No. 112488

IN THE SUPREME COURT OF ILLINOIS

JOSEPH M. FERGUSON, In his official capacity as Inspector General of the City of Chicago, Plaintiff-Appellee, v. MARA S. GEORGES, In her official capacity as Corporation Counsel of the City of Chicago, Defendant-Appellant.	)	On Appeal from the Illinois Appellate Court, First District No. 10-1152 There Heard on Appeal from the Circuit Court of Cook County, Illinois County Department, Chancery Division No. 09 CH 43287 Hon. Nancy J. Arnold

CROSS REPLY BRIEF OF PLAINTIFF-APPELLEE

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

INTRODUCTION

The Corporation Counsel's Reply Brief virtually ignores this Court's considered views (in its *Consolidation Coal* and *Waste Management* opinions) on the scope of and judicial treatment to be accorded the attorney-client privilege. See *Consolidation Coal v. Bucyrus-Erie Co.*, 89 Ill. 2d 103, 117-18 (1982); *Waste Mgmt. Inc. v. Int'l Surplus Lines Insur. Co.*, 144 Ill. 2d 178, 190 (1991). Moreover, the brief barely acknowledges that Rule 1.6 of the Court's Rules of Professional Conduct provides that "other law"—here the Ordinance establishing a uniquely independent and uniquely empowered Office of Inspector General ("IGO Ordinance" or "Ordinance"), Municipal Code of Chicago ("MCC") Chapter 2-56—may require disclosure notwithstanding a privilege claim. Or that, in deciding whether the IGO Ordinance requires disclosure, the Court must consider a number of other factors and values, including among them "frustrat[ing] the very purpose for which the office of Inspector General was created," Appellate Court Opinion, A. 9,[1] thereby risking erosion of public trust in the integrity of government and its commitment to serving the public interest, *People ex rel. Birkett v. City of Chicago*, 184 Ill. 2d 521, 527-28 (1998), a crucial value in democratic society.

By contrast, this brief examines both sides of the scale the Court will employ as it weighs its decision. From this examination it is clear that the IGO Ordinance—the "other law"—side of the scale is so heavily weighted as compared to its counterpart that the result in this case cannot be in doubt.

[1] A copy of the Appellate Court's decision is included in the Appendix to Plaintiff-Appellee's Brief before this Court, cited here as "A. __."

I. THE "MEDIATING" ROLE OF THE COURT

This Court has said that when called upon to determine whether the attorney-client privilege may properly be claimed in the specific circumstances of a particular case, "[it is] the function of a court to mediate between [competing social policies]," and that the mediating process should involve "assigning, so far as possible, a proper value to each [social policy]." *Consolidation Coal*, 89 Ill. 2d at 117 (quoting Cardozo, J.).

The Court's mediating role is evident too in its Rules of Professional Conduct. Rule 1.6(b)(6), which addresses the confidentiality value at the heart of the attorney-client privilege, expressly authorizes a lawyer to make disclosure "to comply with other law or a court order." Who is to determine whether or not "other law" requires disclosure—as here, where it is contended that the IGO Ordinance does? The answer, of course, is this Court (not the Corporation Counsel), which will in the novel legal context before it "mediate" between the values furthered by the IGO Ordinance on the one hand and those furthered by the privilege on the other. (Consistent with this understanding, Comment 12 to Rule 1.6 points out that whether other law requires disclosure is "beyond the scope of these Rules.")

So too with Rule 1.13 on the organization as client, which addresses confidentiality issues respecting government lawyers. Comment 9 to Rule 1.13 says that a "different balance" as to confidentiality may be appropriate when the client is a government rather than a private organization, "for public business is involved." (Here too the Comment says that defining precisely the obligations of government lawyers respecting confidentiality "is a matter beyond the scope of these Rules.")

