Committee on Oversight and Investigations

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###### **THE COUNCIL OF THE CITY OF NEW YORK**

# **COMMITTEE REPORT OF the GOVERNMENTAL AFFAIRS Division**

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**COMMITTEE ON OVERSIGHT AND INVESTIGATIONS**

Hon. Ritchie Torres, Chair

##### November 13, 2019

**Tracking Agency Cooperation with Investigations**

**INT. No. 1440:** By Council Members Torres, Cumbo, Brannan, and Holden

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of investigation to create a web application to track and assess agency cooperation and compliance with investigations and recommendations

**ADMINISTRATIVE CODE:** Adds §§ 33-101, 33-201

1. **INTRODUCTION**

On November 13, 2019, the Committee on Oversight and Investigations, chaired by Council Member Ritchie Torres, will hold a hearing on tracking agency cooperation with investigations and the following bill: Int. No. 1440, in relation to requiring the department of investigation to create a web application to track and assess agency cooperation and compliance with investigations and recommendations. Those invited to testify include representatives from the Department of Investigations (“DOI”), good government groups, think tanks, higher education institutions and non-profit organizations.

1. **BACKGROUND**

DOI is one of the oldest law-enforcement agencies in the country,[[1]](#footnote-1) and the first dedicated to fighting corruption.[[2]](#footnote-2) As the City’s independent Inspector General, it has authority over more than 45 City agencies. DOI also has the authority to investigate those who conduct business or receive benefits from the City, including government contractors and subcontractors.[[3]](#footnote-3)

DOI’s mission is to “root out fraud, waste and corruption wherever it may be.”[[4]](#footnote-4) As such, the agency can investigate any issue which is deemed to be “in the best interests of the city,”[[5]](#footnote-5) and must investigate matters as directed by the Council or the Mayor.[[6]](#footnote-6) Such investigations are conducted confidentially, and employees who report misconduct are afforded protections by City and State whistleblower laws.[[7]](#footnote-7) After conducting an investigation, DOI can issue reports on systemic deficiencies in City agencies, and make recommendations to address these vulnerabilities.[[8]](#footnote-8) DOI may also make arrests[[9]](#footnote-9) or work with criminal prosecutors to secure such arrests in connection with its investigations.[[10]](#footnote-10)

**III. DOI INVESTIGATIONS AND AGENCY COMPLIANCE**

**A. Procedure for City Agency Investigations**

If in the course of their investigation DOI uncovers the need for systematic changes at a City agency, it may publish Policy and Procedure Recommendations (PPRs). The investigations and subsequent reports are overseen by DOI’s Inspectors General, who may issue PPRs to outline steps for agency improvement.[[11]](#footnote-11) These Inspectors General also track whether agencies have agreed to implement any of the recommendations in the report the agency was issued, and whether the recommendations were implemented.[[12]](#footnote-12) DOI is not vested with the authority to compel City agencies to comply with their recommendations, but pressure from the Mayor or the public may influence City agencies’ decisions to implement the recommendations.[[13]](#footnote-13)

In many cases, DOI investigations and the subsequent issuance of PPRs are not made publically available. While DOI reportedly issued 2,538 PPRs in fiscal year 2018,[[14]](#footnote-14) only 13 public reports describing these investigations have been posted on their website.[[15]](#footnote-15) DOI’s practice of making so few of their PPRs public may enable City agencies to conceal their deficiencies.

**B. City Agency Tracking and Implementation**

In addition to the content of many PPRs being handled in private, a City agency’s decision to implement or decline DOI’s recommendations is often not publicly announced. DOI may conduct follow-up investigations, however, which highlight particularly egregious cases where agencies fail to implement DOI recommendations. Two recent follow up investigations were conducted with respect to compliance measures at the New York City Housing Authority (“NYCHA”). In both cases, NYCHA failed to implement the recommendations it had agreed to institute: to create effective measures for safeguarding its appliance inventory, as a result of pervasive theft of those appliances;[[16]](#footnote-16) and to put in place proper procedures to prevent and remove dangerous criminal offenders from public housing.[[17]](#footnote-17) Follow-up investigations can raise the public profile and cause added pressure on a city agency to make effective changes, since these follow-ups may generate significant media coverage.[[18]](#footnote-18)

Despite few instances for which City agencies’ implementation efforts are publicly disclosed, DOI has been tracking overall City agency acceptance and implementation of PPRs since at least 2007. That year, DOI formalized the PPR program, and began to track their recommendations and City agencies’ implementations in a centralized way.[[19]](#footnote-19) Certain data indicators are included in the Mayor’s Management Report. For example, the Department disclosed that it issued 2,538 PPRs in fiscal year 2018, with City agencies accepting 56% of the PPRs issued.[[20]](#footnote-20) In fiscal year 2017, however, DOI issued closer to 500 PPRs, with City agencies accepting 74% of the recommendations received.[[21]](#footnote-21) A lack of transparency in DOI’s issuance of PPRs and agency acceptance of these recommendations makes it difficult to understand the cause of this discrepancy.

