



OFFICE OF THE INSPECTOR GENERAL
Isabel Mercedes Cumming, Inspector General
City Hall, Suite 635
100 N. Holliday Street
Baltimore, MD 21202



December 1, 2021

Dear Citizens of Baltimore:

As promised, attached is my first performance review conducted by the Office of Inspector General (OIG) Advisory Board (Board). Overall, the review found I was “doing an effective job” and “revealed an office that is hard-working, highly capable, and committed to carrying out the OIG’s obligations under the Charter.” There are a couple of matters I wish to highlight from the review.

First, although I supported the legislation that created increased independence safeguards for the OIG more than three years ago, with further time and study, I have become convinced the current makeup of the Board—with a core of City elected and appointed officials—is not in line with best practice and poses clear conflicts for the OIG’s hard-won independence. A strong and independent OIG is of paramount importance for Baltimore’s future. Therefore, I pledge to continue to draw attention to the need to restructure the Board with individuals who are not directly within the OIG’s investigational purview. Board restructuring is all the more important because my term expires at the end of 2024 and the Board will be in a position to choose my successor. This restructuring could occur through a referendum that amends Article X of the City Charter. Indeed, this course of action was recognized by the Dean of the University of Baltimore Law school, who recognizes in the review that “the structure of [the Board] presents the possibility, and therefore the appearance, of such conflict,” and that, in his view, “the Baltimore City Council should consider a further amendment to the City Charter establishing [a] more indirect form of oversight” that does not include elected officials or their designees.

Second, I wish to clarify the Chairman/Solicitor’s comment in his cover letter, where he wrote that “[b]oth you and the Advisory Board agree that it is not the OIG’s role to second-guess City management decisions.” As context, the Chairman/Solicitor wrote in his review that he believed the OIG’s jurisdiction does not encompass acts of “mismanagement.” In my response, I wrote that the OIG agreed that City management decisions occur in the context of competing resources and policies, and it was not the OIG’s role to second-guess such decisions. However, I pointed out that the term *mismanagement* does not refer to this kind of routine governmental decision-making among competing priorities. Instead, “mismanagement” is a collective term that encompasses acts of waste and abuse, such as the extravagant, careless, or needless expenditure of government funds or the consumption or misuse of government property or resources, resulting from deficient practices, systems, controls, or decisions. This kind of mismanagement is clearly within the OIG’s jurisdiction according to the City Charter, which vests the OIG not only with the responsibility to investigate complaints of fraud, financial waste, and abuse, but also to “promote efficiency, accountability, and integrity in City government.” Shining a light on decisions resulting in mismanagement is an important part of any Inspector General’s office.

Finally, this review process has been constructive in that it has presented an opportunity for many of you to learn more about the workings of the OIG. I plan to start an OIG Citizen Academy next year to further this goal. The OIG has also added a feedback section on our website where you may offer comments directly to me and the office. Relatedly, during this review process, the Board opened a link on its website requesting comments from the public for more than a month. I personally asked you to participate in that important feedback measure. However, those public comments were never acknowledged in the Board’s final review. I believe there is always room for improvement and comments from you are of utmost importance to the OIG. Accordingly, I formally requested copies of all the public comments sent to the Board. I was informed last night the comments will be forwarded to this office at a later time. As always, I thank you for your belief and tips to OIG; together, we will continue make a difference.

Sincerely yours,

Isabel Mercedes Cumming
Inspector General of Baltimore City

Attachment #1

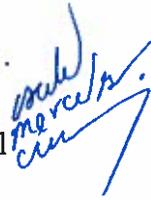
Inspector General's Response to Advisory Board

Date: November 16, 2021

To: Advisory Board

From: Isabel Mercedes Cumming, Inspector General

Re: 2021 Performance Review



I received and reviewed the draft OIG Advisory Board's (Board) 2021 Performance Review (Review), comprised of a written document by the Board's Chairman, City Solicitor James Shea (Solicitor/Chairman), as well as supplements provided by each Board member. I would like to thank the Board for producing the first annual performance review since the Charter amendment in 2018.

Before I respond to the Review's contents, I would like to share some updates made by the OIG after the Board's August 25th meeting. Based on the Board's suggestions during that meeting, the OIG compiled and published the following materials, which are available on the OIG's website:

- **Public Version of OIG Policies** – Published 10/12/21
- **OIG Priority List** – Published 10/29/21
- **OIG Strategic Plan** – Published 11/1/21

My response to the Review will address specific issues in the order they were raised, providing a reference to the relevant Review section for clarity. At the outset, however, I would like to clarify the principles and standards the OIG follows.

The Review correctly acknowledges that the OIG follows "Principles and Standards for Offices of Inspector General" published by the Association of Inspectors General ("AIG"), commonly known as the "Green Book." But the Review also references and cites "Quality Standards for Federal Offices of Inspector General," known as the "Silver Book," and "Quality Standards for Inspection and Evaluation," known as the "Blue Book." The OIG does not follow the Silver Book or the Blue Book for the following reasons.

First, the Silver Book is followed by *federal*—not state or municipal—OIGs as a supplement to the Green Book. Second, the Blue Book's emphasis on inspections and evaluations is not relevant to the OIG's current *investigative* practice. That is, under Article X of the City Charter, the OIG is responsible for: (1) investigating complaints of fraud, financial waste, and abuse in City government; and (2) promoting efficiency, accountability, and integrity in City government. City Charter, Article X, § 3(b). In carrying out this mission, the OIG can utilize inspections, evaluations, and/or investigations. Since 2018, based on available resources, the OIG has utilized investigations as the primary tool to carry out its mission, as explained in the OIG's Annual Reports and upon questioning from members of the Board on August 25th. Standards for investigations are separate from standards for inspections and evaluations within the Green Book. Accordingly, the OIG's performance should be assessed according to the Green Book's standards for investigations, not those for evaluations or inspections, and not those contained within the inapplicable Blue or Silver Books.

Response to Review Section IV – Preface

The Review stated that "[w]hile it is frustrating to the IG that her authority does not include enforcement power, it must be noted that the absence of any process following a report means that the subject of an investigation has no forum in which to contest or disprove allegations made in a report. And the discipline that comes with the responsibility to prove the finding of a report is absent." First, I am not frustrated by the OIG's jurisdiction, which does not include "enforcement power." I was a prosecutor for two decades before I became the IG, and I appreciate and value the substantive differences between these two very separate functions.

Second, relatedly, it is also untrue that “the subject of an investigation has no forum in which to contest or disprove allegations made in a report.” The OIG is only the investigator of a complaint and its process incorporates both statements from subjects and official written responses. Unless the investigation is a criminal referral, the OIG typically interviews the subject of a complaint and incorporates their statements in the report. Moreover, as explained in its October 1, 2021 letter to the Board, after OIG-initiated investigations have concluded, the final written report is provided to the action holder. The action holder is the person with authority over the report’s subject, usually the Mayor, Solicitor, City Administrator, and/or agency head. The action holder responds to the report and identifies any disagreement with the report’s findings and any corrective measures taken. The OIG then drafts and publishes a public synopsis along with the action holder’s response. Although there is a different process when an elected official requests an investigation of their conduct, the OIG nonetheless publishes any responses it receives.

Using the three examples raised in the Review, the table below shows that each agency at issue was given ample time and opportunity to respond. Each of the responses were then published with the relevant reports.

Report	Report Date	Response Date	Date of Publication
Carroll Park (20-0063 I)	2/11/2021	Recreation and Parks: 3/15/21 Finance: 3/26/21	4/1/2021
BCIT (21-0001 I)	6/10/2021	Chairman/Solicitor: 6/30/21	7/27/2021
BOPA (20-0005 I)	5/4/2021	DOT: 5/24/21 BOPA: 5/27/21	6/2/2021

Response to Review Section IV(a) - Strategic Plan

The Review indicated that the OIG’s Policy Manual lacked a “reference to focus on the elimination of systemic bias or inequity” and that the OIG’s Strategic Plan should include a focus on equity. The Green Book standards require the Inspector General and staff to “be free from personal or external impairments to independence and [to] constantly maintain an independent attitude and appearance.” *See* Green Book at 7. The OIG has incorporated that standard into its policies.

Because the OIG focuses on investigations as the means to carry out its mission, the OIG Policy Manual sets forth the kinds of issues and concerns that warrant investigation. Any preferences in investigative priority are based on issue or case type, not on individuals or groups.

That said, the OIG often receives complaints about inequity in the community or workplace. In fact, two of the examples outlined in the Review were complaints that concerned inequities. The Carroll Park case (20-0063-I) concerned the inequity of City resources being unequally distributed between more affluent City neighborhoods and those that are less affluent. The BCIT case (21-0001-I) concerned the inequity that lower-level employees are not given the same options as higher-ranking employees to rundown their accrued leave and subsequently use permission/administrative leave and other special treatment.

