

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.

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<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, of (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

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<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.

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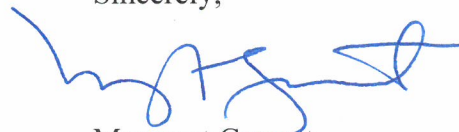
Of the remaining 20 investigations closed in the reporting year – two of which DOI closed when the individuals withdrew the complaint or failed to cooperate with an investigation – the cases were closed without a finding that the complainants were entitled to protection under the City’s Whistleblower 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 blue ink, appearing to read 'Margaret Garnett', with a stylized flourish at the end.

Margaret Garnett