City of Rochester



Office of Public Integrity

Manual

2010 Edition

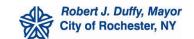


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MISSION, AUTHORITY, CONFIDENTIALITY AND ORGANIZATION

Mission

The establishment of the Office of Public Integrity (OPI) was initiated by Mayor Robert J. Duffy in 2006. The OPI is responsible for:

- Conduct and supervise audits and investigations relating to City of Rochester programs and operations;
- Provide leadership, coordination, and policy recommendations designed to prevent and detect fraud, waste, and abuse, and to promote economy, efficiency and effectiveness in the administration of City of Rochester programs and operations;
- Keep the Mayor fully and currently informed about problems and deficiencies in programs and operations, as well as the need for implementing corrective action;
- Review and provide feedback on existing and proposed policies and procedures;
- Coordinate with Local, State and Federal agencies to promote economy, efficiency, prevention and detection of fraud, waste and abuse in City of Rochester administered or financed programs, or prosecution of participants in such abuse in City of Rochester programs and operations;
- Comply with audit standards;
- Report expeditiously to the Mayor when OPI has reasonable grounds to believe that there has been a violation of state or federal criminal law;
- Prepare and submit annual reports summarizing OPI activities.

Authority

The Rochester City Council created legislation amending Section 1, Chapter 755 of the Laws of 1907 and Section 3-13, Internal Auditor, to read in its entirety as follows:

Section 3-13. **Director of the Office of Public Integrity**. The head of the Office of Public Integrity shall be the Director of the Office of Public Integrity. Under the supervision of the Mayor, he or she shall articulate the standards of business conduct for the City and shall coordinate the analysis, investigation and resolution of concerns and complaints involving City government operations. The Director shall oversee the Manager of Internal Audit and the internal audit staff, which shall develop and conduct an internal audit program on a timely basis. Such program shall examine the financial records and procedures of all city departments, bureaus and their subdivisions in accordance with accepted auditing principles and practices.

Confidentiality/Whistleblower Protection

After the receipt of a complaint or information from any City of Rochester employee, the OPI shall not disclose the identity of an employee without their consent unless the OPI determines that it is unavoidable during the course of an investigation.

The City of Rochester has established a Confidential Hotline Program to provide a confidential means of reporting suspicious activity to the OPI concerning City programs and operations, and has implemented a Whistleblower Protection Policy to protect employees that believe their organization is engaged in or willfully permits unethical or unlawful activities and reports it. Suspicious activity may include instances of fraud, waste, and abuse, mismanagement, or a danger to the public's health and safety. No attempts are made to identify persons contacting the Hotline. The Office of Public Integrity confidential hotline number is **(585) 428-9340**.

Persons may also contact the OPI directly by telephone (**585 428-7245**), e-mail (**OPI@cityofrochester.gov**) or surface mail.

Contacts may provide their name, address, or phone number, if they wish. Providing this information will allow the OPI to contact the individual in case additional information is needed.

Organization

The Director/Inspector General

- Direct report to the Mayor.
- Manage Audits and Investigations Units.
- Direct, review and approve criminal and administrative investigations of fraud, corruption, waste and abuse.
- Liaison and coordinate with federal, state and local law enforcement investigative agencies.
- Review investigative findings, and coordinate final determinations and discipline, with city department administrations, the Law Department, the Deputy Mayor, and the Mayor.
- Develop and coordinate citywide employee integrity/ethics and fraud prevention/detection training.
- Develop and implement risk management strategies.
- Provide post incident reviews and recommend policy revisions.

Manager of Internal Audit

- Supervises the performance of auditing activities relating to City programs and operations; and
- Advises and assists the Inspector General on all OPI audits and reviews.

Audit Staff

 Conducts auditing activities relating to City programs and operations, to ensure efficiency and effectiveness.

Investigations Staff

• Conducts administrative and criminal investigations and inquiries relating to City programs and operations.

Executive Assistant

- Provides overall management of administrative and operational support for OPI programs, including formulating and executing the OPI budget, and coordinating strategic planning activities, training, and procurement support; and
- Prepares the OPI's Annual Reports, and assures implementation of office directives.

OFFICE OF PUBLIC INTEGRITY

ORGANIZATIONAL CHART



AUDITS

The Office of Public Integrity helps improve City operations and programs by providing management with timely and independent audits.

An audit examines a City program or activity, and recommends solutions to issues, if warranted. The OPI conducts both financial and performance audits. Financial audits include annual examinations of the costs incurred on grants and contracts, indirect costs, and internal controls. Financial statement audits determine whether the financial statements of an entity are fairly presented.

