

IN THE
CIRCUIT COURT FOR BALTIMORE CITY

INSPECTOR GENERAL OF
BALTIMORE CITY ISABEL
MERCEDES CUMMING, ESQ., *et al.*,

Plaintiffs,

v.

MAYOR AND CITY COUNCIL OF
BALTIMORE,

Defendant

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Case No. C-24-CV-26-001410

PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs Inspector General of Baltimore City Isabel Mercedes Cumming, Esq., (“IG Cumming”), Gayle Guilford, Chairperson of the Office of the Inspector General of Baltimore City (“OIG”) Advisory Board, and Advisory Board Secretary James Godey, CPA, Esq., move for a Preliminary Injunction pursuant to Maryland Rule 15-505. In support thereof, Plaintiffs state:

1. Plaintiffs incorporate by reference the allegations set forth in their Verified Complaint for Declaratory Judgment, Preliminary and Permanent Injunction, A Writ of Mandamus. The facts relevant to this motion and verified by Plaintiffs in the Complaint are described below.

2. The OIG is charged with “investigating complaints of fraud, financial waste, and abuse” and “promoting efficiency, accountability, and integrity in City government.” BALT., CHARTER art. X, § 4(b) (2022).¹

¹ The OIG’s investigative power is derived from Article XI-A, § 2 of the Maryland Constitution and Article II of the City Charter, which gives the City “full power and authority to exercise all of the powers heretofore or hereafter granted to it by the Constitution of Maryland or by any Public

3. Plaintiffs are the duly appointed Inspector General of Baltimore City and the Chairperson and Secretary of the OIG Advisory Board,² an 11-member entity established under the Charter for Baltimore City (“City Charter”) for the purpose of, *inter alia*, appointing the Inspector General and providing an annual overview of the OIG’s activities to the Baltimore City Council.

4. As set forth in their Verified Complaint, this lawsuit arises from Defendant the Mayor and City Council of Baltimore City’s (the “City”) stark and brazen departure from its longstanding treatment of subpoenas issued by the OIG pursuant to Article X, § 4 of the City Charter.

5. Until 2018, the OIG fell under the auspices and supervision of the Baltimore City Department of Law (“City Law Department”).

6. In 2018, recognizing the need for the OIG to be an autonomous entity, the Baltimore City Council proposed and adopted a resolution recommending amendments to the City Charter to create “an independent” OIG to be appointed and governed “by an independent” Advisory Board, *id.* § 2(a)(1), headed by a chair elected by the members of the Board.

General or Public Local Laws of the State of Maryland[.]” Article II, § (27) of the City Charter further affords the City broad police powers (“To have and exercise within the limits of Baltimore City all the power commonly known as the Police Power to the same extent as the State has or could exercise that power within the limits of Baltimore City”), and Article II, § (47) confers on the City the broad powers to legislate the general welfare and to promote good government (“To pass any ordinance ... which it may deem proper in the exercise of any of the powers, either express or implied, enumerated in this Charter, as well as any ordinance as it may deem proper in maintaining the peace, good government, health and welfare of Baltimore City....”).

² In addition to suing in their official capacities, Chairperson Guilford and Secretary Godey sue individually as citizens of Baltimore City who have taxpayer standing to “seek the aid of courts, exercising equity powers, to enjoin illegal *ultra vires* acts of public officials where those acts are reasonably likely to result in pecuniary loss to the taxpayer.” *State Ctr., LLC v. Lexington Charles Ltd. P’ship*, 438 Md. 451, 538 (2014).

7. In 2022, an overwhelming 86.52% of voters approved a further Charter Amendment, Ballot Question I, which altered the Advisory Board’s membership composition by A) expanding the number of Advisory Board members from 7 to 11; and B) changing the Advisory Board’s composition to ensure that its 11 members, including its chairperson, would not be elected officials or direct appointees of elected officials, candidates for office, lobbyists, or anyone who otherwise might pose potential impediments to the free and fair execution of the OIG’s mission or raise concerns over conflicts of interest. *Id.* § 2(c).

8. Taken together, these changes establish that the OIG is a truly independent watchdog that provides oversight of City government and taxpayer funds, free from political interference, or the appearance of same.

9. To carry out the OIG’s responsibilities, Article X, § 4(d) of the City Charter provides:

- (1) To perform the duties of office, the Inspector General may issue a subpoena to require:
 - (i) any person to appear under oath as a witness; or
 - (ii) the production of any information, document, report, record, account, or other material.
- (2) The Inspector General may enforce any subpoena issued pursuant to this subsection in any court of competent jurisdiction.

10. The aforementioned language reflects a deliberate choice by the unanimous City Council and the voters of Baltimore to establish an autonomous OIG to pursue its investigations and enforce subpoenas without limitation, oversight, or approval by other City entities, including the City Law Department.

