

May 18, 2020

TRANSMITTED VIA EMAIL

Joe M. Ricks, Jr., Ph.D., Board Chair
City of New Orleans Ethics Review Board
525 St. Charles Avenue
New Orleans, LA 70130

RE: 2019 QARAC Report

Dear Dr. Ricks,

Pursuant to the applicable ordinances, the City of New Orleans Office of Inspector General (OIG) submits our formal response to the May 11, 2020, Report of the Quality Assurance Review Committee's (QARAC) to the Ethics Review Board (ERB).

As set forth in detail below, even though the 2020 Report was timely filed, the QARAC's findings and conclusions inexplicably failed to reflect the application of any accepted professional standards for conducting an evidence-based analysis, including but not limited to, conducting any written or verbal interviews or discussion with the Inspector General or any member of our staff.

We believe that despite the generally positive tone of the report, discussions with OIG executive management and/or staff during the review period would have provided clarification and/or additional perspective which would have resulted in a more substantive and useful Report.

As always, the OIG welcomes and encourages comment and feedback from the people of New Orleans and commends the members of the QARAC for their public service.

I. Standards of Operations

A. Appropriate Standards for OIG Operations:

Article XIII of the Municipal Ordinance (the "Ordinance") creating the Office of Inspector General (OIG) requires the OIG to conform to the Principles and Standards for Offices of Inspectors General promulgated by the Association of Inspectors General (AIG Green Book) when initiating and conducting audits, investigations, inspections, and performance reviews.¹ Because the OIG was also required to develop an operations manual available to the public containing principles based on these standards, the OIG's policies also require compliance with Generally Accepted Government Auditing Standards, known as "GAGAS" or "the Yellow

¹ See City Code Section 2-1120(13).

Book.”² With respect to the OIG’s organizational structure, performance reviews are conducted within the Audit and Review Division in full compliance with the Ordinance.³

B. Appropriate Standards for Conducting a Third-Party Review:

As a third-party advisory committee, and in the absence of Ordinance guidance of inspection procedure, we strongly believe the QARAC should function and operate pursuant to recognized standards. There are several well accepted standards used by peer review organizations when conducting an evaluation like the QARAC’s review of the OIG. In fact, the QARAC’s 2018 and 2019 OIG reviews differ greatly in content and completeness than the most recent previous QARAC OIG third-party review which “strived to reach its conclusions in as objective a manner as possible and in strict conformity with The Principles and Standards for Offices of Inspector General (Association of Inspectors General, May 2004).”⁴ In contrast to the QARAC 2014 report which acknowledged its methodology – “the Committee performed its function in an open, transparent, and collaborative manner and sought to reach conclusions that were objectively derived and fair to all concerned.” – the QARAC 2019 report includes no standards followed in executing and reporting its review of the OIG operations.⁵

Additionally, a peer review team should collectively possess adequate professional competence and knowledge of GAGAS and supplemental guidance and/or practice advisories.⁶ Audit professionals are required to use professional judgment to carry out all aspects of their responsibilities, including maintaining objectivity and credibility and evaluating, documenting, and reporting results of the work.⁷ Although audit professionals may make verbal inquiries as part of their collective assessment no inquiries were made by any QARAC member during the review.⁸

Last year the QARAC suggested a change to the Ordinance to permit its review of incomplete works to act as a “civilian check on the OIG.”⁹ In 2018, by stating they also wanted more information in the Annual Report, the QARAC relied heavily on that single OIG product. However, the QARAC not only discounted the 2019 Annual Report, but, after acknowledging the OIG’s work on its system-wide risk assessment, omitted any mention of the Audit Work Plan developed by the Audit and Evaluations Division, including Inspections and Performance

² *Id.*

³ The QARAC notes the OIG is organizationally required to have a performance review division. Quality Assurance Review Advisory Committee Report of 2019, May 11, 2020 (QARAC Report) at 1.

⁴ See QARAC, Report Reviewing Activities for 2014, at 39 (acknowledging the Principles and Standards for Offices of Inspector General, Quality Standards for Investigations and Quality Standards for Inspections, Evaluations, and Reviews, Association of Inspectors General, p. 25-31 (May 2004)).

⁵ *Id.* at 6.

⁶ See Government Auditing Standards, Chapter 5.89 and 2.02; U.S. GAO, 2018.

⁷ See *id.* at Chapter 3.109, 3.113.

