



The City of New York
Department of Investigation

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STATEMENT FROM DOI COMMISSIONER MARK G. PETERS

Pursuant to Chapter 34 of the City Charter, which offers the Commissioner of Investigation “an opportunity of making a public explanation” prior to being removed by the Mayor, DOI Commissioner Mark G. Peters sent the attached letter today to Council Speaker Corey Johnson and Council Investigations Committee Chair Ritchie Torres.

DOI is one of the oldest law-enforcement agencies in the country and New York City's corruption watchdog. Investigations may involve any agency, officer, elected official or employee of the City, as well as those who do business with or receive benefits from the City. DOI's strategy attacks corruption comprehensively through systemic investigations that lead to high-impact arrests, preventive internal controls and operational reforms that improve the way the City runs.

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November 19, 2018

Honorable Corey Johnson
Speaker
New York City Council
City Hall
250 Broadway, 18th Floor
New York, NY 10007

Honorable Ritchie Torres
Chair, Investigations Committee
New York City Council
250 Broadway, 18th Floor
New York, NY 10007

Dear Speaker Johnson and Chair Torres,

Last Friday, Mayor Bill de Blasio filed with the Department of Citywide Administrative Services (DCAS) a statement of his reasons for removing me as Commissioner of the Department of Investigation (DOI). Pursuant to Chapter 34 of the City Charter, prior to my removal I am entitled to “an opportunity of making a public explanation.” Pursuant to that provision of the Charter, I am sending you this letter. I am, of course, available to testify before the Council if you desire.

The Mayor’s purported reason for removing me is based entirely upon the Report from James McGovern (“McGovern Report”) that found that I violated the City’s Whistleblower Law. The McGovern Report was harshly critical of my conduct and I have already accepted the Report’s recommendations and issued a public apology. However, while I accepted these recommendations as I said I would and truly meant the apology, the Report nevertheless contains multiple factual errors

that the Mayor now repeats – repeats without ever asking me whether they are correct. These errors are particularly glaring regarding claims that I misled the City Council or did not take my legal obligations seriously. Any objective review of the Report makes clear that there is no support for these blunderbuss generalizations that it makes.¹ I have never misled the Council and I have never disregarded my legal obligations. (The analysis of these errors is contained in Part I of this letter below.)

Beyond the flaws in the McGovern Report, the context of the Mayor's interactions over the past several years with DOI, combined with certain ongoing investigations about which the Mayor and his senior staff are very much aware, must cast doubt upon the Mayor's true motives. At the very least, the facts described below – including a late night screaming call from the Mayor and a meeting and calls at which I was pressured to not issue certain reports including a Report exposing lead paint safety hazards at NYCHA – suggest an attempt to punish and intimidate DOI for its past work. Moreover, concerns recently raised by City Hall staff about certain ongoing investigations suggest a desire to prevent DOI's independence going forward. (These issues are discussed in Part II of this letter below.)

The importance of an independent Inspector General is vital to any government and should be protected by all of our democratic institutions. I worry that the Mayor's actions in this regard will cause lasting damage to DOI's independence. It will surely cause any successor to think twice before conducting the type of vital systemic investigations into agencies such as NYCHA, ACS, NYPD and City Hall itself, that we have done over the past five years. Regardless of my particular status, it is incumbent on all of New York City's civic leaders to take steps now to protect the concept of an independent DOI going forward.

I. The Mayor's Purported Reason for Removing Me is Without Basis.

The Mayor has stated that he is removing me based upon the McGovern Report. However, given the facts discussed below, and the misstatement of facts in the Report itself, the Report simply does not provide the Mayor with a proper reason for removing me.

First: The Whistleblower Law itself simply does not contemplate removal of a commissioner in these circumstances. Rather, the law states that where a whistleblower claim is substantiated, the investigator (usually DOI, here Mr. McGovern after I recused myself) makes recommendations to the Commissioner or

¹ At the time the Report was issued I did not publicly raise these factual errors. I believed that the proper course of action, as DOI Commissioner, was to accept the recommendations without a back-and-forth over specific factual errors and thus allow the agency to move forward with its important work. However, now that the Mayor is using these errors as the basis for my removal – and has done so without ever asking me about their accuracy – I feel it is important to correct the public record.

other supervisor at the agency in question. Only where the Commissioner does not accept these recommendations is there any role listed for the Mayor. Here, I accepted Mr. McGovern's recommendations. More important, Mr. McGovern specifically considered the question of discipline and determined that I should be disciplined in the form of a letter placed in my personnel file. I accepted that discipline and such a letter has been placed in my file and made public. As such, the Mayor is now seeking to impose greater discipline, beyond that recommended by the independent investigator, and is seeking to do so in circumstances not even contemplated by the law.

