



The City of New York
Department of Investigation

MARGARET GARNETT
COMMISSIONER

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November 1, 2021

BY ELECTRONIC MAIL

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 2021

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 Protection Law." Section 4, Subdivision (i) of the law provides that, "[n]ot later than October thirty-first of each year, the commissioner [of investigation], in consultation with the special commissioner of investigation [for the New York City School District] and the corporation counsel, shall prepare and forward to the mayor and the council a report" on the complaints governed by this section for the preceding Fiscal Year. The following is DOI's report to the Mayor and the City Council for Fiscal Year 2021.¹

¹ Unlike in previous years, this report does not incorporate whistleblower complaints received and investigated by the Special Commissioner of Investigation for the New York City School District (SCI). That information is available in a separate report by SCI, which is attached.

The Whistleblower Protection Law prohibits retaliation against New York City employees, as well as certain employees of City contractors and subcontractors, for reporting corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority in City government to DOI. The law protects such a report of information whether the employee makes a formal complaint to DOI or reports information to DOI as a witness in an already pending investigation.²

The City Council has periodically amended and expanded the categories protected by the Whistleblower Protection Law over the last 15 years. A 2007 amendment expanded the scope to include complaints concerning risk of harm to the health, safety or educational welfare of children. In 2012, the Law was amended to extend protection to officers and employees of vendors who have contracts with the City valued at \$100,000 or more. Further amendments to the law in 2021 added SCI as one of the designated entities to make a complaint of retaliation, expanded the data DOI includes in its annual fiscal year report, and required DOI to send written notification every 90 days to a whistleblower complainant for whom an investigation is underway regarding the status of the investigation.

Under 1978's Mayoral Executive Order 16 (MEO 16), all public officers and employees have an affirmative obligation to report corruption, fraud and other wrongdoing or risk their jobs and professional advancement if they do not.³ MEO 16 operates in tandem with the Whistleblower Protection 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.

To increase awareness among the City workforce about corruption risks, and to ensure City employees understand their obligations to report corruption and wrongdoing, and the associated protections for them, DOI has continued to educate the City's workforce with virtual and on-line corruption prevention and whistleblower instruction. As a result of the Coronavirus pandemic,

² The Law also protects reports of information made to a member of the City Council, the Public Advocate, the City Comptroller, or the Special Commissioner of Investigation for the New York City School District (SCI), each of whom has a duty to refer the information to DOI unless (1) the conduct is within the jurisdiction of SCI, in which case the complaint shall be referred to SCI, or (2) the conduct is alleged to have been committed by the DOI Commissioner, the SCI Commissioner, or a DOI Deputy Commissioner, in which case the complaint must be referred to the corporation counsel.

³ 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."

which continued throughout the entire reporting period, DOI suspended all in-person corruption prevention lectures and instead refocused efforts to conduct virtual lectures with City agencies so as not to compromise City employees' safety during the pandemic. In Fiscal Year 2021, DOI conducted 67 virtual corruption prevention and outreach lectures to 2,207 City employees. An additional 25,028 employees completed on-line anti-corruption training through the Citywide E-Learning module.

We are providing the following information in accordance with the 2021 amendments to Section 12-113 of the City's Administrative Code:

- In Fiscal Year 2021, DOI logged 1,828 complaints from City employees alleging corruption, criminal activity, conflict of interest, gross management or abuse of authority, of which more than 340 resulted in investigations, preliminary investigations, or were merged into existing investigations. Additional city employees may have made complaints anonymously or without identifying their employment status. And many more City employees provided valuable information in the course of DOI investigations, even if those investigations did not originate with an employee complaint.
- In Fiscal Year 2021, DOI logged 25 complaints from employees of contractors. Additional employees of contractors may have made complaints to their contracting agency, or have made complaints to DOI without identifying their employment status.
- In Fiscal Year 2021, DOI did not log any complaints regarding the "risk of harm to the health, safety or educational welfare of a child." Most such complaints would be made in the first instance to DOE, ACS, or a law enforcement agency.
- DOI currently has more than 260 Inspectors General, attorneys and investigators, all of whom have duties that include conducting a whistleblower investigation.

