

## **Report**

To: The Atlanta City Council and the Mayor of the City of Atlanta

From: The Task Force to Review the Processes and Procedures of the Office of Inspector General, the Ethics Officer, and the Governing Board of the Office of the Inspector General and the Ethics Officer

Date: November 6, 2024

Subject: Recommendations for Reforms to the Office of the Inspector General, Ethics Officer, and Governing Board

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### **Introduction**

A Task Force, selected for its expertise and impartiality, was convened to review the processes and procedures of the City of Atlanta's Office of Inspector General (OIG), the Ethics Officer, and their Governing Board. The Task Force was charged with making recommendations to the Atlanta Mayor and City Council regarding these offices' authority, duties, and responsibilities while ensuring they maintain accountability and independence.

After extensive public hearings and a careful analysis of written and oral submissions, the Task Force has compiled a list of proposed recommendations to clarify the roles and improve the procedures of the OIG, the Ethics Officer, and their Governing Board, while safeguarding the independence of these important offices.

Specifically, the resolution creating the Task Force was instructed to focus on the following four areas of concern described in the recitals. These areas are:

- a) Reforms, if any, associated with the authority, duties, and responsibilities of the OIG and Ethics Officer and their reporting relationship to the Governing Board.
- b) Reforms, if any, associated with the rights of employees when interacting with the OIG and the Ethics Officer.

- c) Reforms, if any, concerning the processes or procedures to access records or other sources of evidence, including both City and personal computers, phones, and other equipment.
- d) Reforms, if any, regarding the processes for investigations, including how they are overseen and the role of the Governing Board.

### **Analysis**

Based on the hearings and submissions received, the following outlines our recommendations for potential reforms to the OIG, the Ethics Officer, and the Governing Board in the areas in which our opinion was sought.

#### **Number 1: Authority and Oversight: Clarifying Roles and Responsibilities**

The Task Force believes there is a need for more clarity on the authority and reporting relationships of the OIG and Ethics Officer to the Governing Board. While the Ethics Officer appears to recognize the Governing Board's oversight role, the OIG's relationship appears less defined. The Governing Board must assert itself into overseeing not only the Ethics Officer but also the OIG without inserting itself in or otherwise compromising ongoing investigations. Confidential discussions may be overseen in Executive Sessions.

The Governing Board should also ensure the OIG and the Ethics Officer adhere to their mandates, follow proper procedures, and meet performance standards while respecting their operational independence. Any oversight should ensure the OIG and the Ethics Officer follow established procedures, meet performance benchmarks, manage resources effectively, and do not undertake overly broad speculative exploratory inquiries. The initiation of investigations should be based on a clearly defined justification that goes beyond mere suspicion and meet an established threshold standard to determine whether the matter should be investigated.

Specifically with respect to the OIG, there currently appears to be no threshold standard in place either by law or policy that governs the OIG's discretion to open an investigation. The Task Force believes one should be established. For example, an appropriate threshold standard could provide that the OIG should act on allegations of wrongdoing that involve abuse of authority in the exercise of official duties or while acting under color of office, substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or

regulation, or conduct that undermines the independence or integrity reasonably expected of an official. Within a reasonable period of time, perhaps no more than 30 days, if the OIG determines that a matter does not meet the threshold standard, it should be closed and, where appropriate, referred to another party for review. Any concern that meets the threshold standard on its face should also require the presence of credible evidence, a documented complaint, or specific and verifiable information.

The opening of an investigation by either the OIG or the Ethics Officer should include a preliminary review of facts that reasonably indicates potential misconduct or wrongdoing to ensure that resources are used effectively, investigations are targeted and justified, and both the OIG and Ethics Officer avoid unwarranted inquiries. To that end, the Governing Board should have access to and knowledge of the OIG's and the Ethics Officer's policies and procedures. The OIG and the Ethics Officer may benefit from having an in-house attorney to provide guidance on these requirements and other legal matters that may arise.