Response to Review Section IV(b)(i) – Jurisdiction Under the Charter

The Review assumes that the OIG’s jurisdiction does not encompass acts of “mismanagement.” The OIG agrees that City management decisions occur in the context of competing resources and policies, and it is not the OIG’s role to second-guess such decisions. However, the term *mismanagement* does not refer to this kind of routine governmental decision-making among competing priorities. Instead, “mismanagement” is a collective term that encompasses acts of waste and abuse, such as the extravagant, careless, or needless expenditure of government

funds or the consumption or misuse of government property or resources, resulting from deficient practices, systems, controls, or decisions. This definition of mismanagement has been in the OIG's online glossary since before my tenure as Inspector General. And it is clearly within the OIG's jurisdiction according to the City Charter, which vests the OIG not only with the responsibility to investigate complaints of fraud, financial waste, and abuse, but also to "promot[e] efficiency, accountability, and integrity in City government." City Charter, Article X, § 3(b).

Response to Review Section IV(b)(iii) - Examples

The complaint in the Carroll Park case (20-0063-I) alleged a lack of equity in the distribution of funds for City parks and for Carroll Park in particular because it serves a population in a lower socioeconomic bracket. The Review states that "[t]here is no description of the apparent choice made by the Department of Recreation and Parks to allocate money it was given to items other than maintenance." Although the public synopsis did not contain such a description, the full Report of Investigation (ROI), which was given to the Chairman/Solicitor, explained that funds for Carroll Park had been reallocated to pay a vendor for specific professional services. That information can be found in footnote 5 of the ROI. Moreover, even the public synopsis explains the connection between a decision to reallocate funds and perceived inequity or other abuse:

At times agencies may modify budgets or interpret allocations differently from what is advised by the Department of Finance. Those breakdowns can lead to actual or perceived examples of fraud, waste, and abuse. However, the OIG noted Carroll Park may have not received adequate City resources based on a review of Carroll Park's expenditures, the resolution and number of services requests, and the physical condition of the recreational facilities.

With regard to case 21-0001-I, the complaint alleged a lack of equity in the treatment of agency employees pertaining to separation from City service. Although the OIG appreciates the Chairman/Solicitor's interpretation and concerns in the Review, those concerns were not raised when the Chairman/Solicitor responded to the ROI. Further, the assertion that the OIG criticized the terms of the separation agreements at issue is inaccurate. Instead, the OIG analyzed each agreement and reported on the inconsistencies and lack of uniform policies that resulted in inequitable severance packages offered to Managerial and Professional Society of Baltimore, Inc. (MAPS), employees. The eight individuals outlined in the report were MAPS unrepresented and at-will employees. The report begged the question why every MAPS at-will employee who is terminated is not offered a severance package option. Additionally, the OIG's report could not anticipate whether a former employee would engage in litigation with the City because every employee has the right to sue the City if they choose. Accordingly, the OIG reported the facts and it stands by the report.

Response to Review Section IV(c) - Quality Control Processes

The Review states that "[o]ne quality control principle is that the OIG understands and assesses all sides of a matter under investigation" and that a process for internal and external report review could satisfy this principle. As both a Certified Inspector General and an Executive Officer of the AIG, I am aware of the importance of a strong quality control process, which is also a crucial part of the AIG's upcoming peer review of the OIG. The OIG's internal Standard Operating Procedures for Investigations thoroughly outlines a quality control process.

Response to Review Section IV(d) - Performance Measures

The Review points out the shortcomings of utilizing dollars identified as "waste" or "savings" as a performance measure. According to the Review, "dollars identified as saved have not actually been returned nor the expenditures prevented." The OIG agrees that "savings," by nature, are not dollars that can be returned, and are therefore different from "waste." But identifying potentially wasteful expenditures that have been prevented can indeed be a valuable performance measure for the OIG's work.

The Review references the OIG's report on the City's Banner Program (20-0050-I) as an example of "valuations [that] seem more theoretical than real." The focus of the Banner Program investigation was not on dollar amounts, but on the inability of City agencies to be careful stewards of an income-generating asset. The dollar amount put forth was the market value of the advertising at the time. Moreover, the accuracy of the dollar amount was not raised in the responses to the OIG's report. The OIG will clarify its definition of waste and savings within the policy manual and in its update to the BBMR Budget Publication.

The Review also suggested that tracking actual changes in City policies and procedures would be a worthy OIG performance measure. However, under the Charter, the OIG lacks the authority to change City policies and procedures outside the OIG. Although the OIG's investigative reports may influence an agency to reconsider its policies or procedures, there is no guarantee the agency will do so. Accordingly, it would be inappropriate to assess the OIG's performance base on a metric over which it has no control.

Response to Review Section IV(e) - Investigative Coordination with Agencies

The Review suggests that the OIG is deficient in "leveraging" the resources of other City agencies. However, the OIG often reaches out to City agencies for background information prior to and during an investigation. Moreover, the OIG cannot complete any preliminary inquiry or investigation without communicating directly with agencies and employees who have knowledge of the subject matter. As stated during the August 25th Board meeting and the budget review, the OIG has worked closely with numerous City agencies throughout the last four years, including the Law Department, the Office of the Comptroller, and the many agencies under the Mayor's Office.

Additionally, although the nature and scope of OIG investigations are usually confidential and cannot fully be shared, the OIG does its best to determine whether the subject and/or subject matter of a complaint has been investigated prior to the OIG's involvement. The OIG also regularly refers complaints outside of its jurisdiction to other agencies.

Response to Review Section IV(g) - Budget

The OIG plans to submit its budget material to the Board at the end of January.

Response to Review Section V - Independence

I understand that the current makeup of the Board is mandated by Article X of the City Charter. I also acknowledge that I supported Article X. I also support OIG independence, and Article X was progress on that front. However, with time and study, I have come to realize that the current makeup of the Board—with a core of City elected and appointed officials—is not in line with best practice and poses obvious conflicts for the OIG's independence. I will therefore continue to draw attention to the need to reconstitute the Board with individuals who are not directly within the OIG's investigational purview.

As an additional note on this front, the Review states that the Board has not received a request from the OIG for any specific Board member to be recused, implying, that any such conflict must not exist. However, the Board can appreciate that requesting a specific recusal, not only could jeopardize an OIG investigation, but could be contrary to confidentiality mandates.

Conclusion

I have been honored to lead the OIG during the past four years. I thank the Board for its time and attention, and appreciate that the Review found I am doing an effective job with a team that is hard working and highly talented. I remain committed to carrying out the OIG's important obligations under the Charter.

Attachment #2

Advisory Board Performance Review

**Inspector General Advisory Board
Performance Review**

November 2021

CITY OF BALTIMORE

BRANDON M. SCOTT,
Mayor



DEPARTMENT OF LAW
JAMES L. SHEA, CITY SOLICITOR
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

November 24, 2021

Isabel Mercedes Cumming
Baltimore City Inspector General
City Hall, Suite 635
100 N. Holliday Street
Baltimore, MD 21202

Dear Inspector General Cumming:

We write today to provide you with the Office of the Inspector General (“OIG”) Advisory Board’s first ever annual performance review. The separate responses of the seven Board members that follow make up the Advisory Board’s final performance review. The performance review is meant to be a helpful aid in the discharge of your duties as Inspector General. As stated in the Chairman’s response, we are pleased that you and your office are doing an effective job as OIG, and we are happy to see the steps that you have already taken as a result of the Advisory Board’s suggestions, such as publishing a strategic plan.

We have also reviewed the Response that you provided on November 16th to a draft performance review. As a general matter, we see a number of areas of agreement. Both you and the Advisory Board agree that it is not the OIG’s role to second-guess City management decisions. We also note the emphasis that your office places on equity and encourage you to consider that in your strategic plan. Your response also confirms the importance that should be placed on quality control.

There are areas of disagreement reflected in your Response. At times, the Response may have misunderstood the points that were made in the Review. For example, you note that the Chairman’s Review cites standards applied to federal inspectors general. Those standards merely supplemented the Green Book, which contains the primary guidelines for the OIG. That said, we are reassured that you did not disagree with the principles embodied in any of the cited federal standards. Elsewhere the Response parses issues that were identified in individual OIG reports. Suffice to say, we may not always agree on every detail. That is understandable and perhaps inevitable. What we are most gratified to see is the overall agreement on larger principles, and your willingness to implement several of the Board’s suggestions.

Thank you for your cooperation and attention in concluding this first ever performance review. Your commitment to your job and to this office is both evident and highly commendable. We look forward to continuing to work to support you as required by the Charter.

Sincerely,

CITY OF BALTIMORE
BRANDON M. SCOTT,
Mayor



DEPARTMENT OF LAW
JAMES L. SHEA, CITY SOLICITOR
100 N. HOLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

Handwritten signature of James L. Shea in blue ink.

James L. Shea
Baltimore City Solicitor
(Chairman)

Handwritten signature of Eric Costello in blue ink.

Eric Costello
Baltimore City Council

Handwritten signature of Michael Huber in blue ink.

Michael Huber
Mayor's Chief of Staff

Handwritten signature of Erika McClammy in blue ink.

Erika McClammy
Deputy Comptroller

Handwritten signature of Sharon Middleton in blue ink.

Sharon Middleton
Baltimore City Council

Handwritten signature of Donald Tobin in blue ink.

Donald Tobin
Dean of University of Maryland School of
Law

Handwritten signature of Ronald Weich in blue ink.