In Fiscal Year 2021, we received 14 complaints from individuals who specifically alleged job-related retaliation or sought protection for reporting misconduct in City government, and DOI opened eight investigations.⁴ The remaining six complaints were handled as follows, depending on the allegations and supporting facts: (a) referred to another agency for appropriate action (three complaints); (b) filed for intelligence purposes (one complaint); or (c) remained under review at the end of the reporting period (two complaints). Broken down by the agencies where the complainants worked, the whistleblower retaliation complaints DOI received in Fiscal Year 2021 are as follows:

⁴ DOI cannot ascribe a particular reason for the decrease in the number of whistleblower complaints received in FY 2021 versus FY 2020. The agency notes, however, that the Covid-19 pandemic remained throughout the entire fiscal year and many City employees continued working remotely.

Agency	Number of Complaints
Administration of Citywide Administrative Services	1
Department of Design and Construction	1
Department of Education	1
Department of Environmental Protection	1
Health + Hospitals	3
New York City Housing Authority	5
Department of Parks and Recreation	1
Department of Youth and Community Development	1

Of the eight complaints that were opened as a whistleblower investigation in Fiscal Year 2021, DOI closed two matters, and six remained open and under investigation as of the end of the reporting year. In total, DOI closed 16 investigations in Fiscal Year 2021, including 14 investigations opened in a prior fiscal year.⁵ Nine investigations remained open at the end of the fiscal year, including three that had been opened in a prior reporting period. The median number of days that these nine investigations had been open at the end of the fiscal year was 96 days, with four investigations open less than 90 days, one investigation open between 90 and 179 days, one investigation open between 180 and 364 days, two investigations open between 365 and 730 days, and one investigation open more than 730 days.

With respect to the 16 investigations closed in the reporting year, none of the investigations resulted in a finding that the complainant was entitled to protection under the City's Whistleblower Protection Law. However, 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 or issues, where warranted. For instance, in one whistleblower investigation DOI alerted an agency about a city vendor who may have fostered an environment discouraging employees from making a whistleblower complaint of wrongdoing.

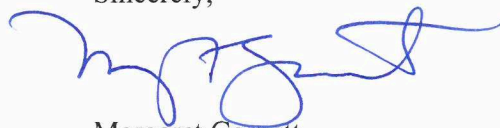
With respect to the four complaints filed for intelligence purposes or referred to other agencies, DOI interviewed the complainant in one matter and determined the complainant did not have a claim for entitlement to protection under the Law and was so notified by letter. In a second instance, the complainant did not raise new information regarding a matter previously investigated by DOI and was so advised. In another matter, DOI determined the complaint, on its face, did not make out a claim for protection, and a referral to the individual agency was necessary so the agency could be aware and review issues raised in the complaint. And in the fourth instance, the complaint was referred to another agency with primary jurisdiction over the allegations. In the two complaints that remained under review at the end of the fiscal year, whistleblower investigations were subsequently initiated.

⁵ Two whistleblower investigations DOI opened in Fiscal Year 2020 were inadvertently omitted in our annual letter last year. These two investigations are included with the number of closed investigations referenced in this letter.

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The New York City Whistleblower Protection Law is fundamental to the work of DOI and supports the mandate that City employees report corruption when they see it, and the protections afforded to them when they do step forward. It is good government in action, holding public servants accountable and protecting them when they do the right thing and fostering a culture that does not tolerate corruption, fraud, abuse of authority or waste of public funds. DOI is committed to continuing its efforts to ensure the effectiveness and public awareness of this Law.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Margaret Garnett', with a stylized, flowing script.

Margaret Garnett

City of New York
THE SPECIAL COMMISSIONER OF INVESTIGATION
FOR THE NEW YORK CITY SCHOOL DISTRICT

80 Maiden Lane, 20th Floor
New York, New York 10038

Anastasia Coleman
Special Commissioner

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VIA ELECTRONIC MAIL

October 18, 2021

Honorable Margaret Garnett
Commissioner
New York City Department of Investigation
180 Maiden Lane
New York, NY. 10038

Re: Whistleblower Complaints and Statistics
for Fiscal Year 2021

Dear Commissioner Garnett:

The Special Commissioner of Investigation for the New York City School District (“SCI”) submits this report detailing complaints and statistics related to the New York City Whistleblower Law to the commissioner of the New York City Department of Investigation (“DOI”) in furtherance of the DOI commissioner’s obligation to report annually to the Mayor and the New York City Council the number and disposition of complaints under the statute.¹

