



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

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

**CONCERNING DOI'S BACKGROUND INVESTIGATION PROCESS, THE RELATED
BACKLOG, AND STEPS TAKEN TO ADDRESS THAT BACKLOG**

**Committee Room, 14th Floor
250 Broadway, 10 a.m.**

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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. Thank you for inviting me to address the Committee on DOI's background investigation process and provide you with an update on the background investigation backlog and the steps we are taking to address it.

First, I want to thank the Council for their assistance and support in this area. Last year, during DOI's budget testimony, I outlined the serious backlog in background investigations that I became aware of shortly after taking office as Commissioner. As part of the effort to tackle this issue, DOI provided a plan of action and asked this Committee to help DOI secure 13 extra personnel lines, with funding for 10 of those lines, at an estimated cost of \$690,000. As a demonstration of our commitment to addressing this serious issue, DOI self-funded the remaining three positions at a cost of approximately \$180,000. We received that vital support from this Committee and from the City, for which we are especially grateful. We have filled all 13 of those positions and I am confident that the increased resources will be put to good use. Even before all of those new personnel began working, other steps we have taken have reduced the backlog by more than 1,350 applications over the last seven-and-a-half months. I want to commend the team of DOI investigators and supervisors who have been working diligently to accomplish this.

Background investigations are one part of a complement of services that DOI provides to the City that I view as an essential part of the agency's core mission. Along with the unit that receives and assesses complaints, and the unit that conducts background checks of City vendors with contracts valued at more than \$250,000, background investigations for sensitive City positions are part of DOI's frontline anti-corruption work. I have made it a priority to restructure the Backgrounds Investigation Unit, reduce the backlog, and ensure that we are maintaining the highest standards of integrity in the process. This past year has put us on the right track to accomplish that.

DOI's Background Mandate and Process

DOI conducts its background investigations per the mandate under Executive Order 16, which currently applies to a limited subset of City employees, specifically employees "to be appointed to or holding positions of responsibility." In an effort to ensure that all such employees receive a background investigation, the DOI Commissioner historically has defined certain more specific categories of employees who must have a background investigation. The last update to these categories was made in 2016, and as part of our overall review of the background investigation process, we are currently evaluating the suitability of the existing categories. I expect to make some adjustments to them, which I believe will result in a modest reduction in the significant amount of background requests DOI regularly receives, without diminishing the effectiveness of our anti-corruption effort. I will outline the details on those reforms shortly.

DOI background investigations gather the facts regarding issues like tax compliance, previous arrests or convictions, the truthfulness of a candidate's claimed work history and educational background, potential conflicts of interest, and, where legally appropriate, financial vulnerabilities that could make a candidate particularly susceptible to bribery or extortion. The focus of a DOI background investigation is to identify adverse information that could bear on the suitability of a candidate to hold a position of public trust. Where adverse information is identified, we share those facts with the hiring agency. It is the hiring agency that decides whether the information merits rescinding a job offer or terminating the employee.

DOI background investigations enhance a hiring agency's internal hiring process but do not supplant it, meaning the hiring agency can and should be conducting its own pre-employment review that may include reference checks and requiring other information from a candidate.

In all background investigations, City hiring agencies initiate the process by notifying DOI of the individuals at their agency who should be background checked. A full DOI background investigation typically takes several months to complete, and the vast majority of backgrounds DOI conducts are completed after the applicant begins working in their City position. We expedite certain high-level positions so that the background can be completed prior to appointment, for example Commissioner-level positions, judicial appointments, and at the request of an agency head, certain highly sensitive positions.

DOI's guidelines allow City agencies up to 30 days from appointment or promotion to forward a completed background package to DOI. Ultimately, hiring agencies, not DOI, make the decision regarding whether to wait for the outcome of a background investigation before allowing an employee to begin working. Similarly, the hiring agency, as the employer, remains responsible for standard reference checks and other best practices surrounding hiring, particularly if they allow employees to begin working prior to their DOI background check being completed. Given the volume of applicants, it would not be feasible to conduct and complete all background investigations prior to commencement of employment for all employees subject to a background investigation. These realities are why I was particularly troubled by the scope of the backlog in DOI's background investigations, and why, as I will explain shortly, we have moved quickly to implement our goal of completing all new background investigations in six months or less.

In the early summer of 2019, we divided the Background Investigation Unit into two teams: One team represents a fresh start on our background investigation role -- ensuring that, going forward, we are meeting our obligations to City agencies in a timely manner and not adding to the existing backlog. That team operates with the goal of completing all new background investigations in less than six months, with an average time to completion of less than 120 days. I am proud to say that the staff on this team has kept us on track with those goals, completing 766 background investigations since

July 1, 2019, in an average of 71 days. A second team is dedicated to addressing and processing background investigations that are part of DOI's backlog, with a goal of reducing the backlog to zero as quickly as possible without sacrificing quality. Since July 1, 2019, DOI has closed 1,357 applicant files from the backlog, reducing the backlog by 20%, from approximately 6,479 on July 1, 2019, to 5,122 backlogged applications as of last Friday, February 21st.

DOI continues to devote additional resources to background investigations through a rotation of incoming staff and other proactive measures. In addition, the influx of new investigative staff in this year's budget should continue to have a positive effect on these results. I believe we are on course to meet the goal that we discussed with City Council last year: clearing the massive backlog within the next four years, if not sooner.

As I mentioned earlier, DOI is considering changes to the categories of employees eligible for a background investigation, which would reduce the pipeline of background applicants while ensuring that our background investigation resources are focused on those employees with significant decision-making or policy-setting authority, or those with positions that make them particularly vulnerable to corruption. I believe these revisions will advance our efforts to conduct background investigations in a timely manner without creating undue risks in the background process. And, I want to stress that even with the changes I am about to outline, if a hiring agency requests a background investigation that it believes is in the public interest, DOI will honor that request.

