



OFFICE OF THE INSPECTOR GENERAL
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100 N. Holliday Street
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Jun 14, 2021

Members of the Baltimore City Council
Rules and Legislative Oversight Committee
100 N. Holliday Street, Room 409
Baltimore, MD 21202

Re: City Council Bill 21-0093 Revising Whistleblower Rights and Responsibilities

Summary:

This bill revises Article 1, Subtitle 8 of the City Code concerning Whistleblower Rights and Responsibilities. The goal of this change is to strengthen whistleblower protections and conform the statutory language to OIG investigative practice.

The revisions include:

- changing the complaint process so that a whistleblower who has been retaliated against may report their retaliation complaint to the agency's personnel officer (rather than direct supervisor);
- protecting the reporting of "abuse of authority" as a type of covered disclosure;
- clarifying when a whistleblower may file their retaliation complaint with the OIG; and
- setting specific deadlines for making a retaliation complaint and outlining the procedures the OIG will follow when initiating, or declining to initiate, a whistleblower retaliation investigation.

Notably, the bill also adds a remedies provision to the whistleblower law that empowers agency directors to rectify any harm done to a whistleblower within their agency.

Position:

The OIG **supports** the proposed revisions in Bill 21-00939 as necessary to enhance protections for whistleblowers and streamline the retaliation investigatory process. The current whistleblower law suffers from a number of drawbacks that could discourage whistleblowers from reporting retaliation and lead to potentially inefficient and ineffective investigations.

First, the current law requires a whistleblower to report retaliation to their direct supervisor, unless all of their supervisors are implicated by the covered disclosure or took part in the retaliatory action. This requirement places a burden on the whistleblower to determine who played a part in the retaliatory action even before an investigation is launched. To the extent the whistleblower is unable to make this determination, the law requires them to report within the very chain of command that may have perpetrated the retaliation in the first place. Moreover, direct supervisors are often ill-equipped and unqualified to investigate a retaliation complaint and issue a legal determination.

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The amendments in Bill 21-00939 would fix this problem by permitting a whistleblower to report retaliation to their agency's human resources officer instead of to their direct supervisor. And, to the extent the whistleblower has an articulable belief that human resources cannot competently investigate the retaliation complaint, the whistleblower may their complaint directly with the Office of Inspector General.

Second, the current law does not provide a time frame in which the OIG must follow up with complainants or decide whether to investigate the retaliation complaint. The proposed changes in Bill 21-00939 provide a 30-day deadline for the OIG to notify complainants as to whether their allegations will be investigated, which will provide complainants with a better understanding of the status of their allegations. If the OIG chooses to investigate the retaliation complaint, it will send notice to the complainant's supervisor, creating a centralized and uniform source of messaging and alleviating potential confusion. Following that notice, the OIG will present its written findings within 150 days to the City Administrator, the relevant agency head, and the whistleblower, enhancing communication among stakeholders.

Finally, under the current law, there are no remedies for a whistleblower who has been retaliated against. Instead, any remedies are left to the discretion of the agency head. The amendments in Bill 21-00939 explicitly detail a number of retaliation remedies available to an agency head, alleviating any confusion about the availability or extent of such remedies. The amendments also require the City Administrator to meet with the Inspector General and the relevant agency head within 14 days of an investigation's close to discuss pertinent findings. This formalizes the review process and establishes an accountability standard for both the OIG and involved agency, ensuring that all invested parties have an opportunity to review the allegations and findings and chart a productive path forward.

For all these reasons, the OIG respectfully **supports** Bill 21-00939.

Sincerely,

Isabel Mercedes Cumming
Inspector General

Cc: Natawna B. Austin, Executive Secretary

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