11. Indeed, the OIG was first created in 2005, when then-Mayor Martin O’Malley issued a Mayoral Executive Order with the “goal of increasing government accountability ...

free from political influence.” Balt City Off. of the Inspector Gen., *2019 Annual Report* at 5 (2019), https://s3.amazonaws.com/baltimorecity.gov/ig-us-east-1/s3fs-public/2024-01/oig_annual_report_2019_pdf.pdf. The 2005 Executive Order initially contemplated that “[i]n connection with an investigation pursuant to this Article, the [OIG] may, *with the approval of the City Solicitor, issue a subpoena...*” Ex. 1, July 27, 2005 Executive Order at § 14(a) (emphasis added).

12. By amending this pertinent language, the Baltimore City Council and Baltimore’s voters and taxpayers expressly determined that the OIG’s authority to issue and enforce subpoenas is *not* contingent upon the authorization and participation of the City Solicitor or the City Law Department.

13. From 2018 through mid-2025, the City’s departments, agencies, and officials, including, at times, the City Law Department, worked cooperatively with the OIG, providing direct access to requested information without issue.

14. In a stunning about-face, beginning in June 2025, and as described more fully in Plaintiffs’ Verified Complaint, the City Law Department, began refusing to comply with the OIG’s subpoenas. For the first time ever in the history of the OIG, the City took the novel position that subpoenas issued by the OIG are not subpoenas, but instead requests to be assessed by the Law Department under the Maryland Public Information Act (“MPIA”).³ Based on this fundamentally flawed interpretation, the City provided hundreds of redacted documents—including entire pages of information—to the OIG, denying the OIG direct access to information critical to carrying out the duties and responsibilities of the office.

³ See generally Md. Code Ann., Gen. Provisions §§ 4-101 through 4-601.

15. Recognizing that the OIG is traditionally represented by the City Law Department, and recognizing the inherent conflict arising from the OIG's and City Law Department's diametrically opposed interpretations of the City Charter, IG Cumming has requested on several occasions that the City Law Department permit her to retain independent counsel so that a sound legal resolution of the two offices' differing interpretations might be obtained. The City Law Department has denied IG Cumming's request at every turn.

16. Moreover, the City has engaged in a public campaign to undermine the OIG's independence and prevent her from carrying out her duties.

17. For example, on Saturday, January 24, 2026, the City issued a press release through the Baltimore City Office of Information & Technology ("BCIT") alleging that the City Law Department "discovered an unauthorized account had access to their files[.]" For the first time, the City publicly took the position that the OIG had gained "unapproved and unfettered access" to the City Law Department's "confidential work product and communications." *Id.* Other than issuing the blanket press release, the City provided no further support or foundation for its assertion of attorney-client privilege or work product protections.

18. The BCIT press release directly and inexplicably contradicts the City's longstanding Technology Acceptable Use Policy:

The City owns all rights to all content created, updated, or maintained on City IT resources unless ownership rights are reserved in writing to a third party or unless federal copyright or other laws provide for different rights. **Users have no expectation of privacy when using City IT resources. The City reserves the right to access and monitor all messages, files, logs, and content created using City IT resources. Communications or content may be subject to disclosure to BCIT, the Office of Inspector General ("OIG"), the Law Department, law**

enforcement, or the Department of Human Resources (“DHR”), **to the fullest extent allowed by law.**^[4]

City of Balt., Acceptable Use Policy at 4 (Jan. 1, 2023), https://s3.amazonaws.com/baltimorecity.gov.if-us-east-1/s3fs-public/am-118-1_0.pdf. (emphasis added).

19. Contemporaneously, the City has further weakened the independence and confidentiality of the OIG’s investigations by depriving the OIG IT Administrator of his ability to (1) access the City’s server and databases; and (2) monitor the server and databases to ensure that only authorized individuals were accessing the information contained within.

20. The City’s efforts to undermine protections for whistleblowers and other individuals providing information related to investigations into fraud, waste, and abuse are chilling. Now, information stored by the OIG on the City’s server and databases can be accessed by any number of individuals in City government who could retaliate against or unduly influence participants complying with lawful OIG-related inquiries, silencing those who wish to come forward.

21. Moreover, the City’s unprecedented position of treating OIG subpoenas as MPIO requests will not only hamstring the OIG’s ability to perform its duties, but it will directly result in harm to the taxpayers. For example, of the 324 investigations conducted by the OIG since January 2018, 104 involved cases that, had the City invoked its current position, would have shielded information from the OIG that ultimately resulted in the discovery of \$38.9 million in fraud, waste, or abuse by City government.

⁴ City of Balt., Acceptable Use Policy at 4 (Jan. 1, 2023), https://s3.amazonaws.com/baltimorecity.gov.if-us-east-1/s3fs-public/am-118-1_0.pdf.

