

**INVESTIGATION REPORT  
REGARDING THE  
OFFICE OF THE INDEPENDENT  
POLICE AUDITOR**

**PREPARED BY**

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## I. INTRODUCTION

On June 3, 2010, Judge LaDoris Cordell requested an outside investigation of allegations that staff of the Independent Police Auditor (“IPA”) disclosed information concerning complaints filed with the IPA contrary to IPA policies and procedures or legal obligations. Although Judge Cordell did not receive direct evidence regarding the alleged unauthorized disclosure, the report that such a disclosure may have occurred warranted a full investigation of the relevant facts and circumstances.

This investigation was undertaken with the purpose of determining the facts related to the specific allegations such that Judge Cordell could 1) determine the need for or appropriateness of employment actions and 2) assess the extent to which related corrective action might be undertaken by the IPA in light of the allegations and factual findings.

### A. The Context of the Investigation.

The need for investigation arose from a report to the newly appointed IPA of potential misconduct by IPA staff. Although this report did not reflect direct knowledge of misconduct or the identity of the IPA staff involved in the alleged misconduct, there was sufficient information for Judge Cordell to be concerned and to feel that outside investigation was warranted. In particular, it was apparent that actual disclosure of information accorded confidential status by law or policy constituted serious misconduct amounting to illegal activity and a threat to the independence/credibility of the IPA office. Likewise, evidence of conduct in conflict with IPA policy, or suggesting public disagreement with IPA policy, could constitute misconduct; the question of misconduct and the seriousness of the transgressions depended on the specific circumstances and evidence of harm, actual or perceived, to the office. Judge Cordell wished to be clear as to both the facts of incidents alleged to have occurred and evidence – or lack of evidence – tending to corroborate the allegations, as well as facts and evidence from which to assess the implications of any conduct related to the allegations.

From the outset, it was clear that several factors could potentially complicate investigation of the matter. First, the subject matter of this investigation is not a current issue – both the original circumstances that prompted the report to Judge Cordell and the underlying conduct being reported, date back more than a year before the initial report to Judge Cordell. The person who initially reported this matter received the information that she was now reporting in June of 2009. Between June 2009 and the May 2010 meeting with Judge Cordell, this information had not been disclosed publicly or to the City. Additionally, at the time this matter was brought to Judge Cordell’s attention, there was no specific information to indicate the alleged misconduct was continuing after June 2009. Ultimately, it became clear that the allegations related to circumstances and events in the period 2007-2008. This lapse of time challenged the opportunity to confirm the details of meetings and communications central to the allegations.

Second, although the allegations centered on conduct by a specific person, or persons, those individuals were not identified by the person making the allegations. This situation is not atypical, but does require a three-step evaluation of the evidence to reach a credible conclusion. The first step seeks to determine the reasons that a name is being withheld and the relationship between that non-disclosure and the credibility to be accorded the statements of the person making the allegations – i.e., is there in fact a person to be identified? Next is the determination of circumstantial evidence that is sufficient to draw a conclusion as to the identity and

assessment of what that evidence shows – i.e., does other evidence point to one person in particular?<sup>1</sup> The final step is determining what of the allegations can be sustained and assessment of the importance of the unnamed person(s) to those allegations – i.e., assuming these things occurred, what steps must be taken (legal action, disciplinary action, corrective action, etc.)?

Given the nature of the allegations – at a minimum the allegations call into question the integrity and loyalty of an employee on the IPA staff – a particular sensitivity arises with what amounts to essentially an “anonymous” allegation. Conclusions drawn from circumstantial evidence can be more complicated than conclusions drawn from direct evidence. The due process and privacy rights of the individual employees are entitled to respect/protection and must be balanced against the investigative goals noted above: insuring proper enforcement of legal requirements and protection of the reputation/credibility of the IPA.

A final factor, also related to the delay in these matters coming to light, is the fact that although it might be the case that no inappropriate conduct continued, there might be a question as to the need for corrective action necessary to address earlier inappropriate activity or misconduct. It is apparent that in directing the investigation, Judge Cordell sought a factual basis for determining the potential impact on the operations and/or credibility of the office going forward. Developing this issue requires careful development of facts that permit a distinction to be drawn – as warranted based on seriousness, evidence of frequency and similar factors – between past actions and current concerns.