Ronald Weich
Dean of University of Baltimore School of
Law

EXHIBIT 1

OIG ADVISORY BOARD: 2021 PERFORMANCE REVIEW

I. Introduction

In November of 2018, the people of Baltimore voted to approve an amendment to the City's Charter creating an independent Office of the Inspector General ("OIG"). While Baltimore City's OIG has existed since 2005, the 2018 Charter amendment restructured the office, removing it from the Law Department and making it a stand-alone body. Under the Charter, a seven-member Advisory Board is charged with meeting "at least once annually to review the performance of the Inspector General." Charter Art. X, § 2(f). In 2021, Solicitor Jim Shea convened the Advisory Board for the first time. The Board met twice and reviewed publicly available material before preparing performance reviews of the IG. This performance review, authored by Solicitor Shea, the Chair of the Advisory Board, will 1) set forth the Advisory Board's responsibility to conduct the performance review as described in the Charter; 2) describe the steps taken pursuant to that review; 3) present an evaluation of the IG's performance; and 4) discuss the importance of the OIG's independence.

Overall, this performance review finds that the IG is doing an effective job. The review has revealed an office that is hard-working, highly capable, and committed to carrying out the OIG's obligations under the Charter. The issues outlined below are meant as constructive feedback, not to criticize or diminish the IG's work. As Chair of the Advisory Board, I hope to serve as a partner moving forward in aiding the OIG wherever possible in carrying out its mission under the Charter.

II. Charter Authority

a. **Composition of the Advisory Board**

Article X of the Charter establishes the independent Office of the Inspector General and sets forth the composition and the responsibilities of the Advisory Board. Pursuant to § 2(a), the Advisory Board consists of the following members:

- (i) the Mayor, or the Mayor's designee;
- (ii) the City Solicitor, who serves as the Chair of the advisory board and may assign staff to the Advisory Board from the Law Department;
- (iii) the Comptroller, or the Comptroller's designee;
- (iv) the City Council President, or the President's designee; and
- (v) a member of the City Council appointed by the City Council President.

In addition, the Mayor and City Council President may jointly appoint the Deans of the University of Maryland and the University of Baltimore School of Law if the Mayor and City Council President agree to the appointment.

b. **Responsibilities of the Advisory Board**

The Charter, as stated above, charges the Advisory Board with four primary responsibilities. First, the Advisory Board has the power to appoint the Inspector General. Article X, § 2(a)(1). Because the current Inspector General was already in office, this authority will not

be exercised until the current IG's term ends on November 6, 2024 (six years after the effective date of Article X). Article X, § 6(b). Second, the Advisory Board has the authority to remove the IG from office by an affirmative vote of at least 4 members for misconduct in office, persistent failure to perform the duties of office, or conduct prejudicial to the proper administration of justice. Article X, § 2(d). Third, the Advisory Board must meet at least once annually to review the performance of the Inspector General. Fourth, the Advisory Board must meet to review the IG's proposed budget for the purpose of assessing and determining whether the proposed budget provides sufficient funding to meet the duties of the office. Article X, § 4(b). This summary addresses the third responsibility: the performance review.

III. 2021 Annual Performance Review (Methodology)

a. Board Composition

In accordance with Article X § 2(a), the following persons constitute the current makeup of the Advisory Board:

1. Michael Huber, Mayor's Chief of Staff (Mayor's designee)
2. James Shea, City Solicitor (Chair)
3. Erika McClammy (Comptroller's Designee)
4. Sharon Middleton (City Council President's designee)
5. Eric Costello (City Council President's appointee)
6. Dean Donald Tobin (Joint appointee)
7. Dean Ronald Weich (Joint appointee)

b. Meetings

In order to perform the 2021 performance review, the Advisory Board members met on July 13 and August 25, 2021. The first meeting was largely an introductory meeting, during which the Board Members discussed the scope of the review. The meeting was a public meeting under the Open Meetings Act, and was broadcast to the public on Charm TV.¹ At the meeting, the Board Members discussed certain ground rules for the performance review and committed to a full exchange with the IG and her staff before concluding the performance review later in the year. The Advisory Board met a second time on August 25, 2021, to hear from the IG and ask questions of the IG and two members of her staff. This was also broadcast to the public on CharmTV.²

c. Materials Reviewed by Advisory Board

The Advisory Board considered a number of materials over the course of the review. These included the following:

¹ July 13, 2021 meeting, online at [Organizational Meeting of the Inspector General Advisory Board - 07/13/2021 - YouTube](#).

² August 25, 2021 meeting, online at [Meeting of the Inspector General Advisory Board 08.25.2021 - YouTube](#), at 37:00.

1. The OIG's Annual Reports from 2018 – 2021.
2. Materials related to the OIG's FY 2022 Budget provided by the OIG May 2021, including the email response from the OIG dated May 25, 2021.
3. The Structure and Effectiveness of the Baltimore City Office of Inspector General: Lessons Learned and the Path Forward, Pearre and Nilson, November 2017 (the "Abell Report").

Additionally, the Advisory Board reviewed several publicly available documents that provide standards and guidelines for inspectors general. First, the Advisory Board reviewed the "Principles and Standards for Offices of Inspector General" published by the Association of Inspector General ("AIG"), May 2014 revision (The "Green Book"). The Association of Inspectors General was organized in 1996 to promote public accountability and to help develop a standardized set of practices, policies, and ethics among inspectors general. The AIG publishes and periodically updates generally accepted principles and standards, also known as the Green Book. Provisions from the Green Book are cited throughout this performance review.

Second, the Advisory Board reviewed materials from the Council of Inspectors General on Integrity and Efficiency, including the "Quality Standards for Federal Offices of Inspector General" published, August 2012 (the "Silver Book"), as well as the "Quality Standards for Inspection and Evaluation", published December 2020 (the "Blue Book"). The Silver Book and the Blue Book were developed for federal IGs, but both are a helpful supplement to the Green Book, and they, too, are cited in this review.

Third, the Advisory Board reviewed the "Statutory Inspectors General in the Federal Government: a Primer" published by the Congressional Referral Service, January 3, 2019. Like the Silver and Blue Books, the CRS Primer is intended for IGs in the federal government, but it provides useful background about the position.

In addition, the IG supplemented her August 25, 2021 testimony by providing an updated OIG Policy Manual and clarifications to her earlier testimony in an email on October 1, 2021. Lastly, the Advisory Board staff reviewed the OIG's website, particularly the glossary of terms, and considered those materials in the performance review.

IV. Performance Review from Advisory Board Chair

The authority of the IG is appropriately broad, and the influence of the IG is substantial, as the IG's recent performance has demonstrated. The IG is viewed as objective and the IG's credibility is high. The media widely, promptly and in detail, publicizes each IG report. These are important attributes and should continue. But these attributes are also themselves reasons to ensure that such influence is accompanied by scrupulous accuracy. *See* Green Book at 3 ("While the scope of this oversight varies among Offices of Inspectors General (OIGs), the level of public trust, and hence public expectation, embodied in these offices remains exceptionally high."); *see also* Blue Book at 15 ("Inspection reports [are to] present factual data accurately, fairly, and objectively, and present findings, conclusions, and recommendations in a persuasive manner.").

There are additional reasons for the IG to strive for accuracy. While it is frustrating to the IG that her authority does not include enforcement power, it must be noted that the absence of any process following a report means that the subject of an investigation has no forum in which to

contest or disprove allegations made in a report. And the discipline that comes with the responsibility to prove the findings of a report is absent.

As a result of its appropriate independence, the OIG is an unsupervised position because no one outside of the IG's office is charged with overseeing investigations or reviewing them when completed. That independence carries with it a heightened burden on the office itself to ensure high quality in its performance. Finally, the consequences of an IG report could well result in significant liability to the City. This is a price that must be paid for an effective IG, but it reinforces the need for the IG to be sure that her reports are correct and accurate, lest unnecessary liability be imposed on the City. The description of these principles is not an accusation that IG has failed in any particular way, but are reminders of the high stakes at play.

There are some areas where the OIG might look for ways to increase her effectiveness and ensure even more consistent accuracy in her reports.

a. Strategic Plan

Structured planning for the future, identifying principles and priorities, would enhance the IG's effective discharge of the duties enumerated in the Charter. Virtually all guidance about the proper operation of an effective inspector general—including the manual that the IG herself cites—call for inspectors general to engage in strategic planning. The Green Book's section on Planning states "The OIG should maintain a planning system for assessing the nature, scope, trends, vulnerabilities, special problems, and inherent risks of agency programs and operations and for use in establishing the goals, objectives, and tasks to be accomplished by the OIG within a specific time period." Green Book at 10. The reason for strategic planning is to ensure that the OIG's limited resources are expended "as efficiently and effectively as possible." *Id.* Likewise, the Blue Book emphasizes the importance of planning, stating "Planning also helps ensure inspection objectives are clear and adjusted, as appropriate, as the work proceeds. Coordination, research, and work planning should be thorough enough to ensure that inspections will meet inspection objectives." Blue Book at 8.

The value of enterprise-wide planning is manifold but two benefits seem particularly apt here:

1. When resources are limited and the number of matters plentiful, priorities of what to investigate are helpful. *See* Green Book at 10.
2. An overall assessment enables an IG to focus on the areas where investigations are likely to have the greatest impact through individual and cumulative investigations. *See* Green Book at 10.

