



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

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

**CONCERNING OVERSIGHT OF SOCIAL SERVICE CONTRACTORS AND A
LOCAL LAW TO AMEND THE CITY'S WHISTLEBLOWER LAW**

**Remote Meeting
Virtual Room 1**

April 30, 2021

Good morning Chair Gibson and Chair Levin, and members of the Committee on Oversight and Investigations and the Committee on General Welfare. 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 today to offer some context about DOI’s oversight of shelter providers contracted by the City Department of Social Services (“DSS”) and to respond to any questions you may have about that oversight. Additionally, I appreciate the opportunity to speak briefly on the concerns DOI has regarding Intro 2292, which would expand the public reporting requirements related to DOI’s investigations; and to offer our commitment to work with Councilmembers to refine that legislation.

Let me start by discussing DOI’s oversight of nonprofit contractors, specifically DSS providers, and DOI’s role in rooting out fraud and strengthening internal controls as it relates to City funding of these entities. For more than a decade, DOI has focused resources in this area, regularly conducting investigations that hold individuals accountable for crimes and other wrongdoing. At the same time, DOI has worked to safeguard City funds, identify gaps in City agencies’ internal controls, and recommend ways to strengthen those controls to prevent fraud from occurring. Conducting criminal investigations, monitoring nonprofit providers, and issuing recommendations to City agencies to close corruption gaps are part of the multi-pronged approach that DOI takes in combatting corruption, particularly as it relates to fraud at City-funded nonprofits.

Pursuant to Executive Order 64, dated March 3, 2021, DOI will also have a new role in ensuring that the City’s human services contractors take appropriate steps to investigate and address allegations of sexual harassment made against the Chief

Executive Officer or an equivalent principal of the organization. Specifically, the Executive Order requires that the City agencies amend human services contracts to require contractors transmit to DOI certain information, including: a copy of any complaint or allegation of sexual harassment or retaliation on the basis of a complaint of sexual harassment brought by any person against the Chief Executive Officer or equivalent principal of the organization, and a copy of the final determination or judgment with regard to any such complaint. Contractors retain all of their obligations, as both employers and service providers, to prevent sexual harassment and to investigate and address all complaints of sexual harassment accordingly. DOI's role --- working with the contracting agency as appropriate --- will be to ensure that contractors meet their obligations and handle such complaints appropriately, even when the complaint is against the leader of the organization.

As has been publicly reported, DOI has an ongoing investigation into financial improprieties at Bronx Parent Housing Network that was in process in 2020 and has already resulted in criminal charges against one defendant. Because this is an ongoing and active matter I cannot provide further details at this time. Alongside this ongoing investigation, DOI has been working with DSS to strengthen oversight of Bronx Parent Housing Network, including retaining a monitor that will report directly to DOI and provide additional oversight in two specific ways: first, the monitor will conduct an internal investigation of BPHN, examining the nonprofit's policies and practices around sexual misconduct allegations and more broadly examining BPHN's subcontractors and the nonprofit's relationship to its former CEO. Once that review is completed, the monitor will then focus on BPHN's ongoing compliance with the terms of its City contract, which is a

more traditional type of integrity monitorship. In addition, DOI and DSS are working to retain an independent monitor that will also report to DOI and will conduct an audit of all non-profit homeless shelter providers with City contracts, providing greater oversight of how this nonprofit sector is using City dollars and complying with City requirements designed to prevent fraud.

I'd like to turn now to briefly address Intro. 2292, which proposes amendments to the City's whistleblower law. DOI fully supports efforts to encourage the reporting to DOI of wrongdoing by City contractors and subcontractors. One of the strongest defenses against the pernicious impact of corruption are individuals who are willing to step forward and report it. Providing a safe and confidential place to report wrongdoing, and conducting thorough investigations of these allegations, while also treating the targets of allegations fairly are all central to DOI's mission. The amendments proposed in Intro 2292, however, are likely to discourage the reporting of corruption to DOI, and undermine our ability to fairly and thoroughly investigate those reports.

DOI's annual Whistleblower letter provides foundational information about our Whistleblower investigations without compromising complainants or ongoing investigations. Legislation recently enacted by City Council will enhance those reporting indices in the annual report we file later this year, specifically the number of reports that come from City employees under subsection (b) of the Whistleblower statute, the number of reports concerning wrongdoing from City contractors, and more detailed information about DOI's investigations of complaints of retaliation.

Intro 2292 would vastly expand DOI's reporting mandate to list all reports of wrongdoing from City employees and city contractors, attributing them to a particular

agency or contractor, as well as providing the status of each of those cases, including open and ongoing investigations. And while the law states that any personally identifiable information could be redacted, the act of linking a specific complainant, and complaint, to an agency or contractor, along with providing the status and outcome of a matter could provide enough specific information to identify complainants and potential witnesses. The Law also does not take into account that a “closed” matter is not necessarily a substantiated one.

Publicly reporting the information called for by the bill would provide just enough information about City employee complainants to spark conjecture and a hunt to find who the complainants are, which would of course be particularly detrimental to active and ongoing investigations, but would also be damaging in closed cases. Moreover, publicizing subjects of investigations that are not yet concluded or where we do not substantiate the allegations is deeply unfair and could result in negative consequences for those targets when such consequences are not supported by any evidence or facts. This kind of public reporting will have a potential chilling effect on all of DOI’s work, and would rightly give pause to individuals who may want to step forward to report corruption. An investigative agency like DOI must have the ability to work confidentially on investigations and speak publicly on them only when we have reached conclusions based on the evidence and the law.

I take transparency seriously and understand its value in better understanding and monitoring the work and impact of law enforcement. That is why my administration has taken steps to increase the type of information available to the public about DOI matters, including developing an accurate and comprehensive public database that catalogues

our policy and procedure recommendations to City agencies and reports on their status; as well as posting publicly for the first time our Whistleblower Law annual letters and the annual anti-corruption report that provides detailed Citywide insight of agencies' anti-corruption programs.

But our obligation to protect complainants who report wrongdoing to DOI, as well as safeguard information about individuals being investigated by DOI or where our investigations do not result in substantiated findings, are also part of DOI's mission and one we must balance with the benefits of transparency. Those are best practices and allow DOI to conduct its work with integrity and fidelity to the law.

DOI follows the facts in its investigations wherever they lead, but we speak publicly only on substantiated facts and confirmed conclusions. To do otherwise would jeopardize our ability to use all available investigative tools, could expose complainants and witnesses who deserve confidentiality for as long as we can provide it, and would unfairly taint the subject of an investigation where DOI's findings did not ultimately support the allegations.

Striking a measured balance between transparency and carrying out investigations ethically and under best practices are attributes that I know this Committee respects and understands. DOI is committed to working with you to achieve that goal and refine this bill to best represent those interests and protect our investigations.

Thank you for this time and I can answer any questions you may have.