



Joseph M. Ferguson  
*Inspector General*

## OFFICE OF INSPECTOR GENERAL *City of Chicago*

740 N. Sedgwick Street, Suite 200  
Chicago, Illinois 60654  
Telephone: (773) 478-7799  
Fax: (773) 478-3949

**MEDIA ADVISORY FOR:**  
September 20, 2012

**CONTACT:** (773) 478-0534  
Jonathan Davey

### **State Supreme Court Oral Arguments Tomorrow**

Oral arguments for the City of Chicago Office of Inspector General's lawsuit against the City's Corporation Counsel will take place in Springfield, IL at 9 o'clock tomorrow morning.

**What:** Oral Arguments  
**When:** 9am, 9/20/12  
**Where:** Supreme Court Building  
200 E Capitol Avenue  
Springfield, IL 62701

**Background:** The City's Corporation Counsel blocked full IGO access to documents it requested in an investigation of a sole-source contract to a former City employee made in apparent violation of the City's ethics and contracting rules. The City's Law Department produced some documents but redacted others on the basis of attorney-client privilege and/or the work product doctrine.

Believing that the City could not properly assert the attorney-client privilege and work product doctrine under these circumstances, and after unsuccessful attempts to persuade the Corporation Counsel otherwise, on October 8, 2009, the IGO issued and served a subpoena for the documents.

The Municipal Code grants the IGO the authority to request information related to an IGO investigation from "any [City] employee, officer, agent or licensee," § 2-56-030(e), makes it the unqualified "duty of every [City] officer, employee, department, [and] agency . . . to cooperate with the [IGO] in any investigation or hearing undertaken pursuant to [the] chapter," and directs that "[e]ach department's premises, equipment, personnel, books, records and papers . . . be made available as soon as practicable to the inspector general." § 2-56-090.

After timely objection and further discussions, the Corporation Counsel declined to comply, and this lawsuit was filed on November 4, 2009.

On December 23, 2009, the Corporation Counsel moved to dismiss all counts of the complaint, arguing that the IGO had no standing to bring the lawsuit or hire its own attorney. Following briefing and a hearing held on April 21, 2010, Circuit Court of Cook County Judge Nancy Arnold granted the motion to dismiss and dismissed the complaint with prejudice. The IGO appealed. The Appellate Court reversed and remanded, holding that that the IGO does have the

right to sue the Corporation Counsel to pursue records that could aid an investigation, but that it did not have enough facts surrounding the documents to determine whether the privilege applied. *Ferguson v. Georges*, 948 N.E.2d 775 (Ill. Ct. App. 2011).

In making its ruling, the Appellate Court stated that “[w]ithout the ability to bring an action to enforce the subpoena, the Inspector General has no means to challenge the Corporation Counsel’s refusal other than asking the mayor to resolve the dispute. The ordinance creating the IGO could not have been designed to tie the Inspector General’s hands in this way because in doing so its investigative process would be meaningless.”

Corporation Counsel Stephen Patton appealed the Appellate Court’s decision to the Illinois Supreme Court, asserting that the Inspector General has no capacity to bring his lawsuit and that the Appellate Court had no jurisdiction to hear the lawsuit. In making this argument, Corporation Counsel has adopted wholesale the position of the prior Administration in asserting that the IGO:

- 1) is not an independent agency;
- 2) that the IGO’s authority to enforce its subpoenas is subordinate to the authority and decisions of the Law Department, even when the Law Department has a direct legal conflict of interest in the matter and;
- 3) that there is no IGO recourse to the courts and that the courts lack the authority to resolve such enforcement and legal conflict issues, which instead devolve to the sole discretion of the Mayor.

The Supreme Court granted the petition for leave to appeal.

This lawsuit is of crucial importance to determining whether the City of Chicago has a truly independent and empowered IGO. The Administration’s positions attempt to abridge the IGO’s critical independence and the functionality of its investigative process through his appeal of the Appellate Court’s correctly-decided decision on jurisdiction and capacity. To require the Inspector General to obtain Corporation Counsel approval and legal assistance to enforce subpoenas the IGO issues – even when the IGO may be investigating misconduct within the Office of the Mayor (as in this instance) or the Law Department itself – would nullify the Inspector General’s expressly granted statutory subpoena power.

The IGO will lose its independence if the Corporation Counsel receives the outcome he seeks in his appeal: that the IGO cannot represent itself in court to enforce its subpoenas; that the Inspector General must seek the Corporation Counsel’s assistance even in cases of clear conflict; and that the Inspector General cannot sue to protect his office’s right to legal and functional existence. Further, allowing the Corporation Counsel to assert the attorney-client privilege to shield information from an official IGO investigation into possible government misconduct would allow the City’s own attorneys to block internal investigations into governmental misconduct whenever they choose to assert the privilege.

Additional background on the lawsuit, as well as the copies of each party's legal briefs, can be found online at the IGO website: [www.chicagoinspectorgeneral.org](http://www.chicagoinspectorgeneral.org). Follow the IGO on Twitter @ChicagoIGO for the latest information on how the IGO continues to fight waste, fraud, abuse, and inefficiency in Chicago government.

###