⁸ Because the QARAC indicated adherence to no set of standards or guidelines, the OIG references different auditing and peer review standards, such as the AIG Green Book and GAGAS Yellow Book.

⁹ QARAC 2018 Report at 6.

Reviews, which was developed to identify entities subject to high risk requiring additional review.¹⁰ This system-wide assessment, along with the 2020 Audit Work Plan, and all reports and letters issued were done with the oversight, input, and consideration of the Ethics Review Board. These processes require the OIG to determine how best to proceed in any identified department, whether it be by examination, inspection, performance review, or audit. This process involves the collections of information and documentation from the impacted departments which received no mention or inquiry from the QARAC, including background and research to determine the best method and most effective mode of review. The criticism of productivity continues to be unsubstantiated if this QARAC fails to engage in a dialog with OIG management and staff to truly learn what this agency is doing and to honestly inform the public of its findings.

Finally, in its assessment of Reports of Investigations the QARAC did not reference the application of the standards promulgated by the Association of Inspectors General (the Green Book) in assessing the propriety or value of two Reports of Investigations. Simply put, had the OIG followed the QARAC's suggestion, the OIG would have violated the Green Book standards which the ordinance mandates we comply with in conducting an investigation.

1. Inquiry:

Pursuant to GAGAS, auditors must obtain and report the views of responsible officials of the entity concerning findings and conclusions.¹¹ Inquiry consists of seeking information from knowledgeable persons within and outside of an entity, either in writing or orally, formally or informally.¹² Inquiries about, understanding of, and management's intent for choosing a particular course of action, and the ability to pursue a specific course of action, may provide relevant information to corroborate evidence obtained in an inquiry.¹³ For the second year, the QARAC had no direct conversation with any OIG employee which could have provided insight on OIG actions and/or management's decisions regarding the necessary courses of action.

2. Opportunity for Response:

The OIG is required by Ordinance to provide an affected person or entity with an internal review copy of the report and to allow 30 days from the report transmittal date to submit a written explanation or rebuttal of the findings before the report is finalized. The entity's rebuttal shall be attached to the finalized report.¹⁴ GAGAS requires auditors to obtain and report the views of responsible officials of the reviewed entity concerning findings, conclusions, and recommendations of the report.¹⁵ When an entity's comments are inconsistent or conflict with

¹⁰ <http://www.nolaog.gov/reports/all-reports/oig-2020-annual-work-plan>.

¹¹ See Government Auditing Standards, Chapter 9.50 and 2.02.

¹² See AU-C §500.A23 (2019, AICPA).

¹³ See *id* at §500.A25.

¹⁴ See City Code Section 2-1120(8).

¹⁵ See Government Auditing Standards, Chapter 9.50; U.S. GAO, 2018.

the draft report findings or comments, the validity of the entity's comments should be evaluated and the reasons for disagreement explained in the report. If entity comments are found to be valid and supported, the report should be modified.¹⁶ The OIG disagrees with some of the QARAC findings and QARAC should reconcile those disagreements before issuance of the final report. This QARAC, for the second year, has denied the OIG the opportunity to respond to the QARAC report which should be included in the final report posted to the public.

II. OIG Response to Specific Findings

A. Audubon:

The manner in which the OIG reports the results of any audit, examination, inspection, or investigation is the result of proper planning, substantive fieldwork, documented analyses, and the use of professional judgment.¹⁷ The OIG's performance audit of the Audubon Nature Institute's (Institute) internal controls over employee purchase card transactions and expense reimbursements required analysis of the Institute's spending – whether an expenditure was a prohibited Constitutional transaction, or otherwise violated state law or city policy memoranda. That analysis required the OIG to determine the nature of contractual construct under which the Institute operated. Different organizational operating structures could lead to different auditing conclusions, none of which could be reached without the legal analysis of how the Institute, in fact, operated. In the Institute's case, the legal structure was the excuse given by the Institute to defend the OIG finding – their legal structure permitted the organizational spending. The OIG separated the structural defect from the expenditures to arrive at its findings.

The QARAC “felt” Audubon’s credit card report should have been separated into two different reports because they “seemed to tackle somewhat unrelated subjects.”¹⁸ The basis for this conclusion is not, however, supported by any analytically approved reasoning. The suggestion the legal analysis should be reported separately removes important context to the findings. Experienced audit professionals arrive at their conclusion from the results of proper planning, fieldwork, objective review and evaluation. Relevant legal analysis, as appropriate, must be applied to these conclusions to arrive at findings.

