

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General



Inspector General

March 27, 2009

The Honorable Adrian M. Fenty
Mayor
District of Columbia
Mayor's Correspondence Unit, Suite 316
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Mayor Fenty:

Enclosed please find a copy of a Management Alert Report (MAR 09-I-004) issued February 20, 2009, to the Alcoholic Beverage Regulation Administration (ABRA) and the D.C. Metropolitan Police Department (MPD). The MAR addresses the lack of written procedures for ABRA investigators to coordinate their activities with the MPD during related investigations. As a result, ABRA's investigative activities could conflict with and possibly jeopardize the results of MPD's criminal investigations. ABRA's response to the MAR, dated March 12, 2009, is also enclosed. The MPD informed our office that it agrees with ABRA's response and will not submit a separate response.

Although the OIG is conducting an ongoing special evaluation of ABRA for which a report will be completed later this year, we are providing this information to you now so that you are aware of the importance of the issues addressed in the MAR and the corrective actions proposed by ABRA.

If you have questions, please contact Alvin Wright, Jr., Assistant Inspector General for Inspections and Evaluations, at (202) 727-2540.

Sincerely,

A handwritten signature in black ink that reads "Charles J. Willoughby". The signature is fluid and cursive, with the first and last names being the most prominent.

Charles J. Willoughby
Inspector General

CJW/kb

Enclosures

cc: See distribution list

DISTRIBUTION:

Mr. Daniel M. Tangherlini, City Administrator and Deputy Mayor, District of Columbia (1 copy)
Mr. Neil O. Albert, Deputy Mayor for Planning and Economic Development (1 copy)
The Honorable Vincent C. Gray, Chairman, Council of the District of Columbia (1 copy)
The Honorable Mary M. Cheh, Chairperson, Committee on Government Operations and the Environment, Council of the District of Columbia (1 copy)
The Honorable Jim Graham, Chairperson, Committee on Public Works and Transportation, Council of the District of Columbia (1 copy)
The Honorable Phil Mendelson, Chairperson, Committee on Public Safety and the Judiciary, Council of the District of Columbia (1 copy)
Mr. Andrew T. Richardson, III, General Counsel to the Mayor (1 copy)
Ms. Carrie Kohns, Chief of Staff, Office of the Mayor (1 copy)
Ms. Bridget Davis, Director, Office of Policy and Legislative Affairs (1 copy)
Ms. Mafara Hobson, Director, Office of Communications (1 copy)
Mr. William Singer, Chief of Budget Execution, Office of the City Administrator (1 copy)
Ms. Cynthia Brock-Smith, Secretary to the Council (13 copies)
Mr. Peter Nickles, Attorney General for the District of Columbia (1 copy)
Dr. Natwar M. Gandhi, Chief Financial Officer (4 copies)
Mr. Robert Andary, Executive Director, Office of Integrity and Oversight, Office of the Chief Financial Officer (1 copy)
Ms. Deborah K. Nichols, D.C. Auditor (1 copy)
Ms. Kelly Valentine, Director and Chief Risk Officer, Office of Risk Management (1 copy)
Mr. Fred Moosally, Interim Director, Alcoholic Beverage Regulation Administration (1 copy)
Ms. Cathy L. Lanier, Chief, D.C. Metropolitan Police Department (1 copy)
Mr. Peter B. Feather, Chairperson, Alcoholic Beverage Control Board (1 copy)
Ms. Jeanette M. Franzel, Managing Director, FMA, GAO, Attention: Sandra Silzer (1 copy)
The Honorable Eleanor Holmes Norton, D.C. Delegate, House of Representatives, Attention: Bradley Truding (1 copy)
The Honorable Edolphus Towns, Chairman, House Committee on Oversight and Government Reform, Attention: Ron Stroman (1 copy)
The Honorable Darrell Issa, Ranking Member, House Committee on Oversight and Government Reform (1 copy)
The Honorable Stephen F. Lynch, Chairman, House Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia, Attention: William Miles (1 copy)
The Honorable Jason Chaffetz, Ranking Member, House Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia (1 copy)
The Honorable Joseph Lieberman, Chairman, Senate Committee on Homeland Security and Governmental Affairs, Attention: Holly Idelson (1 copy)
The Honorable Susan Collins, Ranking Member, Senate Committee on Homeland Security and Governmental Affairs (1 copy)
The Honorable Daniel K. Akaka, Chairman, Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia (1 copy)
The Honorable George Voinovich, Acting Ranking Member, Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia (1 copy)
The Honorable David Obey, Chairman, House Committee on Appropriations, Attention: Beverly Pheto (1 copy)
The Honorable Jerry Lewis, Ranking Member, House Committee on Appropriations (1 copy)