## **B. Report of Investigation.**

Our report of investigation primarily sets forth a factual record to assist the IPA in determining what misconduct, if any, had occurred and, thereafter, fashioning appropriate responses, remedial actions and other corrective measures. Given the nature of certain of the allegations, determining “what happened” in large part will have answered the question of whether misconduct had occurred. For example, where the evidence demonstrated a disclosure of information from IPA files, this finding by itself would constitute evidence of misconduct. Accordingly, as to these issues we can and do offer our conclusions as to whether the evidence sustains an allegation of misconduct.

On the other hand, certain of the allegations concern subjective questions related to office policy/procedure and standards. For example, certain interactions, not amounting to violation of legal requirements or even standard policies, may be considered inappropriate or a violation of policy according to management’s interpretation of applicable conduct standards, conflict of interest rules/guidelines, and the circumstances of the incident/event. As to these issues, we report the relevant facts and, where the evidence permits, make factual findings to resolve disputed or ambiguous facts. The ultimate determination of whether these facts constitute misconduct or warrant corrective action/response is left to the discretion of City management.

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<sup>1</sup> Where the allegation identifies a specific person it is also necessary to determine whether circumstantial evidence corroborates that identification. Typically, you can ask a specific person direct questions. However, where the person is unnamed, questioning can be more problematic if the circumstantial inquiries are vague or ambiguous or the circumstances do not suggest a likely suspect. The challenge is balancing the unfairness of treating every employee as a “suspect” from the outset against relying on credible leads to develop circumstantial evidence.

Accordingly, in setting the investigative objectives reflected in this report we sought to determine all of the questions – direct and indirect, relevant and irrelevant – that appeared to be raised by the allegations and to use them as a guide in developing the available facts. To the extent that these facts pointed to a conclusion within the charge of our investigation, we provide that conclusion and appropriate recommendations. On the other hand, where the facts pointed to determination of issues more appropriately addressed by the IPA or other managers, we have endeavored to provide a complete record from which appropriate action can be taken.

For the purposes of reporting our results, we have focused on the following general issues:

- Is there evidence that confidential information, as defined by relevant statute, ordinance, and/or IPA policies and procedures, was disclosed in violation of IPA policies or applicable law?
- Is there evidence that internal IPA communications or other non-public information (e.g., opinions, policy discussions, etc.) was disclosed to a third party?
- Is there evidence that any activity of the IPA was affected as the result of interaction between IPA staff and third parties?<sup>2</sup>
- If there was a disclosure of either type, is there evidence that any disclosure was intentional?

In developing the factual setting, we sought to differentiate factual findings based on type of information, timeframe and context of communication. In our view, the question of whether the disclosure related to information specifically protected from disclosure by state or local law raised different, albeit related, concerns as opposed to disclosures giving rise to some other type of violation.<sup>3</sup> We also believed that inasmuch as one significant issue is the question of whether the independence of the IPA had been undermined by any sustained conduct, it was reasonable to distinguish between conduct that occurred during the tenure of a particular IPA and conduct that occurred afterwards. In the same vein, given the obligation of the IPA staff to conduct “outreach,” understanding whether any allegedly inappropriate conduct occurred during such activity as opposed to private activities seemed a reasonable distinction. Thus, the context in that regard seemed relevant.

The report begins with a summary of our key findings and conclusions. In the first part of the main body of the report we outline the scope of our investigation and the tasks undertaken in the course of the investigation, followed by a summary of pertinent legal authority and policies. Thereafter, we set forth our factual findings and analysis. In the last section we discuss recommended corrective measures.

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<sup>2</sup> Recognizing the unique role of the IPA and the concerns raised by these allegations and consistent with Judge Cordell’s direction, we have avoided narrowing our focus to the question of “compromise” to the IPA’s function and instead address the broader question of any conduct that might be perceived to affect, at any level, the work of the IPA.

<sup>3</sup> Generally, we assumed that to the extent confidential/protected information was disclosed inappropriately, in addition to the objective statutory violations, there would likely be a violation of the standards applicable to less sensitive information (See Section V.A, below).