Thus, the Corporation Counsel's invocation of the attorney-client privilege is a starting, not an ending, point for this Court's analysis. In this unprecedented case, the mediating function requires the Court, for the first time, to consider and weigh the values furthered by the IGO Ordinance and by the attorney-client privilege when claimed by a government lawyer to justify noncompliance with an Inspector General subpoena issued in the course of an investigation into government misconduct. As we have indicated, the result of the mediating process here cannot be in doubt: in the context of a government lawyer's refusal to comply with an Inspector General subpoena, the language of the IGO Ordinance, and the vital public policy values it embodies and seeks to further, far outweigh the "indirect and speculative" values of the attorney-client privilege. *Consolidation Coal*, 89 Ill. 2d at 117 (quoting 8 Wigmore, Evidence § 2291, at 554 (rev. ed. 1961)).[2]

We turn then to the question of how the Court's mediating function should be performed in this case where, on the one side, are arrayed the familiar values of the attorney-client privilege, and on the other the provisions of the IGO Ordinance and the

[2] The Corporation Counsel disputes that this case is unprecedented, contending that it is governed by the decision in a bar association disciplinary proceeding. Reply Brief of Defendant-Appellant 30-31 ("CC R. Br."). In that proceeding this Court held that, absent a "good reason," which was not advanced, a municipal corporation may have privileged communications with its attorney. *In re Information to Discipline Certain Attorneys of Sanitary District of Chicago,* 351 Ill. 206, 268 (1932). We have not argued otherwise. But the *Sanitary District* Court did not deny that "good reason" may exist, and it offered no guidance on how to weigh the privilege against "good reason" or "other law." In fact, no "other law" was advanced in the *Sanitary District* case (which was a proceeding against targeted individuals, not an oversight investigation of a unit of government). This Court's subsequent opinions in *Consolidation Coal* and *Waste Management* make clear the mediating role courts are to play when "good reason" *is* advanced. Here, as our discussion will show, there is abundant good reason in the form of the "other law" of the IGO Ordinance.

equally familiar values of integrity in government and government lawyers' obligations to the public they serve, which the Ordinance embodies and seeks to further.

II. THE VALUE TO BE ASSIGNED TO THE "OTHER LAW" OF THE IGO ORDINANCE

We have previously made clear that the central purpose of the IGO Ordinance is to create an independent investigatory capacity to advance the public interest in government integrity. Brief and Appendix of Plaintiff-Appellee 3-4, 7 ("IGO Brief"). The Corporation Counsel asserts that we did not make this argument below and that it is therefore waived. CC R. Br. 34. This is plainly not the case. As the Corporation Counsel has himself noted, "Expanded treatment of an argument raised fairly below does not result in waiver." CC R. Br. 10.

Here the Inspector General has not merely "fairly raised" the central purpose argument below. Repeatedly, in both lower courts, he contended that allowing the City to withhold subpoenaed documents upon a claim of attorney-client privilege would "strike a blow to the *very heart of the IGO's authority and mission* by allowing City officials and employees to wall off the most revealing information from the IGO whenever they chose by simply first talking to a City attorney, thereby permitting the City to routinely undermine, if not vitiate, the power and duty of the Inspector General." Plaintiff's Memorandum Opposing Motion to Dismiss, C. 94 (emphasis added).[3] He further argued that this would "inflict heavy damage on the *statutorily-mandated independence of the IGO*, and imperil its ability to *perform its statutory duty* of rooting out corruption within City government." Brief of Plaintiff-Appellant 9-10 (emphasis

[3] The record on appeal consists of one volume of common law record, cited as "C. __," and a report of proceedings.

added) ("App. Br."). He added that the "*very existence*" of the IGO as a "*truly independent investigative agency*" was at stake. Reply Brief of Plaintiff-Appellant 1 (emphasis added); see also App. Br. 27. Indeed, this very central purpose argument is the capstone of the Appellate Court's opinion: "The courts should not frustrate the very purpose for which the office of Inspector General was created . . ." A. 9.

This central purpose of the IGO Ordinance, enacted by the City's own legislative arm, furthers the important value of the public's interest in the integrity of government—that, indeed, is the raison d'etre of the Ordinance. Ultimately at stake is the people's faith in the political process, for corruption is a corrosive characteristic of modern governments that "systematically undermines democratic principles" and "diminishes people's faith in the political process." Christopher J. Anderson and Yuliyaa V. Tverdova, *Corruption, Political Allegiances, and Attitudes Toward Government in Contemporary Democracies*, Am. J. Pol. Sci., Jan. 2003, at 91. It would obviously be incompatible with that central purpose and the furthering of that value if a city employee, subjected by statute to independent investigatory oversight, could deny the Inspector General access to relevant documents simply by claiming the attorney-client privilege—using the simple expedient of talking to a City attorney to wall off from the IGO the most sensitive information.

