The City of New York
Department of Investigation

ROSE GILL HEARN
COMMISSIONER

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By Hand
Honorable Michael R. Bloomberg
Mayor
City of New York
City Hall
New York, New York 10007

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

Re: Whistleblower Law Complaints for Fiscal Year 2011

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, 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 2011, DOI received complaints from 45 people who alleged retaliation for reporting corruption that DOI classified as whistleblower complaints. In some of the 45 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 45 cases the complainants alleged some form of retaliation

for reporting misconduct and therefore their complaints were treated as whistleblower complaints. DOI reviews all complaints of alleged retaliation in any form regardless of whether the complainant specifically invokes the Whistleblower Law.

The 45 whistleblower complaints received in this past fiscal year is the same number that we received in the prior fiscal year. That number is more than double the number received in several earlier fiscal years. The number of complaints filed by employees of the Department of Education ("DOE") has continued to increase significantly following the 2007 amendments to the Whistleblower Law that expanded the law's scope to include complaints about children's educational welfare, health and safety. For example, in Fiscal Year 2007, which covers the period before the amendments expanding the law went into effect, DOI received only 8 complaints from DOE employees alleging retaliation under the City's Whistleblower Law out of the total of 19 Whistleblower Law complaints DOI received that year.

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, in part, to DOI's aggressive public information campaign, initially begun in 2002, in which employees and managers have repeatedly been informed about the wrongfulness and potential consequences of such conduct.

Broken down by the agencies where the 45 complainants were employed, the whistleblower complaints DOI received in Fiscal Year 2011 were as follows:

Department of Education	37
Department of Environmental Protection	1
Department of Health and Mental Hygiene	2
Department of Transportation	2
Fire Department	1
Human Resources Administration	1
Office of Payroll Administration	1

Each of these 45 matters was reviewed carefully by our General Counsel's office. In almost every instance, the complaints were also reviewed by the Inspector General for the agency where the complainant worked. Ultimately, the 45 complaints were handled in one of several ways depending on the allegations and supporting facts: (1) opened for investigation; (2) filed for intelligence purposes; or (3) referred to another agency for appropriate action. Broken down in this manner, the complaints received were handled as follows:

Opened for investigation	40
Filed for intelligence purposes	3
Referred to another agency	2

In one of the three instances where complaints were filed for intelligence purposes during the reporting period, the complainant refused to cooperate with DOI's investigation or to provide further necessary information. In another, the complainant alleged retaliation based on the same conduct DOI had previously found was not the basis for protection under the law after a full investigation. And in the third instance, the complainant failed to allege that he suffered an actual adverse personnel action. With regard to the two referrals to other agencies, neither complaint on its face made out a claim for protection under the City's Whistleblower Law. However, in each of these instances, there were allegations of conduct that the individual agencies needed to be aware of and review further.

Of the 45 complaints made to DOI this fiscal year, more than half were investigated by the close of the fiscal year without a finding that the complainants were retaliated against for reporting corruption as is required under the law. In one investigation completed in this fiscal year, DOI made a finding of retaliation and remedial measures were taken by the employee's agency at DOI's request.

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,

Rose Gill Hearn
Commissioner