In short, IG best practices call for a thoughtful, proactive, and forward-looking assessment of the issues with a goal that an IG should focus attention on ways to be even more effective.

At the August 25th meeting, the IG was asked whether her office had a strategic plan. The IG responded that her strategic plan was "to be the best inspector general office in the United States."³ Later she said that equity was not taken into account. The OIG Policy Manual of

³ August 25, 2021 meeting, online at [Meeting of the Inspector General Advisory Board 08.25.2021 - YouTube](#), at 37:00.

September 2021 also lacks any mention of strategic planning and speaks to priorities only in assessing the facts of a particular complaint. *See* Policy Manual Section 9, Investigative Case Priority. Nowhere is there a reference to a focus on the elimination of systematic bias or inequity.

The IG may consider the day-to-day decisions about whether to move forward with an investigation to implicitly include an evaluation of the relevant priorities at stake, but best practices call for a more explicit process. *See* Green Book at 10 (“Based on the above analysis, the OIG should set priorities and create action plans.”) A strategic plan, periodically refreshed, would enable the IG to focus on issues and areas of greatest importance, including equity, without compromising the impartiality that is required for individual investigations. It would also enhance coordination with other oversight functions, both internal (*e.g.* the City’s Audit function) and external. The myriad problems in the City of Baltimore could then be more effectively addressed strategically in addition to responding to individual complaints.

b. Jurisdictional Analysis

Adhering to the Charter’s stated jurisdiction will also help the OIG be strategic with its limited resources. All agencies have more work than resources. The OIG is no exception, as its recent budget proposal described in some detail. To ensure those resources are better deployed, the OIG should work to identify both at the outset, throughout investigations, and at their conclusion, that the matters being investigated are properly within the jurisdiction set forth in the Charter.

i. Jurisdiction Under the Charter

The Charter defines the OIG’s jurisdiction as extending to the investigation of “fraud, financial waste and abuse.” All these are terms with distinct legal meaning. Of note, the common law definition of waste is an action “which is so one-sided, no reasonable business person would think the consideration adequate.” *See, In re Walt Disney Co. Derivative Litig.*, 907 A.2d 693, 747 (Del. Ch. 2005), *aff’d*, 906 A.2d 27 (Del. 2006). A person commits waste “by intentionally, irrationally squandering or giving away assets.” *See Taylor v. Kissner*, 893 F. Supp. 2d 659, 673 (D. Del. 2012). Courts that have considered the definition of “waste” therefore set a high bar—one which does not capture more run-of-the-mill mismanagement.

A number of OIG-enabling statutes from outside Baltimore establish jurisdiction for respective OIGs over waste, fraud, abuse and mismanagement. But the City Charter leaves out mismanagement, presumably by intention. Nevertheless, the OIG website includes “mismanagement” in its glossary of terms, among “definitions for various allegations, which the OIG can review and investigate, along with definitions of other relevant terms.”⁴ It is doubtful that this slight expansion of the jurisdiction of the office is significant. The main point is that second guessing management decisions does not necessarily fall within the definition of waste, fraud and abuse. Instead, it has the potential to add to the OIG’s burden and create unhelpful friction with other City agencies, without focusing attention on more serious forms of misconduct that the OIG must consider pursuant to the Charter.

ii. Matter Selection

⁴ Office of the Inspector General, Glossary of OIG Terms, online at <https://inspector-general.baltimorecity.gov/what-report>.

Testimony at the August 25th hearing and a review of the OIG’s policy manual provides insight into the process whereby the OIG determines what matters to pursue. OIG staff testified that investigations begin exclusively by receiving a complaint. OIG staff review complaints to determine whether they allege waste, fraud or abuse. A decision is made at that point whether to undertake the investigation, refer it to a third party, or decline. The OIG’s Policy Manual did not provide any further detail on this process.

Absent from this process is any documentation of how a matter fits within the OIG’s definition of waste, fraud, or abuse. This could lead to investigations and reports that address issues that do not readily fit within the definition of waste, fraud, or abuse. As above, this is not meant to be a criticism of the OIG’s past selection of matters, but a suggestion that the focus going forward should be on the more serious transgressions. Taking up matters that fall short of waste, fraud, and abuse, deflects the OIG’s attention away from the more deleterious misdeeds. This goes hand in hand with, and would be reinforced by, more strategic planning.

iii. Examples

Two examples may be illustrative. The OIG’s report synopsis on investigation 20-0063-I addressed the expenditure of resources by the Department of Recreation and Parks in Carroll Park. The report was critical that in FY 2019, of the \$85,295 budget allocation to Carroll Park, only \$46,866.37 was expended. But elsewhere, the synopsis noted that total budget (of \$1,514,605) was exceeded by expenditures on Carroll Park (\$1,538,998). There is no clear statement of the definition of waste, fraud, or abuse, or how the expenditures—or lack thereof—constituted waste, fraud and/or abuse. There is no description of the apparent choice made by the Department of Recreation and Parks to allocate the money it was given to items other than maintenance. That decision could well have been within management discretion. Either way, not expending all the funds that have been authorized for a specific project does not align with any definition of waste, fraud and abuse that the Advisory Board has identified. Instead, it seems to simply substitute the OIG’s opinion for how best to allocate agency resources.

In another investigation, 21-0001-I, the OIG reported that Baltimore City Information Technology (“BCIT”) entered into eight severance agreements with employees between May 2019 and February 2021. The report criticizes the terms of the agreements, each of which was approved by the Mayor’s Office, the Law Department (BCLD) and the Department of Human Resources (“DHR”). The total dollar value of the consideration flowing to the employees is calculated in the report to be \$261,998.02, which is identified as “potential waste”. There is no assessment of the likelihood of litigation by the eight employees or what the damages and costs would have been if the claims had been litigated. Therefore there is no way to be sure that the management decision to settle these claims constituted waste. The OIG may have been correct that the settlements were injudicious but it is difficult to see this as other than second guessing management’s decision to settle.

c. **Quality Control Processes**

As noted above, there is a high premium on accuracy of the facts determined via investigation. All of the relevant guidelines for OIGs, starting with the Green Book, call for robust quality assurance and quality control programs. Green Book at 15-16 (“The OIG should establish procedures to ensure adequate quality control over its work. Quality control is an inherent responsibility of the OIG supervisors.”); Blue Book at 19 (“Inspection organizations must

implement a system of quality control that provides the inspection organization with reasonable assurance that the organization and its personnel follow the Blue Book when conducting inspections.”); Silver Book at 25 (“Because OIGs evaluate how well agency programs and operations are functioning, they have a special responsibility to ensure that their own operations are as effective as possible.”). One quality control principle is that the OIG understands and assesses all sides of a matter under investigation. Doing so, particularly where there is no later adjudication by a neutral judge, promotes accuracy. A process to review draft reports both internally and where possible, externally, would help accomplish this.

The OIG’s general practice of submitting a draft report to the agency (or agencies) investigated and soliciting a response is helpful in this regard. Perhaps the report review process should be outlined in the OIG’s Policy Manual. Of course, the nature of investigations limits the usefulness of such transparency, but the goal is to “promote efficiency, accountability and integrity in the City government,” not just to identify and punish wrongdoers. The 2021 OIG Annual Report announced that there will be an external review of OIG next year, done by a team from AIG. That is good news. It could be that a review by someone or some entity with greater knowledge of the City, its agencies and the actual work of the City’s OIG would be an important complement to that external review.

d. Performance Measures

The OIG has compiled and published an impressive array of performance metrics over the past three years. The number of complaints, investigations and reports has markedly increased each year, as have the dollars identified as “wasted.” The dollar amounts for the latter statistic have some shortcomings. The dollars identified as saved have not actually been returned, nor the expenditures prevented. Some of the valuations seem more theoretical than real. In investigation 20-0050-I, for example, most of the \$450,000 dollars identified were for banners displayed on City light poles that were left up after the contracts expired in March 2020, at which point the pandemic eliminated their advertising value. Not only had the two commercial entities not agreed to a continued display of the banners, but the prices used in the report were based on March 2020 rates never agreed to by the commercial entities (and apparently not applied to anyone else). Further, the Law Department informed the OIG’s office that there was some question about the City’s authority to collect revenue under the program. Taken together, it is highly unlikely that the City could have or should have collected the \$450,000. Nevertheless, the OIG conclusively documents this as “waste” and later factors the amount into the \$7 million that the OIG reports as savings or waste identified in FY 2021.

The upward spiral of the metrics also poses a challenge for the future. A slowing or leveling off of the increases should not be seen as a failure or even a lack of progress. Some thought needs to be given to where the measurements go from here. Additional and different metrics might be considered. Causing an actual change in policy or procedure is an excellent outcome, demonstrably achieved in some instances. Perhaps metrics could be fashioned around that concept. Instead of simply tabulating dollars “saved” without objective verification, suggesting policy changes and then undertaking efforts to follow-up to determine whether remedial measures have been undertaken would better align with national OIG best practices. *See* Green Book at 11, 18, 19 and 31. Without enforcement authority, such follow-up might be a thankless, occasionally unproductive task, but with a modicum of good will and the IG’s ability to cast light on City

practices, a periodic reexamination of problems identified, could amplify and extend the IG's positive influence.

e. Investigative Coordination with Agencies

The OIG might enhance its effect and even more efficiently provide solutions to the problems it encounters through a greater leveraging of other City agencies. *See* Green Book at 17 (“The OIG should coordinate its activities internally and with other components of government to assure effective and efficient use of available resources.”); Silver Book at 32 (“The OIG should coordinate its work internally and with other groups (both inside and outside the agency) performing independent evaluations of agency operations and programs.”).