Performance audits include economy and efficiency audits and program audits. Economy and efficiency audits assess whether entities are managed with regard for program and financial integrity, effectiveness measurement, and compliance with applicable laws, regulations and grant provisions. Program audits measure achievement of desired results or benefits.

Staff Qualifications

OPI audit staff is required to meet the occupational requirements for the GS-11 Auditing Series. The basic requirements for this series include a degree in accounting or related field that is supplemented by 24 semester hours of college-level accounting courses; or a combination of education and experience with specific background requirements. Additionally, all staffers are required to meet the educational requirements required by the Government Auditing Standards (Yellow Book).

The OPI staff is supplemented with Certified Public Accounting firms that work under contract with the OPI and are monitored by OPI auditors. OPI contract auditors are further required to meet specialized requirements, including strict adherence to Federal conflict-of-interest regulations, provisions of the Privacy Act and professional standards set forth in the Government Accountability Office's Yellow Book.

Major Areas Covered by OPI Audits

Audits focus on areas intended to enhance the management and overall performance of the City, review the City's oversight of programs, and assess the City's progress toward achieving its strategic goals.

Typical audits include examinations of financial statements, grants made by the City, and other operational areas. The OPI Audit Section also conducts performance audits, which take a broader view of City programs and procedures and provide useful, timely and reliable information to management with the goal of effecting positive change. Performance audits combine the best features of various disciplines, including traditional program and financial evaluations, survey research, operational auditing, program monitoring, compliance reviews, and management analysis. These audits make extensive use of City documents and data, and interviews with employees and grantee and sub grantee personnel.

OPI Audit Selection

Auditing is a risk-based process where specific audits are determined by a range of factors. Each year the OPI Audit Section develops an Annual Audit Plan that identifies the audits scheduled for the coming year. The plan includes all legislatively mandated audits and a number of discretionary audits.

Discretionary audit work is prioritized, based on a number of factors including:

- Areas of emphasis by the Mayor, Senior Management Team members, or other stakeholders;
- Issues that pose a threat to public health and safety;
- Programs or processes identified as susceptible to fraud, manipulation, or other irregularities;
- Newness, changed conditions, or sensitivities of program activities;
- Dollar amounts or personnel resources involved in the audit area;
- Adequacy of internal controls.

While the OPI Annual Audit Plan allocates all resources for the coming year to specific audit assignments, it is a flexible document that will also incorporate high-priority assignments that may arise during the course of the year.

Steps in the OPI Audit Process

All audits begin with objectives that initially determine the type and scope of the work to be performed. The following steps are used in each OPI audit:

- Notification Letter: The OPI will usually notify the auditee, or subject of the audit, in writing, prior to the scheduled start date of an audit; however, there are circumstances where no advance notification will be provided.
- **Survey**: Early in the process, the auditors gain an understanding of the program by obtaining background information on the auditee's mission, resources, responsibilities, key personnel, operating systems and controls.
- **Developing the Audit Program**: The program provides a plan of the work to be done during the audit and is a set of procedures specifically designed for each audit. The program also assists in assigning and distributing work to auditors working on the engagement, assists in controlling the work, and provides a checklist to guard against the omission of necessary procedures.
- Entrance Conference: Held at the beginning of each audit, its purpose is to provide auditee management with information on the function or activity being reviewed, and a description of the audit scope and objectives. Other areas covered include time frames for completing the audit; access to necessary records, information and personnel; and introduction of the audit team members. The entrance conference also provides a forum to answer questions about the audit process and establishes lines of communication among all parties.
- **Fieldwork**: This phase consists of applying the audit procedures described in the audit program and any modifications thereto, and reviewing the work performed. The review documents that audit procedures have been properly applied, that the work is satisfactory, that working papers are complete and adequate, and that all procedures have been completed.
- **Draft Report**: After fieldwork is completed, a Draft Audit Report is prepared. This report will normally be issued to auditee and City officials with a request that they provide written comments within 30 days. The Draft Audit Report is a "work-in-progress" and is not a public document.

- **Exit Conference**: This is conducted at the end of audit fieldwork, and after completion of a Draft Audit Report. The OPI may provide a draft copy of the audit report to City and auditee officials before the exit conference to facilitate a full and open discussion of the audit's findings and recommendations. It also provides City and auditee officials with an opportunity to confirm information, ask questions, and provide clarifying data.
- **Final Report**: At the end of the 30-day response period, and after reviewing and assessing the auditee's and City's written responses to the Draft Audit Report, the OPI issues the Final Audit Report for resolution of the recommendations. The Final Audit Report aims to provide a fair, complete and accurate picture of the audited area at the time the audit took place. This report usually includes a description of the scope, objectives, and methodology of the audit, and a description of the findings and recommendations for corrective action. It also includes, as appendices, the written responses to the Draft Audit Report by City and auditee officials.