Implementing that central purpose and furthering that all-important value, the Ordinance imposes an unqualified duty "to cooperate with the inspector general in any investigation or hearing undertaken pursuant to this chapter," and to "ma[k]e available as soon as practicable to the inspector general . . . premises, equipment, personnel, books, records and papers." MCC § 2-56-090. There are no exceptions for attorneys, or for the

law department, or for the attorney-client privilege. *Id.* On the contrary, the duties are imposed upon "every" officer, employee, etc., and upon "[e]ach department." *Id.* The "walling off" power would thus be incompatible not only with the central purpose of the Ordinance but with this explicit duty of cooperation of the Ordinance as well. In *Waste Management* this Court held that that duty, when embodied in a contract of insurance, rendered the attorney-client privilege inapplicable. 144 Ill. 2d at 191-93. There is no reason why that should not also be the case when the duty to cooperate is imposed by law rather than by contract.

As to this, the Corporation Counsel makes two arguments. The first is that in providing for a right to object to subpoenas the Ordinance must mean that the attorney-client privilege was to be preserved because otherwise the duty to cooperate would effectively "nullify" the right to object. CC R. Br. 35. This argument is self-evidently without merit. The freedom to object to subpoenas on a valid ground (such as improper service) would obviously remain unaffected by the Court's rejection of an objection based on an invalid ground.

The Corporation Counsel's second argument as to the duty of cooperation is, in effect, that the privilege can be "abrogated" by statute only through express or specific words to that effect. CC R. Br. 33. This argument is simply wrong. The cases we have cited, including two from Illinois, make clear that "necessary implication" is all that is required, that express or specific language is not needed. *People v. Childress*, 338 Ill. App. 3d 540, 551 (1st Dist. 1990); *Malfeo v. Larson*, 208 Ill. App. 3d 418, 424 (1st Dist. 1990).

Childress is precisely analogous. The common law right of a defendant to bar evidence of prior crimes to demonstrate criminal propensity is "axiomatic," a "fundamental tenet" of the criminal justice system. *Childress*, 338 Ill. App. 3d. at 548 (quotation omitted). Yet, in a case of "first impression," like this one, dealing with "a pure question of law," such as we have here, *id.* at 547, the court held that the legislature had abrogated that fundamental tenet implicitly—not expressly—by legislative language that singled out sex offense cases, a specific and unique category of criminal prosecutions. *Id.* at 551.

There is no difference of principle between *Childress* and this case. Both involve tenets of common law overridden by legislative language focused upon specific, narrow situations—in *Childress*, prosecutions of sex offenses, here cooperation duties imposed on government employees in IGO investigations. As *Childress* holds, a tenet of common law must yield to legislative intent, even though that intent is made clear by implication only, not by express language.

The Corporation Counsel asserts that the cases applying this principle to the attorney-client privilege, such as *United States v. Goldberger & Dubin*, 935 F.2d 501 (2d Cir. 1991), are "not persuasive" because they involve "a federal statute mandating disclosure to the I.R.S." CC R. Br. 33. Yet the situation here is exactly analogous, for we too have a statute mandating disclosure—the IGO Ordinance mandating not only general cooperation with the Inspector General but that "[e]ach department's premises, equipment, personnel, books, records and papers shall be made available as soon as practicable to the inspector general." MCC § 2-56-090. A disclosure mandate could hardly be framed more vigorously or comprehensively. The reasoning in *Goldberger* is

as applicable here as there: "The [attorney-client] privilege cannot stand in the face of countervailing law or strong public policy . . . [The privilege should surely yield] where, as here, the attorney-client privilege collides head-on with a federal statute that *implicitly* precludes its application." 935 F.2d at 504-05 (citations omitted) (emphasis added).

The teaching of *Childress*, *Goldberger* and like cases is that when the necessary implication of a statute, read in its entirety, conflicts with the attorney-client privilege, the privilege must give way. That is the case here where, as the Appellate Court said in a related context, "The ordinance creating the IGO could not have been designed to tie the Inspector General's hands in this way . . ." A. 14.