By way of example, DHR has direct responsibility for developing, amending and applying the provision of the Administrative Manual. Information from DHR, including the history and application of the provision in question, could prove helpful to the OIG, even if it is just a time-saving, efficient way to obtain the information. Audit performs a different function from the IG. And yet its role can be related. A number of OIGs in other jurisdictions incorporate the audit function in their offices. At a minimum, Audit should assist where the OIG encounters an accounting or internal control issue and would like assistance.

f. Productive Agency Relationships

While an effective OIG should not set out to win a popularity contest, it should also strive to maintain collaborative, working relationships within the City's workforce. As the Blue Book observes in § 3.2 (b) and (c), OIG investigations can be disruptive:

3.2 Requirement: Coordination – Inspectors must coordinate proposed inspections with appropriate organizations as determined by the inspection organization.

3.2b Inspection organizations should foster communication at all levels. Inspectors should appropriately communicate information about the process and the nature of the inspections to the various parties involved in the inspection. Inspectors should use their professional judgment and comply with their respective organizations' policies and procedures to determine the form, content, and frequency of communication with those involved.

3.2c Inspection organizations should strive to conduct inspections with as minimal disruption to the operations of the inspected entity as possible.

See Blue Book at 8; *see also* Silver Book at 32.

Although consternation among those being investigated is inevitable (and occasionally desirable or necessary), care should be taken to avoid as much as possible a lingering resentment, at least at the management level. Because some complainants are workplace malcontents, the risk of such resentment is real. There is value in establishing trust between OIG and the agencies it inspects: more and better information should result and effective follow up is more likely.

There is reference in Section 6 of the OIG manual to handling interviews “in a manner that respects the rights of those interviewed,” but there is little else in the OIG Policy Manual that promotes collaboration between the agencies and the OIG. Building on these principles would be likely to serve, not impair, the OIG's ability to carry out its mission.

g. Budget Process

It is also the Advisory Board's duty to review the OIG budget before it is submitted to the Board of Estimates (usually in March). The Advisory Board's budget review is "for the purpose of assessing and determining whether . . . the proposed budget provides sufficient funding to meet the duties of the Office." In order to effectively review the OIG budget in time, it would be helpful to receive it sometime before March; ideally, before the end of the previous calendar year. That of course is dependent on the OIG's schedule. We look forward to working with the OIG at that time.

V. Independence

a. Importance of OIG Independence

The OIG must be independent in order to effectively promote "efficiency, accountability and integrity" by "investigating complaints of fraud, financial waste and abuse in City government." Charter Art. X § 3 (b). It is the Chair's view that the Advisory Board embraces the paramount necessity of OIG independence. It considers that promoting the IG's independence is one of its fundamental responsibilities.

b. Challenges to the Makeup of the Advisory Board

In the OIG's letter to the Advisory Board dated July 9, 2021, the OIG challenged the Advisory Board for two reasons: 1) because the Board members lacked the requisite knowledge and expertise to perform the evaluation (that was the point of its quotation from the President of the AIG), and 2) because the Board had members who were within the investigative jurisdiction of the OIG (all of the members are within it see Charter Art. X § 3 (a) (1)(2)(4) and (6)). The OIG's letter of July 15, 2021 retracted point 1) about the board members' qualifications.

The Advisory Board has received no request that any specific Board member be recused from considering the OIG's evaluation. The Advisory Board has conducted its own internal appraisal and sees no reason to ask any Board member, all of whom are qualified and properly appointed, to step down. Finally, it is noteworthy that the makeup of an OIG reviewing board is not listed in any of the IG manuals as a barrier to independence. *See* Green Book at 9; Blue Book at 3-4; Silver Book at 13.

As the IG conceded in a letter on October 1, 2021, the IG has continued to support the Amendment creating today's Art. X of the Charter. But that correspondence also said that "The advisory board's composition of elected officials and/or their designees is not aligned with best practices throughout the nation and even Baltimore City." The letter cited the City Ethics Board established over a decade ago as a better model.

Leaving aside the very different nature of the duties of the Ethics Board and the Advisory Board's responsibility to review the IG's performance, the OIG made assertions in the 2019 Annual Report, long after the "better example" of the Ethics Board was in place, that the Advisory Board's make up was itself one of the several factors that ensured the OIG's independence. Page six of that report is entitled "What Does Independence Mean?" There are four points listed below the title, presumably answering the question posed. The third point reads as follows:

The advisory board consists of the Mayor, City Solicitor, Comptroller, City Council President, a member of the City Council appointed by the City Council President, the Dean of the University

of Maryland School of Law and the Dean of the University of
Baltimore School of Law.

That sentiment seems correct. It is a duty of the Advisory Board to play a part in preserving the independence of Baltimore City's OIG.

VI. Conclusion

Baltimore will not reach its full potential without an effective Inspector General. The Baltimore City Office of the Inspector General is well on its way to meeting that standard. As stated previously, the current office is hard-working, capable, and committed to its mission. This first annual performance review is presented in a spirit of collaboration and with a goal of strengthening the IG to better serve the City of Baltimore. As Chair of the Advisory Board, I stand by ready to be a partner to the OIG in doing so.

The foregoing is a verbatim re-statement of the draft performance review provided to the Inspector General on November 3, 2021.

EXHIBIT 2

Shea, James (Jim) L.

From: Shea, James (Jim) L.
Sent: Wednesday, November 24, 2021 4:40 PM
To: Shea, James (Jim) L.
Subject: FW: Annual Performance Review

From: Costello, Eric (City Council) <Eric.Costello@baltimorecity.gov>
Sent: Monday, November 22, 2021 5:34 PM
To: Shea, James (Jim) L. <James.Shea@baltimorecity.gov>; Huber, Michael (Mayor's Office) <Michael.Huber@baltimorecity.gov>; McClammy, Erika (Comptroller) <Erika.McClammy@baltimorecity.gov>; Middleton, Sharon (City Council) <Sharon.Middleton@baltimorecity.gov>; Donald Tobin - U MD Carey School of Law (DTobin@law.umaryland.edu) <DTobin@law.umaryland.edu>; Ronald Weich <rweich@ubalt.edu>
Cc: Salsbury, Stephen <Stephen.Salsbury@baltimorecity.gov>
Subject: RE: Annual Performance Review

Mr. Solicitor, I concur with your review and have no additional information to add.

Eric T. Costello
Baltimore City Council, 11th District
(m) [443-813-1457](tel:443-813-1457) | (o) [410-396-4816](tel:410-396-4816)
(e) eric.costello@baltimorecity.gov
[Twitter](#) | [Facebook](#) | [Instagram](#)

Salsbury, Stephen

From: Costello, Eric (City Council)
Sent: Tuesday, October 26, 2021 12:07 PM
To: Shea, James (Jim) L.; Huber, Michael (Mayor's Office); McClammy, Erika (Comptroller); Middleton, Sharon (City Council); Tobin, Donald; 'Ronald Weich'
Cc: Salsbury, Stephen
Subject: RE: Draft Performance Review

Mr. Solicitor, I concur with your review and have no additional comment to provide. Thanks, EC

Eric T. Costello
Baltimore City Council, 11th District
(m) [443-813-1457](tel:443-813-1457) | (o) [410-396-4816](tel:410-396-4816)
(e) eric.costello@baltimorecity.gov
[Twitter](#) | [Facebook](#) | [Instagram](#)

From: Shea, James (Jim) L. <James.Shea@baltimorecity.gov>
Sent: Monday, October 25, 2021 5:29 PM
To: Huber, Michael (Mayor's Office) <Michael.Huber@baltimorecity.gov>; McClammy, Erika (Comptroller) <Erika.McClammy@baltimorecity.gov>; Costello, Eric (City Council) <Eric.Costello@baltimorecity.gov>; Middleton, Sharon (City Council) <Sharon.Middleton@baltimorecity.gov>; Tobin, Donald <dtobin@law.umaryland.edu>; 'Ronald Weich' <rweich@ubalt.edu>
Cc: Salsbury, Stephen <Stephen.Salsbury@baltimorecity.gov>
Subject: Draft Performance Review

Attached is my draft performance review of the IG. Please review it and provide me and Stephen with your review. You should create a separate document for your review, even if it also references my review. You are free to agree, disagree, or state that you have no opinion on items within my review.

I intend to submit all of our reviews to the IG, identifying the author of each.

Please let me know if you cannot provide me with your review by COB next Monday, November 1.

Jim

James L. Shea
City Solicitor
Baltimore City Department of Law

100 N. Holliday Street, Suite 101
Baltimore, MD 21202
james.shea@baltimorecity.gov

Office: (410) 396-8393
Cell: (443)721-7020
Fax: (410) 659-4077



DEPARTMENT OF LAW

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EXHIBIT 3

Shea, James (Jim) L.