Audit Resolution Process

This is the process by which:

- The OPI and management agree on proposed corrective actions needed; and
- Management takes action to improve operations or correct deficiencies identified in the Final Audit Report. The resolution process, tracks management's corrective actions until they are completed and the recommendation is closed. Management must inform the OPI of its Proposed Management Decision, or plan for corrective action, within 180 days of the issuance of a Final Audit Report. Management's Notice of Final Action, indicating that all corrective actions have been taken, is due to the OPI within one year of the issuance of the Final Audit Report.

Communication during an OPI Audit

Communication is the key to successful completion of an OPI audit. The goal is to ensure that no unforeseen or potentially divisive issues arise during the exit conference. All issues should be disclosed and discussed prior to the exit conference. Communication begins with audit notification and does not end until the audit is resolved. Audit communication may be informal or, if required, formal briefings may be held concerning significant issues. Communication between auditee management and the auditors during

fieldwork helps the auditor understand facts and circumstances and, when applicable, clear up misunderstandings. Also during fieldwork, auditors can present initial findings, auditee management can provide additional documentation, and corrective actions can be taken. The exit conference, which includes a presentation of the audit findings, is also an opportunity to obtain auditee management's comments on the findings. Auditee management's input is important to ensure that OPI audit findings are presented fairly, that audit recommendations are reasonable and feasible, and that any errors or misrepresentations are corrected.

Disagreement on a recommended Course of Action

When the OPI determines that management's response is unsatisfactory, the Inspector General requests intervention by Senior Management. If the disagreement involves a significant issue, the Inspector General can also seek Mayoral intervention.

Types of Audit Reports issued

Audit reports are prepared in two stages. Stage one is the Draft Audit Report, which is prepared after fieldwork is completed and is normally issued only to the auditee and management, with a request that both parties provide written comments within 30 days. Stage two is the Final Audit Report, which includes management and auditee responses. The Final Audit Report aims to provide a fair, complete and accurate picture of the audited area at the time the audit took place.

Distribution of Final Audit Reports

Reports that are distributed to respective Senior Management Team members and the Mayor, with copies distributed to the auditee.

INVESTIGATIONS

The Office of Public Integrity supports integrity and efficiency in City programs by providing timely, objective, and independent investigative reports.

An investigation is a planned, systematic search for relevant, objective evidence derived from individuals, documents, tangible objects, and data. In addition to documentation of evidence discovered, an investigation typically includes identifying the basis for the original complaint, the issues involved, and citation of relevant statutes.

Staff Qualifications

MINIMUM QUALIFICATIONS:

Integrity Compliance Officer(s) must possess a Bachelor's degree in Criminal Justice or a closely related field and three (3) years of experience with a recognized law enforcement agency conducting investigations and preparing cases for prosecution, or;

Five (5) years of law enforcement or related field experience conducting investigations and preparing cases for prosecution, <u>and</u>;

Knowledge of the policies and procedures of the City of Rochester, collective bargaining agreements, Section 75 of New York State Civil Service Law, the City's Code of Ethics, and familiarity with local and federal law enforcement and prosecution agencies.

OPI Jurisdiction

The jurisdiction of the OPI extends to all matters relating to fraud, waste, and abuse by City employees, grantees, contractors, and other recipients of funds under or relating to City programs and operations. Investigations focus on violations of law or misconduct by employees and contractors, as well as allegations of irregularities or abuse in programs and operations.

These investigations may involve one or more of the following violations of laws or regulations:

- Theft, conversion, misappropriation, embezzlement, or misuse of City funds or property;
- False claims or statements;
- Forgery, falsification, or unauthorized destruction of City records;
- Bribery, extortion, or blackmail or attempted bribery or blackmail of, or by, a City employee;
- Violation of employee standards of conduct, conflict of interest; and
- Mismanagement, fraud, waste of City funds, or abuse of authority relating to City programs and operations.

Initiation of an OPI Investigation

The first step in the course of an investigation is usually receipt of a complaint of wrongdoing, or an allegation. Allegations are received from City

employees, grantee and sub grantee employees and volunteers, contractors, citizens, and public interest groups.