Moreover, as we have previously made clear (the "first reason" advanced in our opening brief, IGO Br. 41-44**),** it is a necessary implication from the IGO Ordinance's specific duty of cooperation—including its comprehensive disclosure mandate that embraces, without qualification, "books, records and papers"—that the expectation of confidentiality essential to the attorney-client privilege has been removed. That renders the privilege unavailable to the Corporation Counsel as a ground for refusing to comply with an Inspector General subpoena. The Corporation Counsel's arguments and citations supposedly to the contrary consist of nothing remotely persuasive.

The common interest doctrine (our "second reason," IGO Br. 44-45) is warp to the woof of the IGO Ordinance's central purpose, for it is linked inextricably to the Ordinance's charge to the Inspector General "to detect and prevent misconduct, inefficiency and waste within the programs and operations of the city government." MCC § 2-56-030(b). The Corporation Counsel begrudgingly concedes that his office has a common interest with the Inspector General in "uncovering and eliminating

government misconduct." CC R. Br. 39. As this Court said in *Waste Management*, "commonality of interests . . . creates the exception [to the attorney-client privilege] . . ." 144 Ill. 2d at 194. While pointing out that *Waste Management* involved a private sector contract of insurance, the Corporation Counsel offers no reason *of principle* why the same result should not obtain respecting the common interest two government officials share in rooting out corruption. That the Corporation Counsel has other duties, CC R. Br. 37, is hardly even an argument.

Finally, the central purpose of the IGO Ordinance is also inextricably bound up with the third and fourth reasons we have advanced for unavailability of the privilege to the Corporation Counsel in the present context, that is, the public interest in government integrity and the obligation of government lawyers to that interest. IGO Br. 45-50. "[P]ublic trust in the integrity of the government and its commitment to serving the public interest," was how this Court phrased the integrity value in *Birkett*, 184 Ill. 2d at 527 (quotation omitted) (deliberative process privilege unavailable where plaintiffs alleged City of Chicago illegally expanded airport facilities). Subordinating relationships between government attorneys and government officials to "the public interest in good and open government," was how the Seventh Circuit phrased government lawyers' obligation in *In re A Witness Before the Special Grand Jury 2000-2*, 288 F.3d 289, 294 (7th Cir. 2002) (attorney-client privilege denied to state official seeking to avoid compliance with grand jury subpoena).[4]

[4] The several federal grand jury cases, refusing to extend the attorney-client privilege to government lawyers in official investigations into government misconduct, are instructive. See *In re A Witness Before the Special Grand Jury 2000-2*, 288 F.3d at 293-94; *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910, 921 (8th Cir. 1997); *In re Lindsey*, 158 F.3d 1263, 1273-74 (D.C. Cir. 1998). Like the grand jury, an investigatory

These are unquestionably among the weightiest of values in democratic society, and the Corporation Counsel's brief is understandably bereft of any contrary view. In the context of noting the importance of public trust in the integrity of government this Court has expressed special concern about according privileges to government precisely because they risk undermining that trust. See *Birkett*, 184 Ill. 2d at 527.

The Corporation Counsel points out that *Birkett* did not involve the attorney-client privilege. Yet the *Birkett* Court expressed concern about the erosive consequences of allowing *government* to exercise a privilege. The consequences, and therefore the concern, do not turn upon the nature of the privilege in question. The nature of a privilege and the values it furthers are of course always matters to be considered by the Court in performing its mediating function. But the fact that the privilege in question here is the attorney-client rather than some other privilege does not, as the Corporation Counsel implicitly argues, obviate either the concern expressed in *Birkett* about according privileges to government, or eliminate the necessity for the Court to perform its mediating function. On the contrary, as the Court well knows from federal cases discussed by both parties that involve high government officials, exactly the same concerns about undermining public trust in the integrity of government that were referenced in *Birkett* have been at the forefront in cases involving the attorney-client privilege. See *In re A Witness Before the Special Grand Jury 2000-2*, 288 F.3d at 294; *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d at 921; *In re Lindsey*, 158 F.3d at 1273.

