific discussion of the role of the human source in the investigation.

**NYPD RESPONSE:**

The Intelligence Bureau recognizes that the Handschu Guidelines direct that the "role of the undercover" be set forth in an authorization, though there is no prohibition against the use of "boilerplate" or generalized language. As the request for human source authorization in an investigation provides that the role of the human source is to obtain information in the investigation, the Intelligence Bureau considers this requirement satisfied. To provide more information could compromise operational security.

**OIG RECOMMENDATION #7:**

**NYPD should specify, when extending use of an undercover or confidential informant, the reason for the extension.** In consideration of the justification requirement attached to extending the use of an undercover, requests for extensions should include specific, fact-based reasons for the extension.

**NYPD RESPONSE:**

There is no requirement under the Handschu Guidelines that a request to extend the use of human sources in an investigation include specific, fact-based reasons for the extension, only a reason for the extension, which the Intelligence Bureau already provides.

**OIG RECOMMENDATION #8:**

**NYPD should create controls to ensure that authorizations to use or extend the use of human sources properly capture the date, signature, and approval of the appropriate supervisor.** To avoid errors and facilitate compliance with all applicable rules, NYPD should create controls so that all written authorizations and renewals properly capture the date and the name, signature, and authorizing action of the requisite supervisor.

**NYPD RESPONSE:**

The Intelligence Bureau will consider the development of best practices for documenting the written approval of the use of human sources in Handschu investigations by the Deputy Commissioner of Intelligence, including name, signature, and date.

**OIG RECOMMENDATION #9:**

**NYPD's Human Source Authorization Form should include the number of the extension request and the date of the last extension.** Although NYPD maintains a record of each date that NYPD believes a human source extension request was approved, these records are difficult to reconcile with documentation because Human Source Authorization Forms for any given investigation are not numbered in any sequential order and do not list the previous extension date. Including this information, as it is contained in Investigative Statements, would simplify independent verification of extension dates.

**NYPD RESPONSE:**

The Intelligence Bureau supports the implementation of this recommendation, which it agrees would be helpful in tracking human source authorizations in Handschu investigations.

**OIG RECOMMENDATION #10:**

**NYPD should consolidate its policies and procedures for investigations involving political activity into a unified handbook.** Although NYPD's Intelligence Bureau has made important strides with documenting policies and procedures for investigations – including initial steps toward consolidating its operational policies-- more work is needed to codify these practices and guidelines into a single handbook that provides investigators, attorneys, analysts, and supervisors with a baseline for what is required and recommended in such investigations. Without official policies, there is a risk that necessary safeguards surrounding investigations of political activity will not be observed in a thorough and consistent manner throughout the Intelligence Bureau.

**NYPD RESPONSE:**

A comprehensive Intelligence Bureau Policy Guide (“IBPG”) has been in development since early 2014. The Intelligence Bureau expects it to be completed and implemented in calendar year 2016.

**OIG RECOMMENDATION #11:**

**NYPD should develop written guidelines concerning informational standards for Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations.** Appreciating that each investigation is unique and that the nature of threats and criminal activity changes over time, NYPD's Intelligence Bureau should develop written guidelines concerning the informational thresholds for each level of

investigation. Having such guidelines would help ensure consistency across investigations and provide NYPD's Intelligence Bureau with a baseline for assessing facts and making determinations. Such guidelines would not be static, but would instead require updates as the nature of the threat evolves.

**NYPD RESPONSE:**

The Handschu Guidelines already contain examples of predicates that further flesh out what is necessary for opening or extending an investigation.