¹⁶ See *id.* at Chapter 9.52; U.S. GAO, 2018.

¹⁷ See *id.* at Chapter 3.109; U.S. GAO, 2018.

¹⁸ QARAC Report at 5.

B. Administrative Investigations:

1. Department of Health Investigations: The QARAC criticized two different administrative investigations stating they did not “match the gravity” of other investigative subject matter, were of “routine personnel issue[s]” and “minor managerial error[s],” and could have been addressed through “education and training through quick telephone calls or meetings ...as the best remedy.” Emphasis added.¹⁹ Like its conclusions in their 2018 review, the QARAC discounts investigative findings not sufficiently egregious to some imaginary level set by the QARAC. In its 2018 review, the QARAC stated the Jazz Fest Report and the S&WB letter did not meet the “purpose” standard set forth in the Ordinance to promote efficiency and effectiveness.²⁰

In its 2019 review of OIG work, the QARAC did not question the “purpose” of the OIG’s investigation into the Department of Health’s (DoH) two administrative investigations – a “compensatory time” investigation originating from a complaint and expense reimbursement matter.²¹ The QARAC questioned how these two investigations were “prioritized such that the OIG published ROIs for those investigations.”²² The reporting of waste, fraud, abuse and mismanagement is a specific function of the OIG and the QARAC’s unsupported substitution of the OIG’s professional judgement, required under auditing and Ordinance standards, is inappropriate under any standard of review.

The AIG’s Green Book requires that due professional care be used in conducting investigations and preparing accompanying reports. Further, the use of appropriate techniques includes methods tailored for the circumstances and objectives for each investigation.²³ Reports of investigations are the standard, not the exception. When the OIG or any agency performing administrative or criminal investigations begins an investigation, it cannot predetermine the findings, foretell if the wrongdoing complained of is isolated in nature, or predict a vague standard of importance. For the second year, the QARAC’s criticism of the Investigative Division’s efforts demonstrate their substitution of informed judgment about which they made no direct inquiries. Investigations should be conducted in a diligent and complete manner, and reasonable steps should be taken to ensure that sufficient relevant evidence is collected; pertinent issues are sufficiently resolved; and appropriate criminal, civil, contractual, or administrative

¹⁹ QARAC Report at 6.

²⁰ Referencing the New Orleans Jazz and Heritage Festival Report of Investigation (Jazz Fest Report) in December 2018 and the department of Public Work letter regarding Sewerage and Water Board employee use of handicap placards (S&WB letter). See QARAC Report of 2018 at 3.

²¹ The QARAC overlooks any significance of two investigations into inappropriate DoH operations were held within a year.

²² QARAC Report at 9.

²³ See Government Auditing Standards, Chapter 3.113.

remedies are considered.²⁴ OIG investigations focus on obtaining sufficient factual evidence for use in determining whether criminal, civil, or administrative actions should be initiated against the specific parties for their actions or inactions. Moreover, an investigation, similar to an audit, might identify high risk areas and determine where internal controls were deficient, and led to violations and/or criminal acts.

Investigative findings, conclusions, and outcomes should be supported by adequate documentation.²⁵ Reviews of allegations received through hotlines and other means help to identify operational weaknesses and high-risk areas. The 2019 QARAC Report made unsupported conclusions such as “*it seems* the OIG devoted substantial time and effort to investigating [the compensatory time investigation]” and “questioned the time an effort expended in 2019 by the OIG ... on a *minor managerial error in 2016*” because the report was 5 pages and the exhibits were 23 pages. Emphasis added.²⁶ All reports, whether written or oral, should be appropriate to the purpose, concise, complete, objective, timely, relevant, free of jargon, and accurate, and comply with and conform to appropriate professional standards, policies and procedures adopted by the OIG.²⁷

The OIG should alert responsible city officials as early as possible to instances of criminal behavior or other egregious misconduct and waste that becomes known to the OIG.²⁸ The OIG is required to inform appropriate officials through oral or written reports of important OIG undertakings, their outcomes, and any problems encountered that warrant the officials’ attention.²⁹ These reports to public officials, agency executives and management, legislative bodies, and prosecutorial authorities keep appropriate officials apprised of the results of OIG activities.³⁰ The conclusion that “a routine personnel issue [] could have been handled in minutes by a City HR Representative or attorneys” does not accomplish the OIG mission of appropriately informing officials and apprising the public of its activities.³¹

Systemic weaknesses or management problems disclosed in an investigation should be reported to appropriate officials. Normally, such disclosures will be made as part of a separate written report including recommendations as to specific corrective actions.³² The QARAC’s comment of a “minor managerial error” ignores benefits likely to result from OIG review including better internal controls; improved economy, efficiency, and effectiveness; detection

²⁴ See Principles and Standards for Offices of Inspector General, Quality Standards for Investigations and Quality Standards for Inspections, Evaluations, and Reviews, Association of Inspectors General (May 2014) at 27, hereinafter “AIG Green Book.”

