



THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007-2601

MICHAEL A. CARDOZO
Corporation Counsel

(212) 788-0800
FAX: (212) 227-5641
mcardozo@law.nyc.gov

February 28, 2007

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

Hon. Christine Quinn
Speaker of the City Council
City Hall
New York, NY 10007

Re: New York City False Claims Act

Dear Mayor Bloomberg and Speaker Quinn:

Local Law No. 53 of 2005, the "New York City False Claims Act" (the "Act") was signed into law on May 19, 2005 and went into effect on August 17, 2005.

The purpose of the Act was to establish for New York City a statute modeled on the federal "False Claims Act" and to provide an additional tool to assist in the recovery of monetary damages from parties who have filed fraudulent claims for payment of City funds.

Under the Act, individuals who claim to have knowledge of false or fraudulent claims are empowered to submit proposed civil complaints to the City's Department of Investigation ("DOI") which, after reviewing them to ascertain whether an on-going investigation exists or whether one is warranted, forwards them to the Law Department. The Corporation Counsel has assigned responsibility for false claims matters to the Affirmative Litigation Division. The Division undertakes a careful review of the proposed civil complaint and the allegations contained therein, and determines whether it will commence a civil enforcement action, or designate the person who submitted it to commence such action, or decline to commence such an action. If an action is commenced based on a person's proposed complaint, such person can receive a percentage of proceeds ultimately recovered in the action or settlement of the action.

The Act calls upon two agencies which are experienced in the areas addressed by the Act and are well positioned to collaborate to utilize this new tool for recovering money damages. A major mission of DOI is to investigate and refer for prosecution cases of fraud, corruption and unethical conduct by City employees, contractors and other who receive City funds. DOI is also charged with studying agency procedures to identify corruption hazards and recommending improvements in order to reduce the City's vulnerability to fraud, waste and corruption. The Affirmative Litigation Division of this office represents the City as plaintiff in a wide range of litigated issues in federal and state court and before administrative agencies. Some of the Division's lawsuits are in areas to recover moneys for the City, including commercial disputes; hazardous product claims; civil racketeering and fraud claims; nuisance and restitution claims; antitrust claims; intellectual property claims; and challenges to state and federal government decisions affecting funding for public benefit programs and education.

Under § 7-804(b)(2) of the Act, the Law Department and DOI are charged with promulgating rules regarding a protocol for processing the proposed civil complaints that would be submitted pursuant the Act. Attorneys from this office and DOI collaborated in the drafting of rules which were published in the *City Record* on July 6, 2005. A public hearing on those rules was held on August 5th and on August 8, 2005 a Notice of Adoption of the rules was duly published in the *City Record*, as of which date the rules became effective. The Rules are contained in Title 46 of the Rules of the City of New York. A copy of the rules is attached for your information. The Act itself became effective the following week, on August 17, 2005.

The text of the Act and the aforementioned Rules are posted on the websites of both the Law Department and DOI (<http://www.nyc.gov/html/law/html/fca/fca.shtml> and http://nyc.gov/html/doi/html/false_claims_home.html) in order to make it more accessible to the public, and the City's "311" hotline supervisory staff have been briefed about the Act so appropriate referrals can be made.

Calendar Year 2006

As discussed above, the Act provides that members of the public can submit proposed civil complaints which are investigated for purposes of determining whether they should be filed as civil complaints.

Section 7-808 of the Act provides that the Law Department report to the Mayor and the Council by March 1 of each year certain specified information regarding experience under the Act in the previous calendar year. Set forth below is the information requested for calendar year 2006.

The number of proposed civil complaints submitted pursuant to § 7-804 (§ 7-808(1))

There were four such proposed civil complaints submitted in 2006.

The number of proposed civil complaints resulting in the Corporation Counsel commencing a civil enforcement action based upon such submission (§ 7-808(2))

No civil complaints resulted in this office commencing a civil enforcement action.

The number of proposed civil complaints resulting in the Corporation Counsel designating the person, or such person's attorney, to act as a Special Assistant Corporation Counsel for purposes of commencing a civil enforcement action (§ 7-808(3)).

The Corporation Counsel did not designate any person, or his or her attorney, to act as a Special Assistant Corporation Counsel for purposes of commencing a civil enforcement action.

Subdivision (4) of § 7-808 (“[t]he disposition of each civil enforcement action filed, including (i) whether the case was based on a proposed civil complaint; and (ii) the monetary value of any award or settlement in each action commenced by the person who submitted a proposed civil complaint to the City; and (iii) the monetary value of any award or settlement in each action commenced by the City”) is therefore not applicable.

As to “[t]he number of proposed civil complaints under review by the City and pending a determination by the Corporation Counsel as to the commencement of a civil enforcement action (§ 7-808(5))”, there are two proposed civil complaints that remain under review.

Section 7-808(6) asks for “[t]he number of proposed civil complaints for which the Corporation Counsel determined not to commence a civil enforcement action and a statistical summary of the reasons for such determinations.”

This office determined pursuant to § 7-804(b)(3)(ii) not to commence a civil enforcement action in one instance (which had been submitted in 2005) because the proposed civil complaint was “based upon an interpretation of law or regulation which, if adopted, would result in significant cost to the city.” The proposed civil complaint presented claims for Medicaid funds, and the City receives no benefit from successfully litigating such claims, as all Medicaid recoveries go to the State of New York pursuant to Part C of Chapter 58 of the Laws of 2005 (the “Medicaid cap statute”) and the 2006 re-enactment of the same Medicaid statute. Hence, any share which a relator might recover would have to come out of the City treasury, without the City receiving any corresponding benefit, and litigating these claim would have resulted in a significant cost to the City under § 7-804(b)(3)(ii). The proposed civil complaint had already been filed as a Federal False Claims Act case of which the federal government and the State of New York were fully aware. This office determined in 2007 not to commence a second civil enforcement action (which had been submitted in 2006) for the same reason.

This office determined pursuant to § 7-804(b)(3)(i) not to commence a civil enforcement action in a second instance (which had been submitted in 2006) because the City’s loss was de minimis (less than \$25,000).

Sincerely yours,


MICHAEL A. CARDOZO

cc: Hon. Rose Gill Hearn