

October 10th, 2011

Superior Court of California  
County of San Francisco  
Civil Grand Jury  
400 McAllister Street, Room 008  
San Francisco, CA 94102

Dear Judge Feinstein and Members of the Civil Grand Jury:

As the Chair of the Citizen General Obligation Bond Oversight Committee and Audit Review Board, I filed this letter in response to your report, "Whistling in the Dark: The San Francisco Whistleblower Program." We appreciate the time you took to investigate and develop recommendations for this very important program. Many of the recommendations are helpful and we welcome your input.

**The Importance of Whistleblowers in Exposing Fraud and Keeping the Public Safe**

Whistleblowers have exposed many issues in the public sector, from Peter Buxtun of the US Public Health Service, who exposed the Tuskegee Syphilis Experiment, to Jesselyn Radack, a Department of Justice lawyer who in 2001, told Newsweek that the DOJ had lied about documents it had concerning the young Marin County man who went over to the Taliban, John Walker Lindh.

**CGOBOC's Authority under the City Charter**

City Charter section F1.111 established the Citizens Audit Review Board (CARB) as a function of CGOBOC. The charter requires the CARB to perform the following duties:

- (1) Review the Controller's service standards and benchmarks to ensure their accuracy and usefulness;
- (2) Review all audits to ensure that they meet the requirements set forth above;
- (3) Subject to appropriate rules ensuring the confidentiality of complainants as well as the confidentiality of complaints referred to and handled by the District Attorney, the City Attorney, and the Ethics Commission, review citizen and employee complaints received through the whistleblower/complaint hotline and website and the Controller's disposition of those complaints; and
- (4) Where it deems appropriate hold public hearings regarding the results of benchmark studies and audits to encourage the adoption of "best practices" consistent with the conclusions of the studies and audits.

## **Response to Civil Grand Jury's Report**

There is one misrepresentation related to CGOBOC in the report that we would like to address.

On page 19 of the report, referring to CGOBOC, the Civil Grand Jury writes "panel members seemed unaware that the program existed or that they had oversight responsibility." We want to be absolutely clear that we have always been aware of this responsibility. Not only has a CGOBOC representative met regularly with the Controller's Office to go over Whistleblower cases and outcomes, but we regularly hear from whistleblowers during our public quarterly meetings. We have discussed the Whistleblower Program at over half the meetings I have attended in the last year and a half I have served on CGOBOC. At our April 28, 2011 meeting we received a report from the CGOBOC Whistleblower liaison after he took up a number of cases to follow through to the end, reviewing timeliness, responses, and retaliation. We are very aware of the program, and of our responsibility for overseeing the program.

We recognize the importance of maintaining the privacy and confidentiality of whistleblowers and those who might be connected to whistleblowers in the workforce. Even when the whistleblower waives their right to confidentiality, other individuals are typically involved in the investigation that might be negatively impacted by publicly acknowledging the whistleblower. Additionally, the Civil Grand Jury's recommendation that the Whistleblower Program find ways to keep complainants better informed of the progress of their case is an issue that has been raised by members of the public at our meetings and discussed by the committee itself. Both CGOBOC and the Controller's Office concur with this goal, and have been working on means to achieve this end.

The key issue raised in the Civil Grand Jury report relates to protection against retaliation against whistleblowers, a key safeguard necessary for the functioning of any whistleblower program. A number of safeguards are present in the program to prevent retaliation, but further review of this issue is warranted given its importance. For example, CGOBOC believes that there has to be a better means of tracking statistics on retaliation complaints and their resolution. The Civil Grand Jury has made a couple of specific recommendations regarding specific means to this end, which will involve CGOBOC working with the Ethics Commission, as they are charged with following up on retaliation.

Below is a list of actions CGOBOC has or plans to take in response to your report:

1. CGOBOC has held two public hearings on the report during the last three months, during which both the Civil Grand Jury and the Controller's Office have presented and discussed the report's findings and recommendations.
2. CGOBOC is working with the Controller's Office to increase publicly-available information regarding complaints filed with the program, while maintaining the confidentiality of individual complainants. The committee has requested that the program's public reports increase both in frequency – with new quarterly updates planned to complement the current annual report – and in terms of the depth of information provided in the reports. On this point, the Controller has suggested using a sample from San Diego that looks very promising, and has suggested

other changes that will improve the availability of information to the public while protecting confidentiality of complainants.

3. CGOBOC is working on more formally defining the committee liaison's duties and will add criteria including the frequency of meeting and the level of review of various case types.
4. CGOBOC will hold quarterly public hearings on the program, and include in these review of the Controller's Office work on "best practices" from other jurisdictions and will consider bringing in experts on these programs to ensure we are continually improving our whistleblower program.
5. Since release of the report, CGOBOC has invited the Executive Director of the Ethics Commission to explain how the investigation of retaliation works and to help us understand an effective way to track retaliation so we can know if it is a factor affecting whistleblowers. If retaliation is a factor, CGOBOC will make recommendations for improvement to the Ethics Commission.
6. CGOBOC will periodically review the status and implementation of changes to the program that the Controller's Office has suggested in their response to the report and will consider the best way to monitor progress, including but not limited to a check list of changes suggested.

In conclusion, we appreciate the Civil Grand Jury's attention to the Whistleblower Program. We will make recommendations moving forward to improve transparency and tracking, while keeping confidentiality and anonymity a priority.

Sincerely,



Thea Selby  
Chair

Citizens' General Obligation Bond Oversight Committee and Audit Review Board

cc:       Members, CGOBOC  
          Members, Board of Supervisors Audit and Oversight Committee  
          Ben Rosenfield, Controller