The Board must also exercise authority over the OIG and the Ethics Officer for personnel and disciplinary matters. The Task Force, again, emphasizes, that interference by the Governing Board with the details of investigations or findings should be avoided, however, as it risks compromising the independence of both the OIG and the Ethics Officer. To this end, only a court of law, and not the Governing Board, should have the power to quash subpoenas.

The OIG and the Ethics Officer should issue regular public reports to the Governing Board to ensure transparency and accountability. These reports should include summaries of investigations, recommendations for corrective actions, outcomes (without disclosing sensitive or confidential information), and any difficulties or problems that the OIG and the Ethics Office may have encountered. After reviewing them, the Governing Board should make these reports public to increase accountability to the broader community.

The reports of specific investigations undertaken by the OIG and the Ethics Officer should also be reviewed first by the Governing Board and then disseminated by the Governing Board (and not the OIG or the Ethics Officer) to the Mayor and City Council and the public. If the OIG finds evidence of fraud, waste, abuse or corruption and reports it to the Governing Board, the Governing Board should decide whether to involve law enforcement as the role of the OIG is to investigate and present findings, while the Governing Board holds the ultimate authority to determine further actions, including legal referrals.

The Task Force also recommends the creation of separate boards for the Ethics Office and OIG due to the distinct nature of their responsibilities, and the OIG and the Ethics Officer should report to their respective boards. With that said, to the extent the previous paragraphs address actions that should be taken by the Governing Board as of the date of this Report, that would have to be modified if the one Governing Board that exists is, instead, two oversight boards, one to which the Ethics Officer reports, and the other which supervises the OIG.

Why does the Task Force recommend two boards? Because both the Ethic Officer and the OIG serve different but complementary roles. The Ethics Officer focuses on enforcing the City's Ethics Code, addressing violations related to conflict of interest, financial disclosure, and improper conduct by City employees and officials. She makes recommendations for ethical compliance and transparency, guiding behavior according to the Ethics Code. In contrast, the OIG has a broader investigative role, identifying and eliminating fraud, waste, abuse, and corruption within the City's operations. The OIG primarily conducts investigations and makes recommendations by means of reports in order to stop and prevent such misconduct but does not directly enforce or adjudicate violations. A different governing board may be necessary because the Ethics Officer is concerned with personal accountability and ethical standards, while the OIG addresses systemic issues of corruption, integrity, and efficiency. Professional and prominent subject matter experts should populate each separate board. Neither board should delve into the day-to-day operational matters of either the OIG or the Ethics Officer. Instead, each board should focus on setting clear expectations for regular reporting. And after reviewing reports, each board should communicate relevant findings and information to the Executive and Legislative branches of City government, as well as to the public. Creating separate boards and separating these oversight functions allows for more specialized governance tailored to the distinct nature of each office's responsibilities.

The Task Force also finds that clearer procedures are needed regarding Human Resources' role in ethical compliance in the City. As such, the Task Force recommends that the City consider explaining the role of the OIG, the Ethics Officer, and Human Resources in onboarding sessions for new employees and training sessions for experienced team members.

The Task Force also recommends that both the OIG and the Ethics Officer undergo regular peer reviews to maintain high standards, accountability, and best practices in their operations. Peer reviews are evaluations conducted by

professionals from similar agencies to assess the quality, fairness, and adherence to standards in their work. These reviews help ensure accountability, consistency, and integrity in investigations and ethical oversight.

## **Number 2: Employee Rights and Responsibilities**

Employees should be fully informed of their rights and responsibilities when interacting with both the OIG and the Ethics Officer. Moreover, employees' rights and privacy should be respected throughout any investigation initiated by the OIG or the Ethics Officer. This information should be provided during onboarding and training sessions, be provided on the OIG's and the Ethics Officer's public-facing website, and be provided through a clear, Miranda-style notice from an OIG or Ethics Officer investigator before any interview.

The Task Force also recommends:

Prior to interviews, notify the subject that they are permitted to have their legal counsel or union representative present.