Second: While the McGovern Report found that I did not have authority to bring SCI within DOI, it also accepted that my motivation was to "improve investigative outcomes." (McGovern Report at p.92). In all of 2016-17, SCI made no arrests, issued no systemic reports and had no audit staff capable of investigating large scale contract fraud. Fixing SCI's inability to hold DOE fully accountable was my only motivation. The McGovern Report does not state otherwise. It is not at all uncommon for agencies, in a sincere attempt to fix a problem, to take steps that a court or other arbiter ultimately determines overstepped – in the McGovern Report's language "abused" – the agency's authority. I am not aware of this Mayor, or any other, having fired a commissioner for that reason.

Third: The Mayor's claim to be concerned about this matter, to the point of believing removal is necessary, is undermined by his staff's own inappropriate conduct during the events in question. In February of this year, I briefed both First Deputy Mayor Fuleihan and Corporation Counsel Carter on my plans to integrate SCI within DOI and neither interposed any objection. According to the McGovern Report – and unknown to me at the time – however, the next month Mr. Fuleihan and Mr. Carter both met secretly, on multiple occasions, with Anastasia Coleman (the SCI Commissioner who I fired) and informed her that they agreed that DOI had no legal authority to supervise SCI. (Indeed, according to the McGovern Report, during meetings at City Hall, Ms. Coleman was told that she was "on the front lines" of this fight with DOI.²) However, while they met in secret with Ms. Coleman, neither Mr. Fuleihan nor Mr. Carter ever called me to tell me about their objections. Instead, they simply allowed me to proceed with the plans I had briefed them on, and then waited until after the conflict occurred to allow the Mayor to use the incident to seek my removal. Needless to say, if either Mr. Fuleihan or Mr. Carter had ever expressed their concerns to me, rather than meeting repeatedly with Ms. Coleman about them, I would have put a hold on the process until those concerns could be resolved. They never did so. This suggests that their true motivation was to create the present crisis rather than to simply prevent any conduct with which they had concerns.

Fourth: To the extent that the Mayor is concerned about Mr. McGovern's very serious suggestion that I misled the City Council, I wish to state clearly and unequivocally that such a suggestion is not true. *I have never misled this Council and*

² McGovern Report at p.65

never would. Rather, the three examples offered by Mr. McGovern, under any scrutiny, clearly do not demonstrate any misleading statements:

- The McGovern Report states that during my testimony I claimed that SCI “was also known as” the Inspector General for DOE. (McGovern Report at 114). The McGovern Report claims this is misleading because it was “‘known’ in this manner only within the halls of DOI.” (McGovern Report at 115). However, the Executive Order founding SCI notes that SCI was being established because there was a need for an “Inspector General” that could be “independent of those whom it is called upon to investigate”³ (Executive Order No. 11), and SCI was also referred to as an Inspector General’s office in DOI’s public website. As such, my statement that SCI was also “known” as the Inspector General for DOE was accurate and simply not misleading.
- The McGovern Report states that during my testimony I claimed that SCI “had always reported to DOI.” The McGovern Report then argues that while this was “technically true” it was “materially misleading” because in fact the prior SCI commissioners had “a very different reporting obligation to DOI than the one Commissioner Peters had imposed [on the new SCI commissioner] and it was the new structure that was causing the problem.” (McGovern Report at 115). However, the subject of my testimony that day (as related to SCI) was that very fact that I was changing the reporting structure at SCI. I expressly explained in my opening statement that in the past SCI had “operated separately from DOI’s main organizational structure” but that this was not working and so “we have taken steps to fully integrate this work within our reporting structure.” (McGovern Report at 66). In other words, far from obscuring the change in structure, my opening testimony announced and highlighted my decision to make that change.
- The Report states that in response to a question about the nature of the dispute between DOI and DOE that was reported in the New York Times, I stated that “at no time has anyone from [DOE] contacted me or anyone on my staff to object to anything we’re doing.” (Report at 115). The McGovern Report claims that this was not true. In fact, the statement was true and was not misleading. To begin with, the statement was in response to a question from Chair Torres as to whether I understood the nature of the dispute between DOI and DOE that was described in the New York Times. That dispute, as reported, was that DOE did not believe DOI had the right to