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body charged with determining whether a crime has occurred, see *People v. DeLaire*, 240 Ill. App. 3d 1012, 1021 (2d Dist. 1993), the IGO is an investigatory body charged with determining whether government misconduct, which may be criminal or civil, has occurred. See MCC § 2-56-030(b), -110. That the IGO may not prosecute is irrelevant—through their investigatory missions both the IGO and the grand jury serve the public interest in honest and open government.

III. THE VALUE TO BE ASSIGNED TO THE ATTORNEY-CLIENT PRIVILEGE

Respecting the values to be assigned to the attorney-client privilege, the Court will remember its express statements that the recognition of a privilege "does not mean that it is without conditions or exceptions," that the attorney-client privilege "remains an exception to the general duty to disclose," that its benefits are all "indirect and speculative; its obstruction is plain and concrete," and that it should be confined to its "narrowest possible limits." *Consolidation Coal*, 89 Ill. 2d at 117-18 (quotation omitted).[5]

The Corporation Counsel's assertion, CC R. Br. 31, that the Inspector General seeks a "new exception" to a firmly established privilege puts the matter precisely backwards. The attorney-client privilege is an "exception to the general duty to disclose." *Consolidation Coal*, 89 Ill. 2d at 103 (quotation omitted). Never before has this Court, or any other court, considered a claim of privilege by a government lawyer as a ground for refusing to comply with an Inspector General subpoena issued pursuant to his subpoena power under the IGO Ordinance. Confining the privilege to its narrowest possible limits by declining to extend it to this new arena can be termed creating a "new exception" only by rhetorical sleight of hand.

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[5] The Corporation Counsel cites two cases for the proposition that the attorney-client privilege is rooted in the imperative need for confidence and trust. CC R. Br. 21-22. But those cases—which focus on the spousal and psychotherapist privileges—make clear that *all* privileges are to be construed narrowly: "Testimonial exclusionary rules and privileges contravene the fundamental principle that 'the public . . . has a right to every man's evidence.' As such they must be strictly construed and accepted 'only to the very limited extent that permitting a refusal to testify or excluding relevant evidence has a public good transcending the normally predominant principles of utilizing all rational means for ascertaining truth.'" *Trammel v. United States*, 445 U.S. 40, 50-51 (1980) (citations omitted) (quoted in part by *Jaffee v. Redmond*, 518 U.S. 1, 9 (1996)).

This is not to "downplay" or "minimize" the importance of the privilege to governments, and certainly not to "deny" it to governments and their attorneys, as the Corporation Counsel would have it. CC R. Br. 21, 27, 31. To the contrary, we assert that the privilege remains available to the City as to outside parties; only in the context of the IGO Ordinance is the privilege rendered unavailable as against a subpoena from the Inspector General.[6] It is rather to recognize: (a) that mere iteration of the values sought to be furthered by the privilege is not conclusive; (b) that this Court has never before considered whether the privilege is available to government lawyers in the context of an Inspector General subpoena; and (c) that in addressing that unprecedented question this Court's previously expressed views (summarized above), especially that the attorney-client privilege, as an exception to the general duty to disclose, should be confined to its "narrowest possible limits," are to be taken into account in the Court's performance of its mediating function.

Nor is it to denigrate the value of certainty in the application of the privilege. Certainty is of course one value, but obviously not a determinative one respecting a privilege that is to be strictly confined within its "narrowest possible limits" and that is subject always to the uncertainty of "other law." Moreover, the attorney-client privilege is already hedged around with numerous requirements and limitations (the crime/fraud exception and many others) which also render it inevitably uncertain in application. Certainty is a value in the private as well as in the government sector, yet in *Waste*

[6] The Corporation Counsel's concern that disclosure to the Inspector General might constitute a waiver as against the City evaporates when disclosure is compelled by Court order. See CC R. Br. 39 (addressing "voluntary disclosure"). Any further concern that the Inspector General might then make "voluntary disclosure" (for example, to law enforcement authorities) could of course be addressed by specific provision in this Court's order.

Management this Court did not hesitate to hold that the duty of cooperation rendered expectation of the privilege "unreasonable." 144 Ill. 2d at 192-93.