22. In addition, receiving unredacted data allows the OIG to identify third parties (such as financial institutions) who possess information so that the OIG can then subpoena those entities. By redacting whole swaths of information, the City has deprived the OIG of its ability to identify relevant sources of information and exercise its independent subpoena authority.

23. The City's specious position, taken for the first time since the OIG's inception in 2005, begs the question: If the Mayor's Office, through the Mayor-appointed City Solicitor, who serves at the pleasure of the Mayor, is to be the final arbiter of what information should be disclosed in investigations of potential fraud, waste, and abuse, then why did the people and taxpayers of Baltimore City establish in the City Charter an OIG in the first place?

24. Without an Order from this Court enjoining the City's conduct and requiring it to abide by the City Charter's plain language, Plaintiffs and the residents and taxpayers of Baltimore City have and will continue to suffer immediate and irreparable harm, as they no longer have the full weight and authority of Baltimore's independent watchdog to sniff out instances of fraud, financial waste, and abuse by City government.

25. A preliminary injunction may be granted pursuant to Rule 15-505 after a court considers the following four factors:

- (A) the likelihood that the plaintiff will succeed on the merits;
- (B) the "balance of convenience" determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal;
- (C) whether the plaintiff will suffer irreparable injury unless the injunction is granted; and
- (D) the public interest.

Ademiluyi v. Egbuonu, 466 Md. 80, 114 (2019) (citations omitted).

26. “Where two governmental parties, both presumptively acting in the public interest, are in irreconcilable conflict in the execution of their governmental responsibilities,” then “a court of equity can usually best resolve the impasse by issuing a temporary injunction where that is necessary to preserve the status quo until a decision on the merits is rendered, so long as that course does not result in greater harm to the public interest than would a refusal to interfere.” *State Dep’t of Health & Mental Hygiene v. Baltimore Cnty.*, 281 Md. 548, 556 (1977) (internal footnote omitted).

27. Each of the factors militate in favor of issuing a preliminary injunction.

28. First, Plaintiffs are likely to succeed on the merits of this action. The plain, unambiguous language of the City Charter authorizes the OIG to issue and enforce subpoenas to carry out the responsibilities of the office. That has been the status quo since at least 2018.

29. Second, from 2018 through 2025, the City complied with all requests to it from the OIG, providing direct access and unredacted materials upon demand. Accordingly, there is no harm to the City to provide information requested by the OIG’s office. On the other hand, the City’s sudden departure from longstanding practices has significantly gutted the OIG’s authority to investigate complaints of fraud, financial waste, and abuse, free from political influence.

30. Third, irreparable injury has befallen, and will continue to befall, the OIG and the residents and taxpayers of Baltimore if the City is permitted to shield information from the OIG connected to its investigations. Indeed, the City stands to lose its ability to monitor millions of dollars of government spending and to ensure that taxpayer dollars are not being squandered by City officials.

31. Finally, granting such an order is in the public interest as it maintains the status quo and allows the OIG to continue to conduct investigations under its independent authority to

ferret out fraud, waste, and abuse in City government. The denial of Plaintiffs' request would cripple the OIG's ability to directly access critical information needed to carry out its functions, and deny the people of Baltimore their right to have an independent watchdog promote the interests of efficiency, accountability, and integrity in City government. Moreover, ensuring that identifies of, and information provided by, whistleblowers and participants in OIG investigations promotes candor in the process protects those participating individuals from retaliation and eliminates the potential for undue influence.

32. Plaintiffs ask the Court to enjoin the City from refusing to fully comply with subpoenas issued by the OIG pursuant to City Charter Article X, § 4, and from interpreting such subpoenas as requests pursuant to the MPIA.

33. In addition, Plaintiffs seek a preliminary injunction enjoining the City from taking any actions that would otherwise hinder or deny the OIG the ability to carry out its investigations and maintain the independence of the office, including, but not limited, to restricting the OIG's ability to:

- a. directly access City databases critical to carrying out the functions of the office;
 - b. maintain confidentiality of information gathered within the scope of OIG investigations; and
 - c. monitor the server and databases to ensure the safety and protect the identity of individuals, including whistleblowers, who disclose information to the OIG and protect those individuals from undue influence.
34. Plaintiffs respectfully request that bond be waived pursuant to Rule 15-503(b).

WHEREFORE, Plaintiffs respectfully request that the Court enter a preliminary injunction enjoining Defendant from treating subpoenas issued by the OIG as MPIA requests and, instead, requiring Defendant to respond to those subpoenas as any other validly issued subpoena received under local, state, and federal law, including any subpoenas currently

outstanding, and from taking any actions that would otherwise hinder or deny the OIG the ability to carry out its investigations and waive the bond requirement pursuant to Maryland Rule 15-503(b).

DATED: February 24, 2026

Respectfully submitted,

/s/ Mark Stichel

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