²⁵ See AIG Greenbook at 25.

²⁶ QARAC Report at 6.

²⁷ See AIG Greenbook at 19.

²⁸ See AIG Greenbook at 7, 18.

²⁹ See AIG Greenbook at 7, 11.

³⁰ See AIG Greenbook at 7, 11.

³¹ QARAC Report at 6.

³² QARAC Report at 31.

and prevention of fraud, waste, abuse, and mismanagement; and cost recovery.³³ Further, the QARAC's conclusion that an investigation resulted in neither a theft or "even unaccountable funds" is a conclusion that cannot be reached without undergoing the actual investigation.³⁴ The QARAC's recommendation OIG results not fulfilling some unspecified level of importance to the QARAC should not be reported by the OIG suggests the OIG should ignore generally known and accepted standards of operation required by the AIG Green Book and other auditing standards in favor of a "quick telephone call" or meeting with, in this case, DoH leaders who indicated their intention to ignore a known policy memo. The QARAC Report's deficiencies suggested in the two DoH reports demonstrate the QARAC's lack of collective but rudimentary knowledge of standards necessary for an appropriate third-party review. A report of "feelings" and conclusions "seeming" to be justified fail to follow and apply any accepted review standards.³⁵

The OIG does not consider a "quick phone call" to a department manager who permitted an employee to earn and use compensatory in violation of a Policy Memorandum in effect since 1980 a matter which should be referred to a city manager. This investigation was the result of a complaint to the OIG. As is often the case, these complaints arrive at our office because city managers fail to respond to unfair or illegal practices occurring within a department. The DoH compensatory time complaint arose anonymously and identified a manager and employee engaging in the illegal practice. The City Chief Administrative Officer (CAO) was anxious for the OIG to address the matter and to provide them with a report. Compensatory time abuse is not merely a routine personnel issue to be brought to a department manager particularly, as was the case herein, the department manager and the Director each maintained the right to use compensatory time when the abuse was brought to their attention by the OIG. In addition to violating known policy prompting a complaint to this office, non-existent documentation supporting the compensatory time demonstrated factors the OIG is tasked with addressing. The letter viewed by the QARAC did not include the CAO's office urging of the OIG to pursue the matter. The OIG asserts the CAO would likewise reject the QARAC's suggestion this matter could have been "handled in minutes by a City HR Representatives (*sic*) or attorneys." Had the QARAC been interested in being fully informed, this concern would have been addressed.

The matter related to the false invoice used at Conrad Park Booster Club was referred to the OIG by the DoH Director. Again, the CAO asked this office to provide them with a report. The DoH employee was not "assisting a non-profit organization..." as the QARAC represented.³⁶ The employee was trying to be reimbursed for monies she spent in violation of City procurement rules. The "best remedy" for the submission of a false and fraudulent invoice will never be a "quick telephone call[] or meeting." However, a quick telephone call or meeting

³³ See AIG Greenbook at 11.

³⁴ QARAC Report at 6.

³⁵ QARAC Report at 6, AIG Greenbook; GAGAS at Chapter 3.109 and 3.113 (professional judgment), 5.89 (collective knowledge).

³⁶ QARAC Report at 6.

with the principals of these investigations would have enlightened the QARAC on the OIG's activities related to these investigations.

2. Investigative Assistance to Criminal Prosecutions: The QARAC noted a section of the OIG Annual Report included a list of criminal prosecutions where the "OIG had lent some assistance and administrative investigations."³⁷ Unlike in the comprehensive 2014 QARAC report which demonstrated the review team thoroughly reviewed all of the OIG work product, in two lines of text, this QARAC purported to summarize over two pages of important work with law enforcement partners. In fact, the QARAC failed to summarize how the OIG assisted the New Orleans District Attorney's Office to review videotape recorded of a murdered cab driver using the specialized credentialed skills of a premier OIG criminal investigator. In doing so, a second suspect who was initially unidentified was later found. The matter went to the grand jury and ended in an indictment. To characterize this effort as "lending some assistance" is peculiar.