In addition, and of particular importance in the instant context, a government body's attorney-client privilege belongs to the government, not to its individual employees. See Rule of Professional Conduct 1.13; *In re A Witness Before the Special Grand Jury 2000-2*, 288 F. 3d at 294. Thus, a mayor may choose to waive the privilege in his or her sole discretion, an action employees have no ability to prevent, so there can *never* be certainty of confidentiality when a city employee reveals information to a corporation counsel. As a result of this reality commentators have noted that the attorney-client privilege may have little effect on employees' decisions regarding whether and what to confide in government attorneys. See Nancy Leong, *Attorney-Client Privilege in the Public Sector: A Survey of Government Attorneys*, 20 Geo. J. Legal Ethics 163, 184-85 (2007); Melanie B. Leslie, *Government Officials as Attorneys and Clients: Why Privilege the Privileged?*, 77 Ind. L.J. 469, 473 (2002).

Perhaps these are some of the reasons why this Court has termed the chilling effect theory in the government context "nothing more than speculation." *Birkett*, 184 Ill. 2d at 532.[7]

[7] The Corporation Counsel cites *Swidler & Berlin v. United States*, 524 U.S. 399, 409 (1998), where the Court chose not to "[b]alance[e] *ex post*" the importance of information in a criminal case against posthumous application of the privilege. We do not propose a "balancing" in each Inspector General subpoena case. Rather, "other" statutory law and competing social policies render the attorney-client privilege unavailable to government attorneys respecting *every* Inspector General subpoena. Thus, the Court's concern in *Upjohn Co. v. United States*, 449 U.S. 383, 393 (1981), about a test to be unpredictably applied in each case, is likewise not a concern here.

Nor will requiring disclosure to the Inspector General pursuant to the IGO Ordinance open the door to challenges from other federal, state or local agencies as the Corporation

Finally, of course, the attorney-client privilege must be qualified by the government lawyer's primary obligation to serve the public interest. That obligation includes his duties to assist in uncovering government misconduct—that is, his obligation "not to protect his governmental client but to ensure its compliance with the law." *In re A Witness Before the Special Grand Jury 2000-2*, 258 F.3d at 293. As the Seventh Circuit also observed, "Public officials are not the same as private citizens precisely because they exercise the power of the state. With this responsibility comes also the responsibility to act in the public interest. It follows that interpersonal relationships between an attorney for the state and a government official acting in an official capacity must be subordinated to the public interest in good and open government . . ." *Id*. at 294 (citing *United States v. Nixon*, 418 U.S. 683, 712-13 (1974)).

In this case, of course, the government lawyer's primary obligation to serve the public interest also includes the Corporation Counsel's statutory duty to cooperate with the Inspector General by making "personnel, books, records and papers . . . available [to him] as soon as practical." MCC § 2-56-090.

In sum, in the context of the "other law" of the IGO Ordinance, the values of the attorney-client privilege are hardly unalloyed.

IV. PERFORMING THE MEDIATING FUNCTION

We come finally to the ultimate step in the mediating process—assigning values to the social policies involved and deciding which is the "weightier." This is, of course,

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Counsel fears. CC R. Br. 32. The IGO Ordinance that requires disclosure here applies solely to the IGO, not to other agencies.

quintessentially a matter for the Court, as its quotation from Justice Cardozo signifies, and not the Corporation Counsel, who is himself subject to the IGO Ordinance. In the instant context this Court must consider the weight of the Ordinance and the values of transparency and integrity in government that it embodies, and balance them against the privilege claimed by the City. The considerations summarized above, which we believe the Court will take into account in performing its mediating function, provide an absolutely clear answer.

Succinctly put, in order to detect and prevent misconduct within the government of the City of Chicago, the IGO Ordinance establishes a uniquely independent and uniquely empowered Office of Inspector General, granting the Inspector General not only the power to initiate and carry on its own independent investigations, equipped with, among others, the subpoena power, but imposing a duty on all city employees to cooperate with the Inspector General and to disclose to him—without qualification—books, records and papers. The central purpose of the Ordinance—establishing a truly independent investigative capability—furthers a value crucial in a democratic society: "public trust in the integrity of the government and its commitment to serving the public interest." *Birkett*, 184 Ill. 2d at 527 (quotation omitted). Undermining the independence of this investigatory capability risks grievous harm to one of our society's most crucial values.