Avoid coercive tactics, such as creating undue pressure during questioning or conducting interviews late at night or on the weekend at the subject's home without prior consent. Where possible, the OIG and the Ethics Officer should consider the employees' personal and professional obligations when scheduling interviews. For example, if an employee is working remotely, ask them to come to the OIG's office for an interview, or go to another city location or, only upon express consent of the employee, conduct an interview at the employee's home.

Ensure employees receive written notification of their role in investigations before interviews.

Provide guidelines on access to City-owned versus personal property during investigations.

Provide greater clarity on the consequences of an employee's refusal to investigate or participate in an investigation since the enabling legislation compels the participation of all employees with the OIG and the Ethics Officer. While an employee's obligation to answer questions is already codified, it should be further amplified.

Assure employees that any statements they provide during an interview are protected and will not be used against them in any other proceeding. This ensures that employees can speak openly and honestly without fear of repercussions or unintended consequences in future matters.

Warn employees about the use of their personal cell phones, computers, and other devices for City business so they will not be subject to access.

For the foregoing recommendations regarding employee rights and responsibilities, the Task Force recommends that the OIG and the Ethics Officer include such admonitions on their website.

### **Number 3: Access to Records and Evidence**

Processes should be implemented to ensure prompt access by both the OIG and the Ethics Officer to records and other evidence, and employees should be made aware of these processes and their obligation to cooperate with these requests and processes during the onboarding process. These processes should include a formal written request process for surrendering City property and the potential for remote access to necessary City devices.

The Task Force recommends that the OIG and the Ethics Officer have policies to ensure that evidence and documents are properly maintained in accordance with legal and confidentiality requirements.

The Task Force also recommends strict limitations on accessing personal property unless referred to law enforcement or ordered by a court of law, ensuring that the OIG or Ethics Officer does not exceed their mandates.

### **Number 4: Investigative Procedures and Accountability**

The OIG and the Ethics Officer should be bound by clear investigative protocols and policies published and available for review by all employees, vendors, and the public. The Governing Board (or boards, if there are two of them) needs to be more engaged in reviewing and approving the protocols developed by the OIG and Ethics Officer. In addition, the Governing Board (or boards) should ensure that these officers follow established standards in all investigations. Specifically, the Task Force advises the following:

- a) **Complaint Intake:** The OIG and the Ethics Officer should have a detailed complaint intake and case approval process. Each complaint, whether received by phone, email, referral, or otherwise, should be assigned an intake number and go through a preliminary review process.
- b) **Initiating an Investigation:** The initiation of investigations should be based on a clearly defined justification that goes beyond mere suspicion. It should require the presence of credible evidence, a documented complaint, or specific and verifiable information suggesting a violation of law, policy, or ethical standards. The threshold for opening an investigation should include a preliminary review of facts that reasonably indicates potential misconduct or wrongdoing to ensure that resources are used effectively, investigations are targeted and justified, and both the OIG and Ethics Officer avoid unwarranted inquires. (Also, see pages 2 and 3 of this Report for other possible threshold requirements.)
- c) **Notification of Investigation:** Unless disclosure could compromise the integrity of the investigation, inform subjects of the investigation promptly, especially if they are the target. This will ensure they are aware of the investigation and its nature. Also, subjects should have the right to have a union representative, legal counsel, or other authorized representative present during interviews.
- d) **Clear Investigation Protocols:** Ensure that all investigations follow a consistent process, which includes defining the scope, objectives, and timeline of the investigation.
- e) **Legal Compliance:** Adhere to local, state, and federal laws and the City's policies governing investigations and employee rights.
- f) **Confidentiality:** Keep investigations as confidential as possible to protect the integrity of the process and the privacy of all involved parties. Only share investigative details with relevant personnel on a need-to-know basis. The names of people in officially released reports should be redacted, where appropriate. Employees must be trained to understand that divulging the content of interviews is prohibited.