We will maintain our current balance of some "objective" triggers for background investigations and some "subjective" triggers for background investigations. We believe this balance between objective categories, which are easy for agencies to apply and provide a measure that is possible for DOI to audit and spot-check, and subjective categories, which are targeted to the actual duties of an employee and allow for the variety of titles and structures across the huge range of city agencies, is the best way to capture the universe of City employees who should be subject to a background investigation.

- The first "objective" threshold is salary, currently set at \$100,000. After discussion with our experienced supervisors in the Background Unit, we have concluded that this threshold can be raised to an annual salary of \$125,000 or more. Currently, that threshold applies even if a long-time City employee crosses it solely because of cost-of-living increases. We will make clear that the salary threshold for a background investigation for existing City employees is triggered by an increase in salary only if the raise is occasioned by a change in duties, title, or responsibilities.

- The second “objective” category currently is any employee whose civil service title has an “M” code for “managerial”. We intend to raise that threshold to those managers who are in titles categorized as Management level 4 or above, which mirrors the standard used by the Conflicts of Interest Board to determine who is required to file an annual financial disclosure report.
- We will maintain the existing “subjective” categories, while updating the language used to describe those categories. Those categories are (1) employees with the authority to enter into financial transactions or agreements on the City’s behalf of more than \$10,000; (2) employees with the authority to negotiate or approve contracts of various kinds, or applications for zoning provisions or special permits; (3) employees with administrator-level access to the city’s sensitive IT infrastructure and systems; and (4) any employee whom the Mayor or an agency head believes should be backgrounded in the public interest.

When these changes are implemented, DOI will conduct outreach sessions for Human Resource (HR) professionals at City hiring agencies, to walk them through the changes and provide an opportunity to share questions, concerns and ideas. We will continue to evaluate the effectiveness of these categories and make further adjustments if warranted.

Finally, DOI continues to actively review other options for responsibly reducing the backlog while also providing a level of service on current background investigations that meets our own high standards for professionalism and excellence. The guiding principle in evaluating any idea is to maintain and foster the integrity of the background investigation process.

DOI’s Background Process for Department of Education Personnel

I would like to turn now to a background matter that was raised just before New Year’s regarding David Hay, a now-former DOE official who had been arrested and charged in Wisconsin with the online sexual solicitation of a minor, and whose background investigation was part of the approximately 6,000 backlogged background files I inherited when I arrived at DOI.

The process for DOE backgrounds is a bit different from the other background investigations that DOI conducts. Specifically, DOI does not fingerprint DOE employees or conduct a criminal history check, rather DOE performs those two assessments. State Education Law and City Regulations require DOE employees to be fingerprinted prior to beginning their employment. Additionally, due to the sensitive nature of the positions, DOE requires immediate notification of all arrests so they can evaluate whether an

employee poses a danger in their position. Accordingly, DOE fingerprints their own employees and receives those arrest notifications directly. For those DOE employees subject to a DOI background check, DOI focuses on other relevant information, such as financial background where applicable, tax information, and prior employment information, among other things.

When Mr. Hay's matter first came to light, it was unclear whether a completed background investigation would have revealed information relevant to the charge against him. However, an investigation by the Special Commissioner of Investigation (SCI), which oversees DOE matters, has provided additional detail on this matter. Specifically, the SCI investigation found that Mr. Hay misrepresented facts in his background investigation questionnaire to DOI and the DOE, that the criminal history check conducted by DOE prior to his employment did not reveal any criminal charges or convictions against him; that no information relevant to his current criminal charges existed in any of the information sources that a DOI background investigation would have reviewed; and, finally, that due to a non-disclosure agreement with a prior employer, other derogatory information about Mr. Hay would likely not have been shared with either DOE or DOI in any event. The fact that this background file was part of DOI's backlog remains a concern for me; but in this specific case there is no reason to conclude that a completed background investigation would have uncovered prior misconduct, or any facts related to the current pending charges against Mr. Hay.

Mr. Hay's circumstances illustrate the challenges for any background investigation process. Although I believe that DOI's background investigations are thorough and that our investigators are diligent and talented, no system is a perfect screen, nor can it be. If an individual does not have a criminal history or public record footprint of wrongdoing; if an applicant deliberately hides relevant facts from a hiring agency or from DOI; if prior employers refrain from sharing serious issues about an individual, the task of performing a complete background investigation is made immeasurably harder.

As I mentioned earlier, DOI is continuously evaluating our background process to see if there are other areas open to improvements. We assessed the Hay situation to see if it illuminated any broader issues that needed to be addressed. As part of that review, we identified all backgrounds pending in the backlog that related to an Assistant Commissioner-level position or higher and have moved those backgrounds to the front of the line. Other than this small adjustment, our top priority remains working through the backlog from oldest to newest as expeditiously as possible, consistent with our standards of professionalism and excellence. At the same time, the changes we have made to the deployment of the unit's resources should ensure that a long delay like that in the Hay situation will not recur, and that to the extent any adverse information is discoverable with reasonable diligence, it is shared with hiring agencies within six months.

In closing, I remain confident that the changes we have implemented over the past year within the Background Investigation Unit are effective steps towards tackling and eliminating the backlog, and meeting our obligations for the current background investigations entrusted to us.

But we are not resting on the successes we have had so far. I recognize what is at stake, and share the concern that incomplete backgrounds pose risks for New York City. I want to assure this Committee and the public that DOI is successfully shrinking the massive backlog that had been growing for years and remains committed to eliminating it within four years, if not sooner. This issue is among my top priorities.

Thank you for your time today and for the opportunity to present this relevant and important information to the Oversight and Investigations Committee.

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