From: Shea, James (Jim) L.
Sent: Wednesday, November 24, 2021 4:54 PM
To: Shea, James (Jim) L.
Subject: FW: Annual Performance Review

From: Huber, Michael (Mayor's Office) <Michael.Huber@baltimorecity.gov>
Sent: Wednesday, November 24, 2021 4:51 PM
To: Shea, James (Jim) L. <James.Shea@baltimorecity.gov>
Subject: RE: Annual Performance Review

Thank you, Mr. Solicitor. I stand by my and confirm my initial review.



*Office of the Mayor
Brandon M. Scott*

Michael G. Huber
Chief of Staff
Mayor's Office

100 N. Holliday Street, Room 230
Baltimore, MD 21202

Michael.Huber@baltimorecity.gov

Cell: (443) 474-3093

Salsbury, Stephen

From: Huber, Michael (Mayor's Office)
Sent: Wednesday, November 3, 2021 10:00 AM
To: Shea, James (Jim) L.
Cc: Salsbury, Stephen
Subject: OIG Performance Review

Baltimore has heaps of challenges that Mayor Scott is determined to solve, and the administration is determined to tackle these matters equitable through transparency, accountability and integrity. Mayor Scott believes the Office is essential to Baltimore's progress.

Mayor Scott served as a co-sponsor of the [charter amendment](#) that established an independent Office of Inspector General, which the voters approved in 2018. Moreover, the Mayor's support for a strong Inspector General was reinforced through legislation he supported that strengthened protections for whistleblowers (19-0377 & 21-0093), tightened the City's financial disclosure requirements (19-0376), increased the OIG's authority by placing the Board of Ethics under that Office's responsibility (19-0378), among others.

The Inspector General Advisory Board is responsible for conducting a thorough performance review for the Inspector General and assessing the Office of the Inspector General's budget. This exhaustive process helps the general public understand the internal operations and significance the Office of the Inspector General plays in Baltimore City government.

As Mayor Scott's designee member on the Advisory Board, I have a greater responsibility to elevate the noble charge of the Office of the Inspector General and shed light on the everyday tasks that often go overlooked by the public. I believe, and have stated time and again, that the Office should be active and effective. Accordingly, it is critical to understand how the Office determines which complaints to pursue or disregard in order to honorably fulfill my role on the Advisory Board.

I support the sentiments expressed in Solicitor Jim Shea's performance review of the Office, and believe a refocus of the Office's charter-mandated scope will help improve accountability and integrity – core tenets of the Scott administration. We look forward to continuing to work with the Office of the Inspector General to ensure the responsible stewardship of City resources.

Michael G. Huber
Chief of Staff
Mayor's Office



100 N. Holliday Street, Room 230
Baltimore, MD 21202
Michael.Huber@baltimorecity.gov
Cell: (443) 474-3093

*Office of the Mayor
Brandon M. Scott*

EXHIBIT 4



Office of the Comptroller

To: James Shea, Chair OIG Advisory Committee
From: Erika McClammy, Deputy Comptroller and member of OIG Advisory Committee
Date: November 24, 2021
Re: Draft Performance Review

Thank you for preparing a performance review for Inspector Cumming on behalf of the OIG Advisory Committee. I have reviewed both the draft and final versions of the review as well as the response submitted by Inspector Cumming. Overall, I concur with the review of the Inspector General's performance and have provided my feedback below in response to points laid out in that document.

IV a. Strategic Plan

I strongly agree with the recommendation that the Inspector General engage in developing a strategic plan for the office. As pointed out, both the Green and Blue books contain clauses that stress the importance of planning. Strategic planning is a necessary task for any city agency funded by taxpayer dollars. Obviously, much of the work of the OIG is in response to queries, complaints or requests for investigations. In the presentation on August 25, the Inspector and the staff discussed staffing needs which had changed over the course of a year. Making decisions about staff composition requires some level of planning which can only be aided or more efficiently guided by an overall comprehensive strategic plan which would also ensure the best use of limited resources.

IV e. Investigative Coordination with Agencies

Inspector Cumming slightly touched on the Office's relationship with the Department of Audits. Although some jurisdictions combine inspector general and audit functions into one office, there is nothing that currently prohibits additional interaction between both agencies. As an example, the Inspector General and the City Auditor coordinate monitoring and follow up of complaints sent to the city's fraud hotline. Again, this is where the development of a comprehensive strategic plan that addresses partnerships and collaborations would benefit the OIG. Ongoing discussions with agencies could flesh out additional collaborative opportunities that extend the reach of the OIG.

I appreciate the opportunity to not only serve on the advisory board but participate in this review process.



Office of the Comptroller

To: James Shea, Chair OIG Advisory Committee
From: Erika McClammy, Deputy Comptroller and member of OIG Advisory Committee
Date: November 1, 2021
Re: Draft Performance Review

Thank you Solicitor Shea for providing a draft of your review of the performance of Inspector General Cummings. My review will only pertain to providing feedback to that document. Overall, I concur with the draft review of the Inspector General's performance. Below are my responses to some of the points laid out in your draft review:

IV a. Strategic Plan

I strongly agree with the recommendation that the Inspector General engage in developing strategic plan for the office. As pointed out, both the Green and Blue books contain clauses that stress the importance of planning. In my opinion, strategic planning is a necessary task for any city agency funded by taxpayer dollars. Obviously, much of the work of the OIG is in response to queries, complaints or requests for investigations. In the presentation on August 25, the Inspector and the staff discussed staffing needs which had changed over the course of a year. The decisions made regarding staff composition required some level of planning. Engaging in a comprehensive strategic plan can only help the OIG maximize its efficiency and ensure best use of limited resources.

IV e. Investigative Coordination with Agencies

Inspector Cummings only slightly touched on the Office's relationship with the Department of Audits. Although the departments/offices may be combined in other jurisdictions, there is nothing that currently prohibits additional interaction between both agencies. As an example, there is some coordination of the fraud hotline between the two agencies. Engaging in a strategic planning process and ongoing discussions with agencies could flesh out additional collaborative opportunities that extend the reach of the OIG.

EXHIBIT 5

Salsbury, Stephen

From: Middleton, Sharon (City Council)
Sent: Monday, November 22, 2021 6:25 PM
To: Shea, James (Jim) L.
Cc: Salsbury, Stephen
Subject: Re: IG evaluation

Good evening Commissioner Shea:

After reviewing again, and your most recent comments, I will say this:

During our last meeting with IG Cummings and her staff, they answered many questions and gave a detailed description of the operation of the IG office.

IG Cummings sent a written clarifying answer to a final question, I posed.

I agree with your assessment and have no further comments to add to your extensive summary.

Sincerely,
Sharon Middleton

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

Salsbury, Stephen

From: Middleton, Sharon (City Council)
Sent: Wednesday, October 27, 2021 9:51 PM
To: Shea, James (Jim) L.
Cc: Salsbury, Stephen
Subject: Re: Inspector General Evaluation. Corrected copy.

Good evening Chairman Shea:

I've reviewed all written documents.

I'm in total agreement with your detailed analysis and assessment of Inspector General Cummings and the Office of the Inspector General.

Sincerely,
Sharon Middleton

Sent from my Verizon, Samsung Galaxy smartphone

EXHIBIT 6

Shea, James (Jim) L.

From: Shea, James (Jim) L.
Sent: Wednesday, November 24, 2021 4:37 PM
To: Shea, James (Jim) L.
Subject: Annual Performance Review

From: Tobin, Donald <dtobin@law.umaryland.edu>
Sent: Tuesday, November 23, 2021 11:08 PM
To: Shea, James (Jim) L. <James.Shea@baltimorecity.gov>; Huber, Michael (Mayor's Office) <Michael.Huber@baltimorecity.gov>; McClammy, Erika (Comptroller) <Erika.McClammy@baltimorecity.gov>; Middleton, Sharon (City Council) <Sharon.Middleton@baltimorecity.gov>; Costello, Eric (City Council) <Eric.Costello@baltimorecity.gov>; Ronald Weich <rweich@ubalt.edu>
Cc: Salsbury, Stephen <Stephen.Salsbury@baltimorecity.gov>
Subject: RE: Annual Performance Review

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I am happy to sign on to the review provided by City Solicitor Shea, and have no modifications to my original letter.

Donald B. Tobin
Dean and Professor of Law
University of Maryland
Francis King Carey School of Law
(He, Him, His)

October 29, 2021

James L. Shea
City Solicitor
Baltimore City Department of Law
100 N. Holliday Street, Suite 101
Baltimore, MD 21202

Dear City Solicitor Shea,

The law deans of the University of Maryland and the University of Baltimore are members of the advisory board in accordance with the city charter, as amended by the City voters after appointment by the Mayor and the Chair of the City Council. The principal reason for our membership on the Committee is to be independent members who are neither elected officials nor employees of the city. It is that expertise I bring to this evaluation, and I have concentrated my remarks in areas that align with that purpose.