- g) **Thorough Documentation:** Maintain detailed documentation throughout the investigation, including witness statements, interview transcripts, emails, and all other related materials. Ensure transparency in documenting the decision-making process, evidence gathered, and the final findings.
- h) **Witness and Subject Treatment:** Interviews should be conducted non-threateningly, without disrupting the employee's regular work schedule where possible.
- i) **Timeliness:** Conduct investigations promptly, balancing the need for thoroughness with avoiding unnecessary delays. Provide periodic updates on the status of investigations to the Governing Board (or boards) and possibly the subject of the investigation.
- j) **Post-Investigation Process:** Prepare a comprehensive final report detailing the findings, conclusions, and recommended actions. The report should be objective, evidence-based, and straightforward.
- k) **Review and Feedback:** Allow the subject of any investigation an opportunity to respond to the findings, ensuring they have a fair chance to present any additional information or defense.
- l) **Establish Clear Appeal Processes:** Allow individuals or entities who believe they were wrongly targeted or unfairly treated by an OIG or Ethics Officer investigation to appeal through established legal or administrative processes. This ensures accountability without compromising their investigatory autonomy.
- m) **Provide closing letters to the subject of investigations once an investigation is concluded, informing them of the findings and any follow-up actions.**

When the OIG or Ethics Officer seeks evidence such as City-owned laptops, cell phones, or other devices, as well as personal devices, during an investigation, they should follow specific processes and procedures to ensure legality, fairness, and respect for privacy rights. Here are practices and procedures for obtaining such evidence that the Task Force recommends:



## **Obtaining City-Owned Devices**

1. **Inventory and Custody Procedures:** The OIG and Ethics Officer should verify whether the devices sought are City-owned.
2. **Request for Voluntary Surrender:** The OIG and Ethics Officer should first request that the employee or vendor voluntarily surrender the devices. This request should be in writing, detailing the reason for the investigation and specifying the devices needed (e.g., laptops, phones, etc.).
3. **Legal Authority:** Cite any relevant laws, regulations, or City policies that give the OIG and the Ethics Officer the authority to seize or review the City-owned devices as part of the investigation. This includes ensuring that the OIG and the Ethics Officer have the jurisdiction to access such devices and any related data under City contracts or employee agreements.
4. **Chain of Custody:** Establish a clear chain of custody for all seized devices, documenting the time, date, and person who handled the devices at each stage to maintain the integrity of the evidence.
5. **Forensic Collection:** If necessary, engage IT or digital forensic experts to properly extract data from devices to preserve the integrity of the evidence without tampering.
6. There should be a process for the issuance of a subpoena with notice to the impacted party. Details of the process should be developed in detail.

None of this should foreclose the City from examining remote access to City-owned computers, cellphones, and other devices.

## **Handling Personal Devices**

1. **Determine Relevance:** Personal devices can only be sought if there is a clear, legitimate reason to believe that they contain evidence relevant to the investigation. This usually involves personal devices used for City business (e.g., emails or messages involving official matters). To this end, employees should be trained to understand that using a personal device to conduct City business can lead to the seizure of their device.

2. **Seek Voluntary Cooperation:** The OIG and the Ethics Officer should request that the employee or vendor voluntarily provide the personal device or specific data relevant to the investigation. This request should outline the need for the evidence and the scope of the requested data (e.g., particular emails, messages, or files).
3. **Subpoena or Warrant:** If the subject of the investigation does not voluntarily provide the personal device or data, the OIG and the Ethics Officer may need to obtain a subpoena or search warrant. This legal action is typically required because personal devices are protected under privacy laws, and a warrant ensures due process.
4. **Legal Justification:** Demonstrate probable cause that the personal device contains information relevant to the investigation to justify the need for a subpoena or warrant.
5. **Judicial Authorization is Required:** Usually a court order.

### **Conclusion**

These recommendations are based on the specific mandate given to the Task Force. While more comprehensive reforms may be warranted, these targeted suggestions aim to improve the clarity, effectiveness, and fairness of the processes and procedures of the Office of the Inspector General, the Ethics Office, and the Governing Board of the City of Atlanta. The Task Force believes that by implementing these reforms, the City of Atlanta can address some key issues of concern, which should contribute to improving the current processes and procedures necessary for these offices to carry out their duties effectively.

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