³ Ironically, one result of the McGovern Report is that the new SCI Commissioner will now no longer be a DOI employee but is rather a DOE employee. As such, there is no longer an inspector general for DOE who is fully independent of DOE.

control SCI. Chair Torres then asked me if I understood DOE's concerns as expressed in the New York Times article, and I said that I was "not clear" as to those concerns because "while the New York Times reported there was a conflict, at no time has anyone from [DOE] contacted me or anyone on my staff to object to anything we're doing." (Report at 67). This was true. No one at DOE (or City Hall or the Law Department) had contacted me on the issue. As the Report notes, my General Counsel was in discussions with DOE's general counsel about an MOU regarding SCI. However, as the Report acknowledges, DOE's position on that portion of the MOU was that the relationship between SCI and DOI was something that was between SCI and DOI. (Report at 115 n.93). An email sent by DOE's General Counsel confirms that DOE had not stated an objection to DOI on this particular issue. (Report at 63). As such, even updates from my General Counsel on this matter did not lead me to understand DOE's concerns with my control of SCI, since DOE's position as expressed to my General Counsel was that DOE had no formal position. As to the implication – not actually stated – that I was hiding the idea of a dispute between DOI and DOE, I was not; indeed, I was responding to a newspaper report of that dispute and I explained that I was not clear on DOE's position. As such, again, my statement to the Council was truthful and not misleading.

Neither the Mayor, nor anyone on his staff, has ever asked me about this issue or offered me an opportunity to walk them through the actual transcripts of the hearing. (By contrast, several members of this Council have asked me to review this issue with them and all of them have informed me that they are satisfied with my explanation and do not believe I misled the Council.) The Mayor's failure to even ask me about this violates every precept of good government practice.⁴

Fifth: To the extent the Mayor is concerned that Mr. McGovern believed I held myself to be "above the law" (McGovern Report at 143) that characterization is false. The statement upon which it is based is one in which I explained to Ms. Coleman that I could have had the Executive Order in question changed but that it was not worth my time.⁵ I did not say this because following the law was not worth my time, but rather, I believed the existing law gave me the latitude to make the changes needed to restructure SCI, and that, as such, it was not worth the time to clarify that

⁴ I note that the McGovern Report also questions the veracity and judgment of my senior staff. However, the Report provides no basis for such attacks and I wish to state for the record that the senior staff at DOI are among the most honorable professionals with whom I have had the pleasure of serving.

⁵ The word I used, according to the secret recordings Ms. Coleman was making of me and my staff, was "wiped out." I regret using this term. However, I used a colloquial term in a conversation. It was not a specific phrase written in a document for formal purposes.

law. A reading of the full transcript of my statement to Ms. Coleman makes this point clear.⁶

Sixth: While the Mayor claims that he is acting upon Mr. McGovern's findings, we now know that Mr. Carter, with the Mayor's full knowledge, assembled a "dossier" on me many months earlier. That dossier, written long before Mr. McGovern's findings, included discussion of my dismissal of Ms. Coleman, assuming that I acted improperly. As such, the decision by the Mayor appears to have been made months before Mr. McGovern's findings, suggesting that reliance upon it is merely pretext.

II. The Mayor's Decision Must Be Viewed in the Context of His Past Interactions With DOI and Certain Pending Investigations.

A. The Mayor's Reaction to Past Investigations.

On several occasions the Mayor and his most senior staff have expressed visible anger at me over certain DOI investigations. They have requested that I not issue certain Reports, and when I declined to do so they took actions to demonstrate their anger in ways that were clearly designed to be intimidating. The following are only some examples of this behavior:⁷

Administration for Children's Services: In January 2017, DOI released a Report that was highly critical of ACS and, in particular, of its failure to have a properly staffed 24-hour call center to receive and immediately act on allegations of abuse. This investigation occurred shortly after the death of a child where ACS received allegations of abuse but failed to timely locate the child. Prior to releasing the Report, however, on January 8, 2017 (at 5:26pm) I received a call from the Mayor in which he asked me to not release this ACS Report. When I informed the Mayor that DOI was obligated to make its findings public he yelled at me, accused me of trying to bring his administration "down" and then informed me he was "going to hang up now before I say something I shouldn't." He then hung up the phone. The next day I was summoned to a meeting at City Hall attended by the then First Deputy Mayor and several other City Hall staff. At the meeting I was pointedly told that the Report would be embarrassing to the Mayor and asked, in a way that made me extremely uncomfortable, whether I was really prepared to do that.

