



The City of New York
Department of Investigation

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COMMISSIONER

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October 30, 2009

By Hand

Hon. Michael R. Bloomberg
Mayor
City of New York
City Hall
New York, New York 10007

Hon. Christine C. Quinn
Speaker
New York City Council
City Hall
New York, New York 10007

Re: Whistleblower Law Complaints for Fiscal Year 2009

Dear Mr. Mayor and Madam Speaker:

The New York City Department of Investigation ("DOI") is pleased to submit this report pursuant to Section 12-113 of the New York City Administrative Code, as amended, the City's "Whistleblower Law." Subsection (i) of the law provides that, "[n]ot later than October thirty-first of each year, the Commissioner 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 following is DOI's report to the Mayor and the City Council.

During fiscal year 2009, DOI received complaints from 52 people who alleged retaliation for reporting corruption that DOI classified as whistleblower complaints. In some of the 52 cases, the complainant sought protection explicitly referencing the City's Whistleblower Law. In others, the complainant did not specifically mention the Whistleblower Law, but in all 52 cases the complainants alleged some form of retaliation

for reporting misconduct. DOI reviews all complaints of alleged retaliation in any form regardless of whether the complainant specifically invokes the whistleblower statute.

The 52 whistleblower complaints received in this past year represent a 9 complaint increase from the 43 reports received the year before. As noted in last year's letter to the Mayor and the City Council, one cause of the growth in the number of complaints is the change in the Whistleblower Law that went into effect in 2007 expanding its scope to include complaints about children's educational welfare, health and safety. In the past year, 9 complaints received by DOI can be attributed to this broader scope in the law.

The Special Commissioner for Investigation for the New York City Public Schools ("SCI") handled the vast majority of the City's Whistleblower Law complaints during this reporting period, with a total of 36 such complaints received by that office. This is 14 more complaints than SCI received in the prior fiscal year, 9 of which, as noted above, were based on underlying complaints ostensibly about harm to a child's educational health, safety and/or welfare. However, several of those complaints did not, on their face, meet the requirements of the statute because they concerned allegations of inadequate teaching materials, criticism for contacts by the complainants with parents, and complaints about the alleged violations of the UFT's collective bargaining agreement.¹ Of the 36 complaints received by SCI in the reporting period, 31 were closed without a finding that the complainant was entitled to protection under the Whistleblower Law and 5 complaints remain open and under investigation.

DOI's aggressive schedule of corruption prevention lectures undertaken in fiscal year 2009 has also contributed to the increase in the number of Whistleblower Law complaints DOI has received overall. In fiscal year 2009, DOI conducted 546 corruption prevention lectures which were attended by 13,852 people. These lectures specifically featured information for City employees about their protections under the City's Whistleblower Law. As expected, DOI has seen a correlation between the number of outreach lectures it gives and the number of complaints it receives.

Consistent with DOI's experience in prior years, a review of the whistleblower complaints received by the agency did not reveal that retaliation for providing information about fraud, corruption, conflicts of interest, gross mismanagement and abuse of authority is widespread in City government. We believe this is attributable, at least in part, to DOI's aggressive public information campaign about the wrongfulness of such conduct and the potential consequences.

¹ Even where, as in these instances, the underlying allegations do not constitute the types of reports that trigger statutory protection under the Whistleblower Law, DOI will refer them to whatever agency is most appropriate to deal with them, such as the Department of Education.

Broken down by the agencies where the 52 complainants were employed, the whistleblower complaints DOI received in fiscal year 2009 are as follows:

Department of Education	36
Department of Environmental Protection	1
Department of Finance	2
Department of Health and Mental Hygiene	1
Department of Transportation	1
Employees Retirement System	1
Health and Hospitals Corporation	3
Human Resources Administration	1
New York City Housing Authority	4
Police Pension Fund	1
School Construction Authority	1

Each of these 52 matters was reviewed carefully by our General Counsel's office. In almost every case, the complaints were also reviewed by the Inspector General for the agency where the complainant worked.

After each of the 52 complaints were reviewed, they were handled in one of several ways depending on the allegations and supporting facts: (1) opened for investigation; (2) opened for a preliminary investigation; (3) filed for intelligence purposes; or (4) referred to another agency for appropriate action. Broken down in this manner, the complaints received were handled as follows:

Opened for investigation	44
Opened as a preliminary investigation	3
Filed for intelligence purposes	3
Referred to another agency	2

In the two instances where complaints were filed for intelligence purposes during the reporting period, the complainants failed to allege that they suffered adverse personnel actions. In the three referrals to another agency, the complainants were all employees of the New York City Health and Hospitals Corporation ("HHC") and so their complaints were referred to the Inspector General for HHC, who has primary jurisdiction over their claims.

Of the matters opened for investigation in the past fiscal year, 35 were closed without a finding that the complainant was entitled to protection under the City's Whistleblower Law. Ten matters remain open and are still under investigation. Please note that, even when a complainant is found not to have met the technical requirements for protection under the Whistleblower Law, where warranted, DOI will still make recommendations to an agency to redress problematic conduct related to that complaint.

Hon. Michael R. Bloomberg
Hon. Christine C. Quinn
October 30, 1009
Page 4 of 4

The protections afforded by the Whistleblower Law are essential to helping to create and maintain a government that functions with integrity and transparency. DOI remains committed to enforcing the Whistleblower Law because it is essential to our efforts to encourage employees to come forward and report wrongdoing. Accordingly, one of DOI's top priorities continues to be insuring that City workers are free from retaliation when they report corruption and other misconduct in City government.

We look forward to helping to ensure the effectiveness of that law in the coming fiscal year.

Sincerely,

A handwritten signature in black ink, appearing to read "Rose Gill Hearn". The signature is written in a cursive, flowing style.

Rose Gill Hearn
Commissioner