As a start, I agree with the ultimate conclusions of City Solicitor Jim Shea regarding the performance of the Inspector General. I appreciate the way he has conducted this review in an objective, non-political way. The Board has clearly taken the independence of the Inspector General seriously, and I appreciate the effort of the Board to move this review forward.

City Solicitor Shea's memo outlines the Board's investigation into the performance of the Inspector General, and I do not have much to add to City Solicitor Shea's review. I highlight three areas for the Inspector General.

First, one of the most important aspects of leadership is the capacity to assemble a team of high performing colleagues who help support and lead areas of the office. I commend the Inspector General for bringing her top leaders to the hearing. I was impressed by both the competence, leadership and passion of her team members who appeared at the meeting. They demonstrated a strong knowledge of the micro issues faced by the office, and had a clear passion for their work. The interaction and collegiality between team members reflected positively on the Inspector General's management.

Second, during the review hearing there was discussion with the Inspector General about strategic planning in her office. I agree with the City Solicitor's assessment that the Inspector General should engage in strategic planning for her office. The strategic plan would guide the unit's work and provide more transparency to the people in Baltimore.

I also agree with the City Solicitor that it is important for the Inspector General to be seen as a fair and independent examiner of cases before the office. This requires that she be extremely careful with regard to the facts she presents and the context in which those facts are presented.

Finally, I commend the City and its voters for seeking a means of having oversight of the Office of the Inspector General that seeks to remove political interference. I recognize that the Inspector General has some concerns about the organization of the Board. While an Inspector General must be independent, there must also be some form of oversight of operations for any public official placed with this kind of trust. I look forward to the Board working with the Inspector General to implement clear understandings of the proper role of the Board and its interaction with the Inspector General.

Sincerely,



Donald B. Tobin
Dean and Professor of Law

DBT/tr

EXHIBIT 7

Shea, James (Jim) L.

From: Shea, James (Jim) L.
Sent: Wednesday, November 24, 2021 4:38 PM
To: Shea, James (Jim) L.
Subject: FW: Annual Performance Review

From: Ronald Weich <rweich@ubalt.edu>
Sent: Monday, November 22, 2021 7:04 PM
To: Shea, James (Jim) L. <James.Shea@baltimorecity.gov>
Cc: Salsbury, Stephen <Stephen.Salsbury@baltimorecity.gov>
Subject: RE: Annual Performance Review

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I confirm my prior review. Let me know if this email to you is sufficient, or if you want me to say it as a Reply to All.

Ronald Weich, Dean
University of Baltimore School of Law
1420 N. Charles St.
Baltimore, MD 21201
410.837.5518
rweich@ubalt.edu

November 1, 2021

James L. Shea
City Solicitor
Baltimore City Department of Law
100 N. Holliday Street, Suite 101
Baltimore, MD 21202

Dear Solicitor Shea:

I appreciate the opportunity to serve on the Office of the Inspector General (OIG) Advisory Board pursuant to Article X of the Baltimore City Charter. The Charter was amended three years ago to strengthen the effectiveness of the OIG, and the deans of the two Maryland law schools were appointed to the Board by the Mayor and City Council President to help protect the Office's independence. I am pleased to support these worthy goals.

The Charter directs our Advisory Board to conduct a performance review of the OIG. You have circulated a draft performance review and invited other members of the Board to comment. This letter constitutes my reaction to that draft document and my contribution to the performance review itself.

Unlike the other members of the Advisory Board, Dean Tobin and I do not work in city government and therefore have only limited first-hand visibility into the operation of the OIG. The thoughts expressed herein are based on my review of materials circulated to the Board, notably the OIG's Policy Manual and Annual Reports from 2018 to 2021, the hearing at which the Inspector General responded to questioning from Board members and my general awareness of the work of the OIG.

I fully concur in the fundamental conclusion of the draft review that the current Inspector General, Isabel Cumming, is "doing an effective job." You characterize Ms. Cumming's Office as "hard-working, highly capable and committed to carrying out the OIG's obligations under the Charter." You further observe that "[t]he IG is viewed as objective and the IG's credibility is high." I agree with these statements.

I wish to address two issues raised in your draft performance review: strategic planning and OIG independence.

Strategic Planning

Your draft review encourages the OIG to engage in strategic planning. I have no reason to doubt that the Office undertakes its work in a strategic manner based on appropriate goals, but I agree that the publication of a formal strategic plan would be desirable and consistent with the best practices of organizations similar to the OIG.

A number of the other suggestions in your draft review could be addressed by the publication of a strategic plan. Such a plan could set forth the IG's understanding of its jurisdiction under the Charter and explain how the OIG selects matters to investigate. I have no reason to question the IG's current priorities, but I agree the publication of a strategic plan would illuminate the OIG's decision-making and enhance public understanding of the OIG's mission and effectiveness.

The OIG should certainly be reluctant to publish a roadmap of its investigative strategies, but the publication of a strategic plan at the appropriate level of generality would not compromise the agency's work.

Your draft document refers to several specific matters to illustrate the value of strategic planning. I have insufficient information and expertise to assess those matters.

Independence of the Inspector General

In the draft review you stress the importance of the OIG's independence. You refer to independence as a "paramount necessity" and declare that one of the fundamental responsibilities of the Advisory Board is to promote the IG's independence. I wholeheartedly agree.

Inspector General Cumming has expressed concern about the structure of the Advisory Board. The Charter amendment establishing the Advisory Board may be seen as strengthening OIG independence by replacing a system in which the Inspector General reported to a single official with a system in which oversight is diffuse. But a flaw in the structure is that the city officials serving on the Board are always potentially the subject of OIG investigations. Even if no occurrence of undue influence or attempted undue influence has occurred during this process, the structure of this oversight mechanism presents the possibility, and therefore the appearance, of such a conflict.

Among the materials submitted to the Board by the OIG is a section of the City of Atlanta Charter establishing a Governing Board for the Inspector General of that city. That Board consists of nine individuals appointed by the mayor and city council based on nominations from a wide range of civic organizations. In that jurisdiction, elected city officials have a role in the composition of the governing board through their appointing authority but do not themselves sit on the board. This system insulates the Inspector General from direct oversight by officials whom the IG may someday need to investigate.

The OIG also produced a chart indicating that other jurisdictions, including Broward and Palm Beach Counties in Florida and the City of New Orleans, avoid having elected officials or their designees serve on their OIG advisory boards. In my view, the Baltimore City Council should consider a further amendment to the City Charter establishing this more indirect form of oversight.

Thank you for the opportunity to contribute to the OIG performance review mandated by the Baltimore City Charter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ronald Weich', with a stylized flourish at the end.

Ronald Weich
Dean

EXHIBIT 8

Date: November 16, 2021

To: Advisory Board

From: Isabel Mercedes Cumming, Inspector General

Re: 2021 Performance Review



I received and reviewed the draft OIG Advisory Board's (Board) 2021 Performance Review (Review), comprised of a written document by the Board's Chairman, City Solicitor James Shea (Solicitor/Chairman), as well as supplements provided by each Board member. I would like to thank the Board for producing the first annual performance review since the Charter amendment in 2018.

Before I respond to the Review's contents, I would like to share some updates made by the OIG after the Board's August 25th meeting. Based on the Board's suggestions during that meeting, the OIG compiled and published the following materials, which are available on the OIG's website:

- **Public Version of OIG Policies** – Published 10/12/21
- **OIG Priority List** – Published 10/29/21
- **OIG Strategic Plan** – Published 11/1/21

My response to the Review will address specific issues in the order they were raised, providing a reference to the relevant Review section for clarity. At the outset, however, I would like to clarify the principles and standards the OIG follows.

The Review correctly acknowledges that the OIG follows "Principles and Standards for Offices of Inspector General" published by the Association of Inspectors General ("AIG"), commonly known as the "Green Book." But the Review also references and cites "Quality Standards for Federal Offices of Inspector General," known as the "Silver Book," and "Quality Standards for Inspection and Evaluation," known as the "Blue Book." The OIG does not follow the Silver Book or the Blue Book for the following reasons.

First, the Silver Book is followed by *federal*—not state or municipal—OIGs as a supplement to the Green Book. Second, the Blue Book's emphasis on inspections and evaluations is not relevant to the OIG's current *investigative* practice. That is, under Article X of the City Charter, the OIG is responsible for: (1) investigating complaints of fraud, financial waste, and abuse in City government; and (2) promoting efficiency, accountability, and integrity in City government. City Charter, Article X, § 3(b). In carrying out this mission, the OIG can utilize inspections, evaluations, and/or investigations. Since 2018, based on available resources, the OIG has utilized investigations as the primary tool to carry out its mission, as explained in the OIG's Annual Reports and upon questioning from members of the Board on August 25th. Standards for investigations are separate from standards for inspections and evaluations within the Green Book. Accordingly, the OIG's performance should be assessed according to the Green Book's standards for investigations, not those for evaluations or inspections, and not those contained within the inapplicable Blue or Silver Books.

Response to Review Section IV – Preface

The Review stated that "[w]hile it is frustrating to the IG that her authority does not include enforcement power, it must be noted that the absence of any process following a report means that the subject of an investigation has no forum in which to contest or disprove allegations made in a report. And the discipline that comes with the responsibility to prove the finding of a report is absent." First, I am not frustrated by the OIG's jurisdiction, which does not include "enforcement power." I was a prosecutor for two decades before I became the IG, and I appreciate and value the substantive differences between these two very separate functions.

