



DEPARTMENT OF LAW
CITY OF CHICAGO

November 18, 2013

Joseph M. Ferguson
Inspector General
740 North Sedgwick, Suite 200
Chicago, Illinois 60654

Dear Joe:

Per your request for public comment, I am writing to provide the Law Department's suggestions and comments on the IGO's Interim Revised Rules and Regulations ("Revised Rules") that were circulated by your office on October 9, 2013.

We agree with most of the IGO's Revised Rules as written, and appreciate the opportunity for comment and discussion in line with the collaborative process that led to the release of the IGO's 2012 Rules and Regulation. That being said, there are a few areas where we believe the Revised Rules should be modified and/or supplemented, including: (1) confidentiality, and (2) notice and "advisements."

Confidentiality

Overall, the Confidentiality section (3.6) of the IGO's Revised Rules is quite comprehensive. However, as discussed in 2012, we continue to believe that there should be language included in the IGO's Rules and Regulations specifically limiting the descriptive detail disclosed in the IGO's Quarterly and other public reports pursuant to the requirements of IGO Ordinance Section 2-56-110. In short, providing unnecessary, narrative details undermines the legislative intent of the ordinance and breaches its confidentiality provisions, and the proposed rules and regulations should make this clear.

Notice and Advisement

The Interviews section (3.13) currently provides that only "subjects" receive advisements that they have a right to legal counsel, and not employees or other individuals who are "witnesses," but have not yet become "subjects" of an investigation. As we discussed prior to the first publication of the IGO's Rules and Regulations, we continue to believe that all employees and other individuals who are to be interviewed should receive these advisements, whether or not they have yet become subjects.

Section 3.13 of the Revised Rules mandates only that those individuals who are current subjects be advised of their right to legal counsel, and that all union employees be advised of their right to have legal counsel and of their constitutional right to avoid self-incrimination. Witnesses are not provided advisements unless they become subjects during the course of an interview. This section should be amended to require advisement of all employees and individuals of their rights to have counsel present at their interview and to avoid self-incrimination, whether union or non-union, subject or witness. This advisement should be provided to all employees and other individuals upon their first contact by the IGO, prior to any interview and/or meeting.

Based on previous conversations, we understand that the IGO opposes such a requirement on the ground that it will change the dynamics of the interview and make witnesses less cooperative and forthcoming because the advisements will cause them to fear they are at risk based on what they say. The fact is, even if a witness is not guilty of any wrongdoing, he can become a subject simply by how he responds in the interview, for example, by being uncooperative or providing inaccurate responses. More fundamentally, advising witnesses of their rights should have exactly the opposite effect.

There is no clear and permanent line of demarcation between “witnesses” and “subjects”. “Witnesses” can quickly become “subjects” and vice versa. As written, when the interviewer concludes a “witness” has become a “subject,” he must conclude the interview and subsequently commence a new one, after providing the required “advisements”. (See §3.13, ¶ 4(b).) We reiterate our position and belief that this approach is unworkable. By the time this “re-boot” occurs, the employee has already incriminated himself, which is a bell that cannot be “unrung.” This is also counterproductive from the IGO’s perspective, as it can open up the IGO and its investigation to unnecessary criticism and potential legal challenge and exposure.

Providing employees this information up front allows them to make informed choices about whether or not to retain representation prior to an interview. In short, providing these advisements in advance will encourage employee cooperation with the IGO, and remove the unnecessary cloud of mystery and fear often associated with the investigation and interview process.

Finally, failure to advise all witnesses of their right to counsel remains in contravention of accepted practice in other contexts where witnesses are questioned on the record. This is true even where the witness is a third party with no employment or other interest at risk. For example, in civil cases every witness, even a third party, has a right to representation by counsel if they so choose.

External Review of Operations

We have no substantive comments on the External Review of Operations (6.1) section as written. In fact, the Law Department applauds the IGO’s steps to undergo audits and peer review pursuant to national investigative and auditing standards and to publicly post and share the results. In that vein, we do not believe that we have yet seen the results of the Peer Review conducted of your office in 2012 and would appreciate the opportunity to review its results.

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We appreciate your willingness to consider these comments, concerns and suggestions. Please feel free to give me a call if you have questions or would like to discuss any of these matters further.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephen R. Patton". The signature is written in a cursive style with a large, prominent initial "S".

Stephen R. Patton