3. The QARAC also failed to articulate the OIG Investigations Division work in the case against Tonnette Rice, the former leader of the New Orleans Multi-Cultural Tourism Marketing Network, who pleaded guilty to theft of \$70,000. The guilty plea was the result of work spanning 2015 through April 2019, for which the OIG alone was the responsible agency. The particulars of this case were missing from the QARAC Report leaving the impression the DoH cases discounted by the QARAC were the only work of the OIG Investigations Division in the review period.

4. The Annual Report mentioned the important guilty plea of Kevin Richardson of a City of New Orleans Office of Safety and Permit employee. In a time where this city department is under a national microscope, it is unconscionable the QARAC would omit such an important OIG accomplishment. The OIG is the preeminent law enforcement participant in this ongoing investigation. The implications of this plea to a federal wire fraud conspiracy count is absent in the QARAC Report instead delegated to the OIG "having lent some assistance."

5. The QARAC addressed the Investigation Divisions accounting of complaints, open and closed, and the number of active investigations. It noted our report numbers did not add up. No question was posed to anyone in Investigations which might help the QARAC on this issue. The closed complaint numbers refer to complaints opened not only in 2019 but in previous years.

6. Furthermore, the QARAC Report fails to mention the Construction Fraud Division's (CFD) Quarterly Reports on work in 2019 designed to prevent and detect fraud during the construction of the new terminal at Louis Armstrong International Airport. These reports reflect the work done by the CFD for the past year pursuant to a Memorandum of Understanding with the New Orleans Airport Board the provisions of which include the NOAB providing

³⁷ QARAC Report at 5, citing OIG Annual Report at 15-17.

funding for the salary of the veteran Fraud Investigator embedded in the construction operations with access to data systems such as the invoices for all contractors. The NOAB and the OIG have engaged in discussions about extending our relationship on major airport construction projects at various stages of planning.

C. Productivity:

The QARAC recognized the “sharp increase in productivity reflected in the work of the OIG” but suggested the Inspections and Evaluations Division should “make sure its staffing needs are met going forward.”³⁸ Again, the QARAC would have been enlightened in this area had it engaged with the appropriate OIG staff member to discuss the ramifications of what appears to be a realistic suggestion and task worthy of accomplishment. The OIG agrees with the QARAC that limited staffing does impede the OIG’s productivity. However, speculating as to how to best address the OIG’s staffing needs overlooks the requirement that new hires obtain the specific employment designations within one year, while on their probation, to ensure they are able to retain their employment status. Navigating this one issue through the maze of city departments, including the Civil Service Commission, has been unnecessarily challenging and demonstrates how the QARAC’s suggestions in another area of its report – that the OIG have a quick phone call, or characterize anything as a “routine personnel issue – is unfortunately simplistic under the best of circumstances.

The QARAC Report rightly points out that our March 31, 2020, report did not specifically estimate “cost incurred” for our OIG projects that resulted in final audit, evaluation, or investigative reports. Had the OIG been asked, our response would have been that internally, we do not specifically track such data. More importantly, because of the cyber-attack, the City has been slow in recovering the capability to provide the OIG with accurate budget to actual figures that can be verified. Therefore, we chose not to include numbers that would have been, at best, rough estimates of expenditures directly related to completed 2019 reports.

III. Requested Action:

The ERB has a meeting set for May 22, 2020. We ask the ERB to include on its agenda its procedures for handling OIG peer reviews and to specifically address:

1. What is the goal of the third-party review and what information is the report intended to provide to the public;
2. What set of recognized standards is the third-party review required to follow in conducting and reporting the results of its review; and
3. A proper review process by which a final report includes comments of the OIG properly addressed by the QARAC before it is disseminated to the public.

³⁸ QARAC Report 2019 at 6-7.

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Like the work of the OIG, the review of an agency or department should be disclosed to the public only after the reviewed agency has had an opportunity to respond to the findings of the report. It is troubling that for the second year, the OIG has not been permitted to respond to a review of its agency as part of an accepted inspection or examination process despite the OIG's adherence to the same standards.

We commend the time and effort of the members of the QARAC and welcome the opportunity to respond on May 27, 2020, to any questions they have about the reports completed by the OIG in 2019.

Sincerely,



Derry Harper
Inspector General

Cc: Members of the Ethics Review Board
Dane Ciolino, ERB General Counsel
Quality Assurance Review Advisory Committee