Investigative Guidelines

Once an allegation is received, an analysis is conducted to determine whether OPI action is warranted and, if so, what type of action is needed. The OPI considers the following factors in evaluating a complaint:

- The plausibility that a violation of a statute or regulation under OPI jurisdiction has been committed;
- The presence of indicators that the matter may significantly affect public health and safety;
- The effect of the alleged illegal or improper activity on City programs;
- Whether the matter is of interest to Senior Management Team members, or a public interest group;
- The level of the position of individuals against whom the allegations have been made (allegations of wrongdoing by high-ranking City officials are of heightened concern); and
- The effect knowledge of the investigation may have by deterring others who may consider committing similar illegal or improper acts.

If an OPI investigation is not initiated in response to a complaint but does require additional action, the matter may be referred to management. Referral to management may occur in cases where an allegation reflects issues or facts indicating a performance matter or that a technical inquiry is warranted. It is expected that management will examine the facts of the matter and take appropriate action.

This action is to be reported by the management to the OPI, as is any discovery of additional facts indicating more serious allegations. Referral to a law enforcement agency by OPI occurs when the matter is outside the OPI's jurisdiction. Allegations not warranting immediate action may be retained for use as the basis for inquiries or audits.

Investigative Process

Since the goal of an investigation is to obtain all available information on the matter or matters alleged, the procedures employed in the investigative process focus on obtaining relevant facts so as to address all aspects of a complaint. Investigative activities can include examination of documents, such as files, contracts, vouchers, reports, and memoranda. Investigators also obtain information by interviewing witnesses, subject matter experts, and the individuals against whom the allegations have been made.

Information obtained is documented in records of interviews and written statements sworn under oath. After all relevant information has been gathered, an investigative report is prepared. When there is evidence of criminal wrongdoing, the report is presented to the Rochester Police Department (RPD) for use in prosecution in City or County Court. Violations of other statutes are coordinated with Federal prosecutors.

If the investigation shows evidence of an administrative offense, the information will be provided to management for action. Management is requested to advise the OPI of the action taken, and such action is incorporated into the investigative case file.

OPI access to Documents

• Section 1. Chapter 755 of the Laws of 1907 of the City Charter provides specific authority for the OPI to have access to, and to obtain, all records, reports, audits, reviews, recommendations and other materials that relate to City programs and operations.

OPI access to Individuals

City personnel, volunteers and employees of grantees, sub grantees and contractors, mainly participate in OPI investigations by providing information to investigators in interviews. A majority of persons voluntarily consent to interviews and fully cooperate by supplying information and documents within their control. City employees who do not voluntarily consent may be ordered by a supervisor to appear for an interview with an OPI investigator. City employees who fail to comply with such an order are subject to disciplinary action. False statements made in the course of an OPI investigation are subject to criminal and administrative penalties.

Employee Rights and Warnings

Office of Public Integrity interviews are conducted in compliance with applicable laws, regulations and policies. Before beginning an interview, OPI investigators identify themselves and state the nature and purpose of the interview. When applicable, a statement of the individual's alternatives with regard to remaining silent and obtaining legal counsel are provided directly and personally to each interviewee. Statements of rights are referred to as "warnings." There are three basic types of warnings, commonly referred to as Miranda, Garrity, and Administrative. The substance of each is summarized as follows:

- 1. **Miranda**: Given when an individual is being interviewed concerning his or her own potentially criminal misconduct and is taken into custody or deprived of freedom in a significant way. This warning advises, in accordance with the Fifth and Sixth Amendments to the Constitution, that the individual is entitled to remain silent or otherwise not incriminate him or herself, and is entitled to the assistance of an attorney.
- 2. **Garrity**: Advises employees that the possibility of criminal prosecution has been removed, usually by a declination to prosecute, and that the employee is required to answer questions relating to the performance of their official duties or be subject to disciplinary action, including dismissal.
- 3. **Administrative**: Given when an employee is the subject of an inquiry that is purely administrative in nature. Informs the employee that he or she is required to answer questions relating to the performance of their official duties or be subject to disciplinary actions, including dismissal.

Legal Representation

Office of Public Integrity policy is to allow an interviewed employee who requests legal representation to have an attorney present. Employees who make such a request are allowed a reasonable amount of time to arrange this representation. Legal representation is at the expense of the individual employee or as allowed by law.

Bargaining Unit Employees — Union Representation

The Office of Public Integrity is not obligated to advise an employee of their right to union representation during an interview. Bargaining unit employees have the right to union representation during OPI interviews if the employee reasonably believes that the examination may result in disciplinary action against them and the employee requests representation. Even an employee who is not considered a "subject" of an investigation has the right to union representation if the employee reasonably believes there is a possibility of disciplinary action. It is the individual employee's responsibility to obtain Union representation. Employees are given a reasonable amount of time to arrange for union representation.