Department of Corrections: In April 2017, DOI released a Report regarding misuse of government cars by the Commissioner of DOC and his senior staff. Prior to releasing the Report, on April 25, 2017, at 6:39pm, I received an email from the then First Deputy Mayor asking that DOI "forebear" on issuing the Report and

⁶ It appears that Ms. Coleman began secretly taping me and other DOI officials within weeks of starting at SCI. A full transcript of my conversation with her is contained at pages 54-55.

⁷ A fuller description of DOI's investigations in these areas is contained in the addendum attached to this letter.

asking me to call him. At 6:47pm I called the then First Deputy Mayor who reiterated his request that the Report not be released, in part, because it would be embarrassing to the DOC Commissioner. Despite this request, DOI released the Report several days later. I subsequently had multiple conversations with people who informed me that the Mayor and his senior staff were “really angry,” felt I should be more “loyal,” and now wondered if I was “still a friend.”

NYCHA Lead Investigation: In November 2017, DOI released a Report that made public NYCHA’s failure to conduct proper lead inspections and the fact that the head of NYCHA had filed false forms with the federal government that concealed this failure. Prior to issuing the Report, I discussed it on several occasions with the then First Deputy Mayor, in part to urge the City to appoint a monitor to deal with the issue. On November 7, 2017, I had a call with the then First Deputy Mayor. He asked me not to release the Report. When I informed him that DOI could not withhold this Report related to public safety issues – especially in light of the fact that NYCHA had not yet agreed to remedy them – he became annoyed and informed me that in his view, as a City Commissioner, I had an obligation to comply with his request to protect the interests of the agency in question, NYCHA. I informed him that I disagreed with his view on this matter.

NYPD Investigations: On multiple occasions, the NYPD has refused to produce documents and directed witnesses not to appear for interviews with DOI. This has slowed past investigations (most notably our Report that the NYPD failed to properly staff its unit responding to sexual assault) and is presently slowing certain ongoing investigations that contain equally serious allegations. At one point in 2016 there was a meeting at City Hall to discuss the NYPD’s lack of cooperation that was attended by the then First Deputy Mayor, Mr. Carter and senior staff from NYPD and DOI. At that meeting, a senior NYPD official conspicuously displayed his gun and later told a third party that he had done so to intimidate the DOI officials. Indeed, my staff commented to me about their concern with the display of a weapon as we left the meeting. Neither the then First Deputy Mayor nor Mr. Carter objected to this behavior; rather, the then First Deputy Mayor, expressing his anger that I insisted on NYPD production of documents, called me an “asshole.”

Taken as a whole, these incidents demonstrate a pattern in which the Mayor and his senior staff believe that I owe a duty of loyalty to the Mayor rather than to the City as a whole and that my actions, in exposing waste, fraud or abuse in City agencies, as required in the City Charter, are improper and justify retribution.

B. The Importance of an Independent DOI Given Pending Investigations.

Finally, there is the impact the Mayor’s decision to remove me may have on several ongoing investigations that could implicate the Mayor and/or senior appointees in certain agencies: This includes previously reported investigations into Mayoral interference in Yeshiva matters, DOI’s continuing investigation into unsafe conditions at NYCHA and our continued review of sexual assault

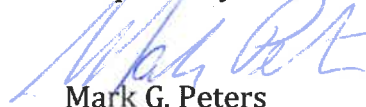
investigations at the NYPD.⁸ Other investigations, not yet made public, but known to the administration and involving senior agency officials and/or public safety, would be similarly endangered. I have been informed that several of the Mayor's senior staff are concerned about certain of these investigations. In this context, the Mayor's decision to remove me from office will clearly have a chilling effect on my successor that could prevent DOI from engaging in independent actions and exposing wrongdoing concerning these and any other investigations going forward.

DOI does not publicly discuss its ongoing investigations and so I will not provide details here of any potential investigations into actions by the Mayor or other officials in his administration. However, if the Council wishes to hold a hearing, and chooses to hold part of it in executive session, I would be willing to provide some information about these investigations – to the extent not prohibited by state and federal grand jury secrecy laws – so that the Council at least has a record of these investigations in the event that they are unreasonably delayed or discontinued by my successor.

Conclusion

Serving as Commissioner of Investigation has been the greatest honor of my professional life. I believe that DOI has done extremely important work that has protected vulnerable New Yorkers and helped keep the City government honest and accountable. However, DOI's work is only possible when it is allowed to act in an independent manner without threats from the Mayor. Perhaps for this reason, no Mayor in modern history has ever removed a DOI Commissioner. As such, the Mayor's decision to remove me will hinder the ability of any future commissioner to do this type of work and thus deprive the City of a fully independent inspector general. I hope that the Council will agree with me and take steps to protect the agency going forward.

