



MICHAEL A. CARDOZO
Corporation Counsel

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

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

March 10, 2008

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 that 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 seek to recover money for the City in areas 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 that 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. 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 them 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.

In 2007, the State enacted the New York False Claims Act (Chapter 58 of the Laws of 2007), legislation that in its earlier bill form had been supported by this office and had been one of the models upon which the New York City local law was based. Except for the matter referred to below, noting a referral under the new law, we are unaware of the extent to which potential claimants will avail themselves of the State law instead of, or addition to, the City law.

Calendar Year 2007

As discussed above, the Act provides that members of the public can submit proposed civil complaints that 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 2007.

There were six proposed civil complaints submitted pursuant to Section 7-804 in 2007. One proposed civil complaint submitted in 2006 was withdrawn in 2007, and there are no proposed complaints pending from 2006. For the reasons described below, none of these proposed civil complaints resulted in this office commencing a civil enforcement action, and 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. Therefore, there are no dispositions to report of suits based on proposed civil complaints. In addition, we note that there was one proposed complaint forwarded to this office by the State Attorney General pursuant to the recently enacted State "New York False Claims Act" (Chapter 58 of the Laws of 2007). This referral is currently under review.

This office determined pursuant to §7-804(b)(3)(ii) not to commence a civil enforcement action in four instances 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 complaints presented claims for Medicaid funds, and, in the absence of express advance State approval, 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 that a relator might recover would have to come out of the City treasury without the City receiving any corresponding benefit, and litigating these claims would have resulted in a significant cost to the City under § 7-804(b)(3)(ii). The proposed civil complaints had already been filed as Federal False Claims Act cases of which the federal government was fully aware. The Attorney General's Office was either also aware of the claim, or was made aware of the claim by a referral from this office.

This office determined in 2007 not to commence one other civil enforcement action that had been submitted in 2006 when it was determined that the City had not suffered any loss. That matter involved an allegation that the City was defrauded because a contractor did not pay prevailing wages. It was referred to the Comptroller's Office to pursue the prevailing wage claim in accordance with its statutory authority.

There are two proposed civil complaints submitted in 2007 that remain under review, along with the referral under the State's "New York False Claims Act".

In addition, this office has utilized the Act by filing three complaints that pled a claim under the Act along with other claims, but were not related to a proposed civil complaint under Section 7-804. One claim was based on false royalty reports; a second was based on fraudulent bills submitted in connection with computer services; and a third was based on false bills in connection with printing services. One of those actions settled; the second and third actions have partially settled.

Sincerely yours,



MICHAEL A. CARDOZO

cc: Hon. Rose Gill Hearn