The New York City Administrative Code § 12-113, commonly known as the Whistleblower Law, relates to employees of an agency of the City, or employees of vendors conducting business with the City, who report information concerning conduct which they know or reasonably believe to involve corruption, criminal activity, conflict of interest, gross mismanagement, or abuse of authority in City government to the DOI commissioner, the New York City Public Advocate, the New York City Comptroller, or a member of the New York City Council. In matters where the underlying claim includes allegations stemming from a report regarding the physical or educational welfare of a child, the statute includes reports made to the Mayor or to the head of an agency or that agency’s designee.²

For the purposes of SCI’s review of Whistleblower complaints, New York City Department of Education (“DOE”) employees are considered employees of a City agency. The Whistleblower Law prohibits another employee from taking any adverse personnel action against the reporting employee in

¹ This report will also be made available publicly on the SCI website at www.nycsci.org.

² For the purposes of reports regarding the New York City Department of Education, the “head of agency” title refers to the Chancellor or a deputy chancellor.

retaliation for making such a report. If an employee believes she has been the subject of such retaliatory adverse personnel action, she may report such conduct to the Commissioner of DOI or, in the case of complaints regarding the DOE, the Special Commissioner, who maintains the powers conferred upon a deputy to the Commissioner of DOI.

The Board of Education (“BOE”) Whistleblower Resolution (1992) prohibits adverse personnel actions against an officer or employee of the DOE who reports information concerning conduct which she knows or reasonably believes to involve corrupt or other criminal activity, conflicts of interest, unethical conduct or misconduct by another officer or employee of the City School District, or by persons dealing with the City School District, to SCI.³ SCI will then conduct an investigation into the matter. If SCI finds that an adverse personnel action was taken in retaliation for making such a report, the employee will be accorded protection and, if necessary, remedial relief, under the Whistleblower Law and the BOE resolution (together, the “WB Statutes”).

In Fiscal Year (“FY”) 2021, SCI received seven complaints from individuals alleging retaliation for having previously reported official wrongdoing. One of those matters was investigated and closed within the FY with no further action. One complaint was closed within days of receipt at the request of the complainant who later withdrew the complaint. Three additional complaints were evaluated and referred to the DOE after concluding that the complaint did not fall within the parameters of the WB Statutes.⁴ The chart below breaks down the complaints received by statutory subsection category in FY 2021:

§2 (b)(1)	§2 (b)(2)	§2 (b)(5)
6	0	1

In addition, three complaints received by SCI during previous FY, were closed without further action in FY 2021, after findings that the complainants were not entitled to protection under the WB Statutes.

Seven cases being evaluated under the WB Statutes remain open and under investigation by SCI that commenced in FY 2021 or earlier. The chart below breaks down the total open investigations under the WB Statutes by number of days active at the close of FY 2021:

90 – 179 Days	180 – 364 Days	365 – 729 Days	730 or greater
2	0	2	3

Finally, pursuant to New York City Administrative Code § 12-113, Section 4 (i)(5)(f), SCI currently employs approximately 24 full-time field investigators. Of those, 10 investigators are assigned

³ The Board of Education is now referred to as the Panel for Educational Policy of the Department of Education.

⁴ Complaints received that fail to meet basic statutory requirements under the WB Statutes, but nonetheless raise issues of concern, may still be investigated by SCI, or may be referred by SCI to the DOE Office of General Counsel, the DOE Office of Equal Opportunity and Diversity Management, or the DOE Office of Special Investigations.

to a select team who solely investigate matters involving sexual or other inappropriate conduct by DOE employees or those doing business with the DOE. Those investigators would likely not be assigned an investigation involving a potential violation of the WB Statutes. The remaining 14 field investigators would all be eligible to investigate allegations of retaliation under the WB Statutes, and may be assigned those investigations on a rolling basis.

Sincerely,

ANASTASIA COLEMAN
Special Commissioner of Investigation
for the New York City School District

By: /s/ Daniel I. Schlachet
Daniel I. Schlachet
First Deputy Commissioner

AC:DS:lr

cc: Carol Strickland, Esq.
Leslie Dubeck, Esq.