Respectfully submitted,



Mark G. Peters
Commissioner

cc: Hon. Bill de Blasio
Mayor of the City of New York
Hon. Lisette Camilo
Commissioner, DCAS

⁸ With regard to the NYPD, I note that on the same day the Mayor fired me, the NYPD removed the head of its Special Victims Division (SVD) who had provided DOI with much evidence for its Report on SVD. DOI's Report found no fault with the head of SVD. This removal can only add to the chilling affect on future investigations.

*Addendum to the Letter from Mark G. Peters to Corey Johnson and Ritchie Torres
Dated November 18, 2018*

As noted in this letter, the administration, at various times, has objected to DOI investigations into NYCHA, ACS, DOC and the NYPD. For context, below is a short summary of DOI's work in these areas. It is important to note that in some instances – as described in the letter – the administration affirmatively requested that DOI not make its findings public. Further, in other instances, the administration rejected the Reports, claiming that they did not find them credible; however, the administration never once stated a material error in the Reports. Finally, in many instances (some noted in the below summary) the administration failed to fix obvious public safety problems even after being presented with evidence of the failures.

This summary does not include ongoing investigations, as DOI does not discuss such investigations publicly. As noted in the letter, some information about ongoing investigations can be provided to the Council in executive session.

NYCHA

DOI has arrested NYCHA staff and issued several Reports or letters on safety issues at NYCHA. These include:

- In 2016, a DOI investigation of an elevator accident that killed a resident at NYCHA's Boston Road development found that NYCHA failed to follow certain safety rules related to elevators.
- In 2016, a DOI investigation found that NYCHA failed to properly maintain smoke detectors in apartments and that NYCHA documents inaccurately reported that smoke detectors were working when in fact they were not.
- In 2017, a DOI investigation found that NYCHA did not properly inspect apartments for lead paint and submitted false federal forms that claimed such inspections had occurred.
- In 2018, at the City Council's request, DOI investigated whether the Chair of NYCHA had provided materially inaccurate statements to the Council at a hearing on the lead issue. DOI, by letter to the Council, determined that the NYCHA Chair had made materially inaccurate statements.

ACS

DOI has issued multiple Reports demonstrating systemic failures at ACS regarding child safety. These include:

- In 2016, a DOI investigation found that ACS failed to properly investigate allegations of child abuse or neglect. DOI found that the problems went beyond individual cases and suggested more systemic vulnerabilities.
- In 2017, a DOI investigation found systemic issues with ACS's ability to respond to allegations of child abuse made on nights and weekends.
- In 2018, a DOI investigation found that hundreds of children had been maltreated while in foster care but that ACS failed to properly supervise the foster care agencies who were charged with protecting these children. In some instances, ACS knew the foster care agencies were not properly functioning but failed to take steps to correct the problem.

DOC

DOI has arrested dozens of Corrections Officers and DOC staff for assault, sexual misconduct and contraband smuggling. DOI has also issued Reports on systemic misconduct including:

- In 2014, a DOI investigation found security breakdowns that allowed an undercover officer to smuggle contraband into multiple jails. In 2018, a follow-up DOI investigation found that the problems identified in the 2014 Report continued and that DOC had not taken proper steps to fix them.
- In 2015, a DOI investigation found that DOC routinely hired correction officers who had red flags in their background hiring files including past arrests, psychological concerns and affiliations with inmates. In 2018, a follow-up investigation found that hiring problems continued and that DOC had not taken proper steps to fix them.
- In 2017, a DOI investigation found that DOC officials, including the then Commissioner, had misused DOC vehicles for personal purposes.

NYPD

DOI, through its Inspector General for the NYPD created by Local Law 70, has issued Reports demonstrating failures at the NYPD. These include:

- In 2015, a DOI investigation found a lack of discipline imposed on NYPD officers who used excessive force. In 2018, a follow-up Report found that the NYPD continued to under-report the use of force.
- In 2016, a DOI investigation found that the NYPD failed to follow rules regarding surveillance of political groups. Citing this Report, a federal judge subsequently rejected a proposed settlement agreement on this topic.
- In 2018, a DOI investigation found that the NYPD failed to properly staff its Special Victims Division impeding the ability to properly investigate sexual assault cases. The investigation found that NYPD did not have an evidence based model for determining staffing needs – something the NYPD has still not implemented.