**IV. GOVERNMENT TRANSPARENCY**

 Government transparency is integral to ensuring that the public serves as a check on government power. Advocacy organizations like the Sunlight Foundation emphasize the importance of access to information to effective democratic participation, in whatever form that information may take.[[22]](#footnote-22) The Sunlight Foundation recommends that cities have policies in place to increase transparency in government operations and create opportunity for city residents to accurately and independently assess government performance.[[23]](#footnote-23) Open government policies like these are similarly praised by organizations like Reinvent Albany and Columbia Law School’s Center for the Advancement of Public Integrity.[[24]](#footnote-24)

 The City administration has advocated for transparency in the City government. When the City unveiled a new Open Data homepage in 2017, Mayor de Blasio underlined the importance of transparency and accountability in government: “Open data is a window into what’s happening in every neighborhood in our city, bringing our dedication to transparency and accountability to life.”[[25]](#footnote-25) The City has been lauded by some advocates for its contribution to transparency through the adoption of the Council’s Open Data Law and other efforts to increase access to information for New Yorkers, such as the Mayor’s Open Data for All plan.[[26]](#footnote-26) The Mayor’s emphasis on transparency has not extended, however, to DOI. Some DOI investigations may contain sensitive and confidential information, or may be the subject of an ongoing law enforcement investigation. Nonetheless, DOI discloses to the public very little of what or whom they are investigating, and more notably what recommendations are provided to a City agency as a result of these investigations. Furthermore, the City rarely provides details on agencies’ implementation of these recommendations. By failing to release such information, DOI prevents City residents from assessing City agency operations and evaluating the agencies’ willingness to take necessary corrective action.

**V. LEGISLATIVE ANALYSIS**

**Int. No. 1440, A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of investigation to create a web application to track and assess agency cooperation and compliance with investigations and recommendations**

Int. No. 1440 would require DOI to develop and maintain an application on their website to track and assess agency cooperation and compliance with investigations and recommendations. For each agency investigated, the bill would require DOI to indicate what recommendations were made to the agency, whether those recommendations were accepted or rejected by the agency, and, if accepted, whether the accepting agency has implemented the recommendations. The bill would require DOI to make the website application available to the public and update it as necessary to reflect the current status of each agency’s cooperation and compliance.

The bill would take effect immediately.

**VI. CONCLUSION**

The Committee seeks to gain a better understanding of how DOI can become more transparent to City residents. The Chair looks forward to hearing from DOI and good government groups about their views on making City agencies’ implementation of DOI’s recommendations publicly available information.

Int. No. 1440

By Council Member Torres, Cumbo, Brannan, and Holden

..Title

A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of investigation to create a web application to track and assess agency cooperation and compliance with investigations and recommendations

..Body

Be it enacted by the Council as follows:

Section 1. The administrative code of the city of New York is amended by adding a new title 33 to read as follows:

TITLE 33

INVESTIGATIONS

CHAPTER 1

GENERAL PROVISIONS

§ 33-101 Definitions. As used in this title, the following terms have the following meanings:

Commissioner. The term “commissioner” means the commissioner of investigation.

Department. The term “department” means the department of investigation.

Investigation. The term “investigation” means any investigation made by the department.

Recommendation. The term “recommendation” means any recommendation made by the department in the course of an investigation or as the result of an investigation.

CHAPTER 2

REPORTING

 § 33-201 Website and reporting. a. The commissioner shall develop and maintain a web application on the department’s website for the purposes of tracking and assessing agency cooperation and compliance with investigations and recommendations. For each agency investigated, the web application shall set forth the recommendations made to the agency and state whether each recommendation was accepted or rejected by the agency to which it was made. For each accepted recommendation, the web application shall indicate whether the accepting agency implemented the recommendation.

 b. The web application required by this section shall be made available online, to the public, by no later than July 1, 2019, and thereafter shall be updated as necessary to reflect the current status of each agency’s cooperation and compliance.

§ 2. This local law takes effect immediately.

