



Alleging Obstruction, Chicago's Inspector General Turns to City Council for Stronger Laws

Description

In a [memo sent Friday](#) to the Chicago City Council's ethics committee, city Inspector General Deborah Witzburg laid out a series of what her office characterizes as obstructions by the city's law department and sought new legislation to buttress the OIG's independence.

In unusually strong language for a council memo, the document alleges that the city's Department of Law "selectively acts in opposition to OIG's investigative work when OIG's work may result in embarrassment or political consequences to City leaders."

While Chicago law and tradition establishes a robust inspector general's office with a broad investigative remit, certain weaknesses have undermined the effectiveness of the office for years. For example, full public disclosure of significant investigation reports can indefinitely be held by the law department, [as previously reported by BGA Policy](#).

Friday's memo highlights three other Department of Law practices that, according to the inspector general, "negatively impact the effectiveness, independence, and pace of OIG investigative work":

- Assertion of attorney-client privilege by the law department to withhold records and communications from OIG investigations,
- Assertion by the law department that department lawyers may attend OIG investigative interviews, at the discretion of the city's corporation counsel, and
- DoL conditioning enforcement of OIG subpoenas on OIG's willingness to disclose information pertaining to the investigation for which the subpoena was issued.

The [Better Government Association's city policy agenda](#) advocates for a strong and independent inspector general's office. The inspector general's recommendations, detailed below, seek to shield OIG investigations from outside influence, and specifically from interference by the mayor's legal team.

The Witzburg memo lays out both specific examples and aggregate counts of law department interference in OIG investigations, including city lawyers' recent refusal to allow OIG investigators access to the mayor's gift room, where a list of gifts nominally accepted on behalf of the public included expensive cufflinks, shoes, handbags, whiskey, size 14 men's shoes and a personalized Mont Blanc pen.

Assertions of Privilege

The ordinance establishing the city's inspector general imposes upon city officials, employees, departments and contractors a statutory duty to cooperate with OIG investigations. The legislative language does not include limits or carveouts other than specifying that departmental premises, equipment, personnel, books, records and papers shall be made available as soon as possible.

However, the mayor's office, law department, and other city departments have, according to the OIG memo, withheld responsive materials from OIG on the purported basis of the City's attorney-client privilege in dozens of investigations during Witzburg's term, which began in April of 2022.

In addition to shielding some information outright, the law department's assertion of privilege also delays the production of records, according to the memo. Law department review of emails and text messages to determine which are privileged may take and has taken many months to complete, the memo states, including one instance where text messages from an unnamed mayor's city device took over a year to produce.

Investigative Interviews

Witzburg's memo describes repeated and ongoing assertions by the law department that their attorneys may attend OIG investigative interviews, an unusual practice not included in federal statute or recommendations by the Association of Inspectors General, a national professional association that sets standards for inspectors general nationwide.

Typically no parties are present at investigative interviews other than the investigators, the witness or subject being investigated, and any personal legal representation for the witness or subject in their individual capacity.

Law department attorneys, who ultimately are accountable to the mayor, can obtain information about an investigation into city government by serving as counsel to city employees during OIG investigative interviews. The OIG memo points out that "The presence of a city lawyer serving at the pleasure of the mayor should be expected to compromise the candor of witnesses and subjects, chill cooperation with OIG investigations, and intimidate complainants and whistleblowers."

To protect both witnesses and subjects, the OIG during Witzburg's tenure has refused to conduct interviews with DoL attorneys present, resulting in the delay or outright cancellation of investigations in which DoL insisted on being present for interviews.

Subpoena Enforcement

The city inspector general is authorized by the Municipal Code to issue its own subpoenas, with language stipulating that the inspector general “work with the Law Department to retain counsel” to enforce subpoenas, and allowing the inspector general to request that corporation counsel designate OIG attorneys as Special Assistant Corporation Counsel for purposes of subpoena enforcement.

Despite language in the existing code that the corporation counsel’s approval of OIG requests “shall not be unreasonably withheld, delayed or conditioned,” the law department has, according to the memo, in some cases required disclosure of information pertaining to the investigation for which the subpoena was issued before agreeing to appoint OIG investigators as Special Assistant Corporation Counsel

Proposed Legislation

The ethics committee now faces a slate of recommendations from OIG to address what the inspector general portrays as deliberate and selective interference in the investigative office’s work:

- Language requiring that corporation counsel “shall promptly” designate OIG attorneys Special Assistant Corporation Counsel upon request, or else allow the selection of outside counsel. The recommended language governing the use of outside counsel is similar to that used elsewhere in the Municipal Code for the Civilian Office of Police Accountability, another body with independent investigative and subpoena authority.
- Language stating that persons interviewed as part of OIG investigations “shall be entitled to personal representation in their individual capacity only,” and that “attorneys representing the City or retained or employed by the City” shall not be allowed to attend OIG investigative interviews except at the inspector general’s discretion.
- Language clarifying that the duty of city employees, officials and agencies to cooperate with investigations supersedes any claim of privilege asserted by the city or its agencies. This mirrors language from the federal [Inspector General Act](#) and the model language recommended by the [Association of Inspectors General](#), which sets the professional standards for inspectors general like Chicago’s OIG.

Ethics Committee chair Ald. Matt Martin (47th) said he intends to introduce legislation to ensure that the Inspector General’s concerns are met. “From the raid on Anjanette Young’s home to the Hilco investigation, our Office of Inspector General provides critical oversight and accountability. I firmly believe that city lawyers should not jeopardize the independence or integrity of these investigations,” Martin said.

Asked for comment on the memo, Department of Law spokesperson Kristen Cabanban provided a written statement that “For the past three decades, previous City inspector generals have properly accepted that the legal rights of City employees and the legal interests of the City rightfully justify our practices. There is both legal precedent through case law as well as procedural jurisprudence that dictates how we must conduct ourselves.”

It will fall to the ethics committee “and, should they advance any relevant ordinance, to the full City Council” to decide whether or not to reinforce the inspector general’s powers with legislative changes. A proposed ordinance could be introduced as early as February’s meeting of City Council,

scheduled for Feb. 19, and heard in committee any time after at Martin's discretion.