Second, relatedly, it is also untrue that “the subject of an investigation has no forum in which to contest or disprove allegations made in a report.” The OIG is only the investigator of a complaint and its process incorporates both statements from subjects and official written responses. Unless the investigation is a criminal referral, the OIG typically interviews the subject of a complaint and incorporates their statements in the report. Moreover, as explained in its October 1, 2021 letter to the Board, after OIG-initiated investigations have concluded, the final written report is provided to the action holder. The action holder is the person with authority over the report’s subject, usually the Mayor, Solicitor, City Administrator, and/or agency head. The action holder responds to the report and identifies any disagreement with the report’s findings and any corrective measures taken. The OIG then drafts and publishes a public synopsis along with the action holder’s response. Although there is a different process when an elected official requests an investigation of their conduct, the OIG nonetheless publishes any responses it receives.

Using the three examples raised in the Review, the table below shows that each agency at issue was given ample time and opportunity to respond. Each of the responses were then published with the relevant reports.

Report	Report Date	Response Date	Date of Publication
Carroll Park (20-0063 I)	2/11/2021	Recreation and Parks: 3/15/21 Finance: 3/26/21	4/1/2021
BCIT (21-0001 I)	6/10/2021	Chairman/Solicitor: 6/30/21	7/27/2021
BOPA (20-0005 I)	5/4/2021	DOT: 5/24/21 BOPA: 5/27/21	6/2/2021

Response to Review Section IV(a) - Strategic Plan

The Review indicated that the OIG’s Policy Manual lacked a “reference to focus on the elimination of systemic bias or inequity” and that the OIG’s Strategic Plan should include a focus on equity. The Green Book standards require the Inspector General and staff to “be free from personal or external impairments to independence and [to] constantly maintain an independent attitude and appearance.” *See* Green Book at 7. The OIG has incorporated that standard into its policies.

Because the OIG focuses on investigations as the means to carry out its mission, the OIG Policy Manual sets forth the kinds of issues and concerns that warrant investigation. Any preferences in investigative priority are based on issue or case type, not on individuals or groups.

That said, the OIG often receives complaints about inequity in the community or workplace. In fact, two of the examples outlined in the Review were complaints that concerned inequities. The Carroll Park case (20-0063-I) concerned the inequity of City resources being unequally distributed between more affluent City neighborhoods and those that are less affluent. The BCIT case (21-0001-I) concerned the inequity that lower-level employees are not given the same options as higher-ranking employees to rundown their accrued leave and subsequently use permission/administrative leave and other special treatment.

Response to Review Section IV(b)(i) – Jurisdiction Under the Charter

The Review assumes that the OIG’s jurisdiction does not encompass acts of “mismanagement.” The OIG agrees that City management decisions occur in the context of competing resources and policies, and it is not the OIG’s role to second-guess such decisions. However, the term *mismanagement* does not refer to this kind of routine governmental decision-making among competing priorities. Instead, “mismanagement” is a collective term that encompasses acts of waste and abuse, such as the extravagant, careless, or needless expenditure of government

funds or the consumption or misuse of government property or resources, resulting from deficient practices, systems, controls, or decisions. This definition of mismanagement has been in the OIG's online glossary since before my tenure as Inspector General. And it is clearly within the OIG's jurisdiction according to the City Charter, which vests the OIG not only with the responsibility to investigate complaints of fraud, financial waste, and abuse, but also to "promot[e] efficiency, accountability, and integrity in City government." City Charter, Article X, § 3(b).

Response to Review Section IV(b)(iii) - Examples

The complaint in the Carroll Park case (20-0063-I) alleged a lack of equity in the distribution of funds for City parks and for Carroll Park in particular because it serves a population in a lower socioeconomic bracket. The Review states that "[t]here is no description of the apparent choice made by the Department of Recreation and Parks to allocate money it was given to items other than maintenance." Although the public synopsis did not contain such a description, the full Report of Investigation (ROI), which was given to the Chairman/Solicitor, explained that funds for Carroll Park had been reallocated to pay a vendor for specific professional services. That information can be found in footnote 5 of the ROI. Moreover, even the public synopsis explains the connection between a decision to reallocate funds and perceived inequity or other abuse:

At times agencies may modify budgets or interpret allocations differently from what is advised by the Department of Finance. Those breakdowns can lead to actual or perceived examples of fraud, waste, and abuse. However, the OIG noted Carroll Park may have not received adequate City resources based on a review of Carroll Park's expenditures, the resolution and number of services requests, and the physical condition of the recreational facilities.

With regard to case 21-0001-I, the complaint alleged a lack of equity in the treatment of agency employees pertaining to separation from City service. Although the OIG appreciates the Chairman/Solicitor's interpretation and concerns in the Review, those concerns were not raised when the Chairman/Solicitor responded to the ROI. Further, the assertion that the OIG criticized the terms of the separation agreements at issue is inaccurate. Instead, the OIG analyzed each agreement and reported on the inconsistencies and lack of uniform policies that resulted in inequitable severance packages offered to Managerial and Professional Society of Baltimore, Inc. (MAPS), employees. The eight individuals outlined in the report were MAPS unrepresented and at-will employees. The report begged the question why every MAPS at-will employee who is terminated is not offered a severance package option. Additionally, the OIG's report could not anticipate whether a former employee would engage in litigation with the City because every employee has the right to sue the City if they choose. Accordingly, the OIG reported the facts and it stands by the report.

Response to Review Section IV(c) - Quality Control Processes

The Review states that "[o]ne quality control principle is that the OIG understands and assesses all sides of a matter under investigation" and that a process for internal and external report review could satisfy this principle. As both a Certified Inspector General and an Executive Officer of the AIG, I am aware of the importance of a strong quality control process, which is also a crucial part of the AIG's upcoming peer review of the OIG. The OIG's internal Standard Operating Procedures for Investigations thoroughly outlines a quality control process.

Response to Review Section IV(d) - Performance Measures

The Review points out the shortcomings of utilizing dollars identified as "waste" or "savings" as a performance measure. According to the Review, "dollars identified as saved have not actually been returned nor the expenditures prevented." The OIG agrees that "savings," by nature, are not dollars that can be returned, and are therefore different from "waste." But identifying potentially wasteful expenditures that have been prevented can indeed be a valuable performance measure for the OIG's work.

The Review references the OIG's report on the City's Banner Program (20-0050-I) as an example of "valuations [that] seem more theoretical than real." The focus of the Banner Program investigation was not on dollar amounts, but on the inability of City agencies to be careful stewards of an income-generating asset. The dollar amount put forth was the market value of the advertising at the time. Moreover, the accuracy of the dollar amount was not raised in the responses to the OIG's report. The OIG will clarify its definition of waste and savings within the policy manual and in its update to the BBMR Budget Publication.

The Review also suggested that tracking actual changes in City policies and procedures would be a worthy OIG performance measure. However, under the Charter, the OIG lacks the authority to change City policies and procedures outside the OIG. Although the OIG's investigative reports may influence an agency to reconsider its policies or procedures, there is no guarantee the agency will do so. Accordingly, it would be inappropriate to assess the OIG's performance base on a metric over which it has no control.

Response to Review Section IV(e) - Investigative Coordination with Agencies

The Review suggests that the OIG is deficient in "leveraging" the resources of other City agencies. However, the OIG often reaches out to City agencies for background information prior to and during an investigation. Moreover, the OIG cannot complete any preliminary inquiry or investigation without communicating directly with agencies and employees who have knowledge of the subject matter. As stated during the August 25th Board meeting and the budget review, the OIG has worked closely with numerous City agencies throughout the last four years, including the Law Department, the Office of the Comptroller, and the many agencies under the Mayor's Office.

Additionally, although the nature and scope of OIG investigations are usually confidential and cannot fully be shared, the OIG does its best to determine whether the subject and/or subject matter of a complaint has been investigated prior to the OIG's involvement. The OIG also regularly refers complaints outside of its jurisdiction to other agencies.

Response to Review Section IV(g) - Budget

The OIG plans to submit its budget material to the Board at the end of January.

Response to Review Section V - Independence

I understand that the current makeup of the Board is mandated by Article X of the City Charter. I also acknowledge that I supported Article X. I also support OIG independence, and Article X was progress on that front. However, with time and study, I have come to realize that the current makeup of the Board—with a core of City elected and appointed officials—is not in line with best practice and poses obvious conflicts for the OIG's independence. I will therefore continue to draw attention to the need to reconstitute the Board with individuals who are not directly within the OIG's investigational purview.

As an additional note on this front, the Review states that the Board has not received a request from the OIG for any specific Board member to be recused, implying, that any such conflict must not exist. However, the Board can appreciate that requesting a specific recusal, not only could jeopardize an OIG investigation, but could be contrary to confidentiality mandates.

Conclusion

I have been honored to lead the OIG during the past four years. I thank the Board for its time and attention, and appreciate that the Review found I am doing an effective job with a team that is hard working and highly talented. I remain committed to carrying out the OIG's important obligations under the Charter.