Union Representative Role

The union representative's role during an OPI interview includes conferring with the employee, clarifying matters and advising on union issues. The OPI investigator is responsible for conducting and controlling the interview. In the event of a dispute, the OPI investigator may give the employee the choice of proceeding without union representation or terminating the interview.

Who Should Report Allegations?

All City employees, volunteers and employees of grantees, sub grantees and contractors are required to support and cooperate with OPI investigative efforts.

Why Report Wrongdoing?

All City employees are required to report wrongdoing. City employees and other persons directly involved in City programs are in the best position to observe wrongdoing and have the expertise to assess wrongful actions and their consequences.

How Can Wrongdoing Be Reported?

Report any indications of fraud, waste, abuse of authority, mismanagement, or other wrongdoing directly to the OPI or through your supervisor. Managers and supervisors are responsible for ensuring that allegations of wrongdoing they receive are promptly reported to the OPI. Reports can be made by:

Contacting the OPI directly by telephone at (585) 428-7245

- Calling the Confidential HOTLINE at (585) 428-9340
- Submitting an e-mail to <u>OPI@cityofrochester.gov</u>
- Writing to:

Office of Public Integrity 85 Allen St. Suite 100 Rochester, New York 14608

What Kinds of Information Should Be Reported?

The information you provide to the OPI should be sufficient to allow evaluation of your complaint and determine if action by the OPI is warranted or referral should be made to another agency, to management, or to some other office for their action. Among the key items to be reported are:

- Contract and procurement irregularities
- Conflicts of interest
- Theft and misuse of property
- Travel fraud
- Misconduct
- Time and attendance abuse
- Misuse of Government credit card
- Abuse of authority
- Program mismanagement
- Misuse of information technology resources
- Waste of Government supplies or services

The following information should be provided:

- A brief, accurate statement of facts believed to provide evidence of wrongdoing;
- Names, addresses, and office locations of pertinent individuals and organizations;
- Dates when the suspected wrongdoing took place or is expected to occur;
- How you became aware of the information;
- Memoranda, contracts, invoices, or other related documents; and

• Names, addresses, office locations, and telephone numbers of others who may have information about the suspected wrongdoing.

Employees who report suspected misconduct should not engage in any independent inquiry or investigation and should not discuss the matter with the persons suspected of wrongdoing. After the initial contact with the OPI, employees should provide the OPI with any new or additional information of which they become aware.

How am I Protected if I Report Wrongdoing to the OPI?

You may anonymously make an allegation or request that your identity be kept confidential. If you choose to identify yourself, the City of Rochester Whistle Blower Policy provides that your name will not be revealed unless the OPI determines that the disclosure is unavoidable.

Reprisal and retaliation for reporting wrongdoing is prohibited by State law and regulations, and no action may be taken against you for having complained or disclosed information to the OPI. However, individuals may be subject to disciplinary or criminal action for knowingly making a false complaint or providing false information to the OPI.

Investigative Products Produced by the OPI

- Report of Investigation: A Report of Investigation relates facts and describes available evidence to address relevant aspects of an allegation against individuals, including aspects of an allegation that are not substantiated. Investigative reports do not contain recommendations to management as to disciplinary action. Investigative reports are given only to individuals who have a "need to know" in order to properly determine whether agency action is warranted. If administrative or disciplinary action is deemed appropriate, managers consult with the Bureau of Human Resource Management and Corporation Counsel for guidance in initiating discipline. Management is expected to advise the OPI within 90 days of receiving the investigative report as to what disciplinary or other action has been taken in response to investigative report findings.
- Letter to Management: When the OPI observes that an issue identified is a recurring or systemic problem, or one reported in other OPI products, a letter is used to identify the problem to management in this broader context. Management is requested to

- report to the OPI on managerial actions taken in response to the problems identified.
- Consideration for Debarment: If an OPI investigation leads to the conviction of an investigative target or reveals evidence of other criminal actions by that individual, the OPI may request that Corporation Counsel consider debarring or suspending that individual from participation in City procurement and nonprocurement programs. The decision on whether to debar or suspend an individual, and the length of any debarment or suspension, rests with Corporation Counsel. The Corporation Counsel is also requested to notify the OPI of all debarment or suspension decisions.

Distribution of OPI Investigative Reports

Reports of Investigation are sensitive documents. Their distribution is restricted and is subject to Freedom of Information Act exemptions as law enforcement documents. When an investigation is completed, copies of the investigative report and associated exhibits may be forwarded as appropriate to the Mayor, the Deputy Mayor, Corporation Counsel, and/or a respective Senior Management Team member. OPI will provide copies of the report to managers whose official duties present a "need to know" in connection with a particular case.