It is thus a necessary implication from the purpose and language of the Ordinance as a whole, and particularly from its unqualified duty of cooperation and disclosure, which is imposed on all City employees without exception for attorneys or for the attorney-client privilege, that those exceptions were not intended. We have pointed out

that the Appellate Court said in a related context, "The ordinance . . . could not have been designed to tie the Inspector General's hands in this way . . . ," A. 14, a conclusion echoed in *Goldberger*: "The [attorney-client] privilege cannot stand in the face of countervailing law or strong public policy . . ." 935 F.2d at 504-05.

On the other hand, the Court is being asked to extend the privilege into an arena where it has never before in Illinois been deployed, in the face of this Court's admonition that the privilege should be confined to its narrowest possible limits, and in the face also of its expressed concern about privileges to governments (serious enough to have led some courts to deny the privilege to the highest official in the land). Although in theory the privilege in the government context conduces to integrity, in practice corruption has long marred the government of the City of Chicago.[8] Valuable though the privilege may be in other contexts, its "indirect and speculative" benefits in the instant context are not nearly as weighty as those of the language and central purpose of the "other law" of the IGO Ordinance, and the value it seeks to further of the public's trust in the integrity of its government.

[8] A roster of more than 300 "convicted city officials involved in public corruption scandals in city government offices" appears in *Patronage, Cronyism and Criminality in Chicago Government Agencies: Anti-Corruption Report Number 4*, Thomas Gradel and Dick Simpson, Univ. of Ill. at Chi., Feb. 2011, at 2, 28-70, available at http://www.uic.edu/depts/pols/ChicagoPolitics/AntiCorruptionReport_4.pdf. The report covers the period 1989-2011. A subsequent report states, "New public corruption data from the U.S. Department of Justice shows the Chicago metropolitan region has been the most corrupt area in the country since 1976 . . . Recent conviction data shows that the Chicago area is the most corrupt area in the United States . . ." *Chicago and Illinois, Leading the Pack in Corruption: Anti-Corruption Report Number 5*, Dick Simpson, James Nowlan, Thomas J. Gradel, Melissa Mouritsen Smuda, David Sterrett, and Douglas Cantor, Univ. of Ill. at Chi., Feb. 15, 2012 (updated Apr. 18, 2012), at 2-3, available at http://www.uic.edu/depts/pols/ChicagoPolitics/leadingthepack.pdf.

CONCLUSION

The IGO Ordinance is a statutory commitment by the City of Chicago to honest government that should not be vitiated by allowing a government lawyer to withhold documents from the very agency tasked with carrying out that commitment. We submit that the balance of values is heavily weighted on the side of requiring the Corporation Counsel to make disclosure of "books, records and papers" to the IGO, as he is statutorily obligated to do by the IGO Ordinance.

This Court should therefore affirm the Appellate Court ruling that this suit is justiciable, reverse the remand to the trial court, and rule that the Corporation Counsel may not refuse to comply with the Inspector General's subpoena on the ground of attorney-client privilege.

Respectfully submitted,

INSPECTOR GENERAL OF THE
CITY OF CHICAGO

BY: _____

June 8, 2012

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 17 pages.

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ALEXANDER POLIKOFF, Attorney

No. 112488

IN THE SUPREME COURT OF ILLINOIS

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To**:** J. Mark Powell
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PLEASE TAKE NOTICE that on June 8, 2012, the Plaintiff-Appellee, Joseph M. Ferguson, in his official capacity as Inspector General of the City of Chicago, by his counsel filed with the Clerk of the Supreme Court of Illinois the CROSS REPLY BRIEF OF PLAINTIFF-APPELLEE.

BY:

_____
Plaintiff-Appellee's Attorney

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CERTIFICATE OF SERVICE

I certify that I served the foregoing notice and three copies of the Cross Reply Brief of Plaintiff-Appellee by placing them in an envelope with sufficient postage affixed and directed to the person named below, at the address indicated, and depositing that envelope in a United States mail box in Chicago, Illinois, before 5 p.m. on June 8, 2012.

_____
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