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1. City of New York Department of Investigation, About DOI, <https://www1.nyc.gov/site/doi/about/about.page> (last accessed on November 1, 2019). [↑](#footnote-ref-1)
2. Columbia Law School Center for the Advancement of Public Integrity, *Oversight and Enforcement of Public Integrity: A State-by-State Study, New York*, 2018, pg. 2, *available at:* <https://www.law.columbia.edu/sites/default/files/capi-data/reports/newyork_2018.pdf>. [↑](#footnote-ref-2)
3. City of New York Department of Investigation, *supra* note 1; *Id.* at 6. [↑](#footnote-ref-3)
4. City of New York Department of Investigation, Legal and Executive Authority, <https://www1.nyc.gov/site/doi/about/legal-executive-authority.page> (last accessed on November 1, 2019). [↑](#footnote-ref-4)
5. Charter § 803 (b). [↑](#footnote-ref-5)
6. Charter § 803 (a). [↑](#footnote-ref-6)
7. *See* N.Y. Labor Law § 740; Administrative Code § 12-113; Charter § 803 (c) (5). [↑](#footnote-ref-7)
8. City of New York Department of Investigation, Jurisdiction, <https://www1.nyc.gov/site/doi/about/jurisdiction.page> (last accessed on November 1, 2019). [↑](#footnote-ref-8)
9. *See* N.Y. Criminal Procedure Law §§ 2.20 (38), 140.25. [↑](#footnote-ref-9)
10. City of New York Department of Investigation, DOI’s Mission and History, <https://www1.nyc.gov/site/doi/about/mission.page> (last accessed on November 6, 2019). [↑](#footnote-ref-10)
11. City of New York Department of Investigation, Units, <https://www1.nyc.gov/site/doi/offices/inspector-general.page> (last accessed on November 1, 2019). [↑](#footnote-ref-11)
12. New York City Global Partners, *Best Practice: Policy and Procedure Recommendation Program*, Updated May 2012, pg. 1, *available at:* <http://www.nyc.gov/html/ia/gprb/downloads/pdf/NYC_Policy%20and%20Procedure%20Recommendation%20Program.pdf>; Jurney, Ben. “Under the Hood at Agencies, Investigation Department Increases Policy Focus,” *Gotham Gazette*, December 2, 2016, *available at:* <https://www.gothamgazette.com/city/6648-under-the-hood-at-agencies-investigation-department-increases-policy-focus>. [↑](#footnote-ref-12)
13. *See* Jurney, *supra* note 12. [↑](#footnote-ref-13)
14. *See* NYC Mayor’s Office of Operations, *Fiscal 2019* *Mayor’s Management Report*, September 2019, pg. 94, available at: <https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2019/2019_mmr.pdf>. [↑](#footnote-ref-14)
15. *See* City of New York Department of Investigation, *supra* note 11. [↑](#footnote-ref-15)
16. City of New York Department of Investigation, *New York City Department of Investigation: Failed Large Appliance Inventory Controls at NYCHA*, November 2017, *available at*: <https://www1.nyc.gov/assets/doi/press-releases/2017/nov/25NYCHAInventory_11-03-17.pdf>. [↑](#footnote-ref-16)
17. City of New York Department of Investigation, *New York City Department of Investigation: NYCHA Is Still Failing to Remove Dangerous Criminals from Public Housing*, March 2017, *available at:* <https://www1.nyc.gov/assets/doi/press-releases/2017/mar/10NYCHAMOU03-27-17wreport.pdf>. [↑](#footnote-ref-17)
18. *See* Mena, Kelly. “DOI Finds NYCHA Failing to Remove Dangerous Criminal Offenders,” *Kings County Politics*, March 30, 2017, *available at:* <https://www.kingscountypolitics.com/doi-finds-nycha-failing-remove-dangerous-criminal-offenders/>; Cohen, Shawn and Musumeci, Natalie. “Housing Authority Accused of Ignoring NYPD Info on Criminal Residents,” *New York Post*, March 28, 2017, *available at:* <https://nypost.com/2017/03/28/housing-authority-accused-of-ignoring-nypd-info-on-criminal-residents/>. [↑](#footnote-ref-18)
19. *See* New York City Global Partners, *supra* note 12, at 2. [↑](#footnote-ref-19)
20. *See* NYC Mayor’s Office of Operations*,* *supra* note 14. [↑](#footnote-ref-20)
21. *Id.* [↑](#footnote-ref-21)
22. Sunlight Foundation, Our Mission, <https://sunlightfoundation.com/about/> (last accessed on November 1, 2019). [↑](#footnote-ref-22)
23. Sunlight Foundation, Open Cities: An Open Model for City Progress, <https://sunlightfoundation.com/our-work/open-cities/> (last accessed on November 1, 2019). [↑](#footnote-ref-23)
24. Columbia Law School Center for the Advancement of Public Integrity, *supra* note 2, at 3. [↑](#footnote-ref-24)
25. New York City Office of the Mayor, *De Blasio Administration Unveils New Open Data Homepage as New York City Celebrates 5 Years of Open Data*, March 7, 2017, *available at:* <https://www1.nyc.gov/office-of-the-mayor/news/137-17/de-blasio-administration-new-open-data-homepage-new-york-city-celebrates-5-years-open>. [↑](#footnote-ref-25)
26. Gringut, Leo. “New York City ‘Open Data’ Paves Way for Innovative Technology,” *International Policy Digest*, March 26, 2019, *available at:* <https://intpolicydigest.org/2019/03/26/new-york-city-open-data-paves-way-for-innovative-technology/>; Campbell, Craig. “New York City Open Data: A Brief History,” *Harvard Kennedy School Ash Center for Democratic Governance and Innovation*, March 8, 2017, *available at:* <https://datasmart.ash.harvard.edu/news/article/new-york-city-open-data-a-brief-history-991>. [↑](#footnote-ref-26)