



**GLENN A. CUNHA**  
INSPECTOR GENERAL

## The Commonwealth of Massachusetts

### Office of the Inspector General

JOHN W. McCORMACK  
STATE OFFICE BUILDING  
ONE ASHBURTON PLACE  
ROOM 1311  
BOSTON, MA 02108  
TEL: (617) 727-9140  
FAX: (617) 723-2334

April 1, 2019

The Honorable Marc R. Pacheco, Chair  
Committee on State Administration and Regulatory Oversight  
State House, Room 312-B  
Boston, MA 02133

The Honorable Danielle W. Gregoire, Chair  
Committee on State Administration and Regulatory Oversight  
State House, Room 22  
Boston, MA 02133

#### **Re: House 9, An Act Relative to Chapter 12A**

Dear Chair Pacheco and Chair Gregoire:

Thank you for your consideration of House 9, An Act Relative to Chapter 12A, which amends the Office of the Inspector General's ("Office") enabling statute. As you know, the Office has a broad mandate to prevent and detect fraud, waste and abuse. To that end, Chapter 12A, our enabling statute, grants the Office the independence and authority to investigate and review potential misuse of public funds in order to ensure that government works effectively and efficiently. House 9 clarifies and strengthens the Office's capacity to conduct its work. The Inspector General Council unanimously supports this legislation.

#### **Section 1**

Currently, Chapter 12A grants the Office broad access to all records of a public body necessary to fulfill its oversight responsibilities, with two clearly delineated exceptions. G.L. c. 12A, § 9. Despite this unambiguous language, some public bodies believe they are prohibited by statute from providing information to the Office. To ensure that the Office can retrieve all of the records which relate to its duties and responsibilities as intended, Section 1 explicitly states that the Office shall have access to records unless the General Court expressly restricts such access. This clarification will help the Commonwealth because it will ensure that my Office obtains all of the information it needs to conduct thorough, accurate and timely reviews and investigations.

My Office understands that many public bodies in the Commonwealth maintain sensitive information. Under Chapter 12A, the Office is bound by strict confidentiality requirements that

protect the documents and information the Office receives. Therefore, any concerns about inappropriate access to protected information would be unwarranted.

At the federal level, a similar law was enacted in 2016 after federal inspectors general reported to Congress similar difficulties accessing agency information. The federal statute, the Inspector General Empowerment Act of 2016, Pub. L. No. 114-317, served as a model for Section 1 of House 9.

### **Sections 2 and 3**

Following an investigation or review, if the Office has reasonable grounds to believe a crime has occurred, the Office must report the matter to the United States Attorney or the Attorney General or both. Sections 2 and 3 add district attorneys' offices to our statute; this would permit the Office to also refer cases directly to a district attorney for prosecution without prior approval of the Inspector General Council. Referring a case to a district attorney provides another avenue for prosecution of a case that may not be appropriate for the U.S. Attorney or Attorney General.

### **Sections 4 through 6**

Sections 4 through 6 strengthen the whistleblower protections in our statute. First, Chapter 12A currently protects public employees from retaliation if they file a complaint or provide information to the Office. Sections 4 through 6 extend these whistleblower protections to employees of private contractors who report suspected fraud, waste and abuse of public dollars, when the contractor is engaged in business with a public entity.

The proposal also adds penalty and damages provisions to Chapter 12A. The current statute has no such language. Specifically, Sections 4 through 6 provide that any person who retaliates against a whistleblower could be subject to a fine of up to \$10,000 and may be liable for treble damages, costs and attorney's fees. The proposed language mirrors other whistleblower statutes, such as G.L. c. 12 § 5J (double damages, costs and attorney's fees), G.L. c. 149 § 185 (triple damages, costs and attorney's fees), and G.L. c. 19C § 11 (fine, treble damages, costs and attorney's fees). This much-needed change will create a disincentive against retaliation and provide redress to both public and private employee whistleblowers. We also believe it will encourage more individuals to come forward with information in the first instance.

### **Section 7**

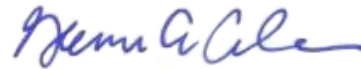
Finally, under the current statute, a designee of the Inspector General Council must be present whenever the Office takes testimony under oath from a witness (called a "private session"). This places a burden on Council designees, especially when a Council member's office has no involvement in or jurisdiction over the subject matter of the private session.

Chair Pacheco and Chair Gregoire  
Committee on State Administration and Regulatory Oversight  
April 1, 2019  
Page 3 of 3

Consequently, Section 7 removes the mandatory attendance requirement and allows a member or designee of the Inspector General Council to attend private sessions at the request of the Inspector General. For example, if the Attorney General is considering civil or criminal charges in a case, a designee from the Attorney General's Office during testimony may be helpful. The role of the Inspector General Council otherwise remains the same, including approving summonses to take testimony under oath.

I respectfully request the Committee report out favorably House 9. This proposal makes valuable changes to my Office's enabling statute and will significantly increase its ability to prevent and detect fraud, waste and abuse. Please do not hesitate to contact me if you have any questions about House 9. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Glenn A. Cunha".

Glenn A. Cunha  
Inspector General

Enclosure: House 9 redline

**Chapter 12A-Office of the Inspector General  
House Bill 9, An Act relative to Chapter 12A**

<b>Bill Section</b>	<b>Subject Area</b>	<b>Summary of Section</b>	<b>Chapter / Section of the General Laws Amended</b>
<b>1</b>	Access to information	Explicitly states that the Office has access to agency records unless the General Court expressly restricts such access	12A/9
<b>2</b>	OIG referrals to other agencies	Adds new language permitting the Inspector General to refer possible criminal violations to district attorneys	12A/ 10
<b>3</b>	OIG referrals to other agencies	Permits district attorneys to initiate proceedings into criminal matter	12A/10
<b>4</b>	Whistleblower protections	Extends whistleblower protections to public contractor employees	12A/14
<b>5</b>	Whistleblower protections	Extends whistleblower protections to public contractor employees	12A/14
<b>6</b>	Whistleblower protections	Adds penalty and damages to current whistleblower provisions in Chapter 12A	12A/14
<b>7</b>	Private session	Removes the requirement that an Inspector General Council member be present at private sessions	12A/15

a. Redline

**Chapter 12A-Office of the Inspector General  
House Bill 9, An Act relative to Chapter 12A**

**House 9, Section 1**

**Chapter 12A, Section 9 - Inspection of records and papers; investigations; summons**

The inspector general in carrying out the provisions of this chapter shall have access to all records, reports, audits, reviews, papers, books, documents, recommendations, correspondence, including information relative to the purchase of services or anticipated purchase of services from any contractor by any public body, and any other data and material that is maintained by or available to any public body described in section seven which in any way relate to the programs and operations with respect to which the inspector general has duties and responsibilities except records under the provisions of section eighteen of chapter sixty-six as defined in section three of said chapter sixty-six. The inspector general shall have access under this paragraph notwithstanding any other provision of law, except pursuant to any provision of law enacted by the general court that expressly (i) refers to the inspector general; and (ii) limits the right of access of the inspector general.<sup>1</sup>

---

<sup>1</sup> SECTION 1.

....

\* \* \*

### **House 9, Sections 2 and 3**

#### **Chapter 12A, Section 10 - Reports to attorney general or United States attorney**

In carrying out his duties and responsibilities, the inspector general shall report to the attorney general, the United States attorney, ~~or both,~~ the appropriate district attorney, or any combination thereof<sup>2</sup>, whenever the inspector general has reasonable grounds to believe there has been violation of federal or state criminal law. Said attorney general or district attorney<sup>3</sup> shall institute appropriate further proceedings.

....

\* \* \*

### **House 9, Sections 4, 5 and 6**

#### **Chapter 12A, Section 14 - Complaints by public employees; investigation**

(a) The inspector general may receive and investigate complaints or information from any source ~~public employee~~<sup>4</sup> concerning the possible existence of any activity constituting fraud, waste and abuse in or relating to programs and operations as described in section seven.

(b) The inspector general shall not, after receipt of a complaint or information from an ~~an~~ public<sup>5</sup> employee, disclose the identity of the employee without the written consent of said employee, unless the inspector general determines such disclosure is necessary and unavoidable during the course of the investigation. In such event, the employee shall be notified in writing at least seven days prior to such disclosure.

(c) Any ~~employee~~ person who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any ~~employee~~ public employee, or any employee of a contractor having a contract, or an anticipated contract, with a public body, as a reprisal for making a complaint or disclosing information to the inspector general, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity. Any person who willfully violates this subsection shall be punished by a fine of not more than \$10,000. In addition, any person who takes such prohibited action against an employee may be liable to that employee for treble damages, costs and attorney's fees.<sup>6</sup>

\* \* \*

---

<sup>2</sup> SECTION 2.

<sup>3</sup> SECTION 3.

<sup>4</sup> SECTION 4.

<sup>5</sup> SECTION 5.

<sup>6</sup> SECTION 6.

## **House 9, Section 7**

### **Chapter 12A, Section 15 - Summons for witness to attend and testify**

...

A person summonsed to attend and testify under oath shall appear and testify under oath before ~~at least two persons, one of whom shall be the attorney general or his designee, the state auditor or his designee, the secretary of public safety or his designee, the state comptroller or his designee, or other members of the inspector general council, and the other of whom shall be~~ the inspector general or an employee of the office who is an attorney admitted to practice in the commonwealth and approved by the inspector general council. A member of the inspector general council, or a designee of a member, may be present at the request of the inspector general.<sup>7</sup>

.....

---

<sup>7</sup> SECTION 7.