Letter to Mayor Fenty
March 27, 2009
Page 3 of 3

The Honorable José E. Serrano, Chairman, House Subcommittee on Financial Services and General Government, Attention: Dale Oak (1 copy)

The Honorable Jo Ann Emerson, Ranking Member, House Subcommittee on Financial Services and General Government (1 copy)

The Honorable Daniel K. Inouye, Chairman, Senate Committee on Appropriations, Attention: Charles Houy (1 copy)

The Honorable Thad Cochran, Ranking Member, Senate Committee on Appropriations (1 copy)

The Honorable Richard Durbin, Chairman, Senate Subcommittee on Financial Services and General Government (1 copy)

The Honorable Sam Brownback, Ranking Member, Senate Subcommittee on Financial Services and General Government (1 copy)

Mr. G. Bradley Weinsheimer, Chief, Superior Court Division, United States Attorney's Office for the District of Columbia (1 copy)



DISTRICT OF COLUMBIA
OFFICE OF THE INSPECTOR GENERAL
CHARLES J. WILLOUGHBY
INSPECTOR GENERAL

INSPECTIONS AND EVALUATIONS DIVISION
MANAGEMENT ALERT REPORT

**ALCOHOLIC BEVERAGE REGULATION
ADMINISTRATION
AND
D.C. METROPOLITAN POLICE
DEPARTMENT**

**ABRA LACKS INVESTIGATIVE POLICIES
AND PROCEDURES TO AVOID CONFLICTS
WITH CRIMINAL INVESTIGATIONS**

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General



February 20, 2009

Fred Moosally
Interim Director
Alcoholic Beverage Regulation Administration
941 North Capitol Street, N.E.
Washington, D.C. 20002

Cathy L. Lanier
Chief of Police
D.C. Metropolitan Police Department
300 Indiana Avenue N.W., Room 5080
Washington, D.C. 20001

Dear Mr. Moosally and Chief Lanier:

This is a Management Alert Report (MAR 09-I-004) to inform you that during our special evaluation of the Alcoholic Beverage Regulation Administration (ABRA), the Office of the Inspector General (OIG) determined that ABRA investigators lack written procedures for coordinating their activities and sharing information with the Metropolitan Police Department (MPD) during related investigations. As a result, ABRA's investigative activities could conflict with and possibly jeopardize the results of MPD's criminal investigations. The OIG provides these reports when it believes a matter requires the immediate attention of District government officials.

Background

As an independent District government agency, ABRA issues licenses to qualified applicants to serve or sell alcoholic beverages, investigates possible violations of District alcoholic beverage law, and takes appropriate enforcement action when a business is found to have violated the law. Following a criminal incident related to or occurring within an establishment that possesses an alcoholic beverage license, ABRA conducts an investigation that may run concurrent with an MPD criminal investigation. An ABRA senior official stated that the frequency of ABRA investigations related to serious violent crimes varies, but is probably once a month or once every 2 months. ABRA investigators gather evidence to determine if the establishment violated license requirements (e.g., operating hours, provisions for maintaining patrons' safety) and whether ABRA should present the case to the Alcoholic Beverage Control (ABC) Board. The ABC Board then deliberates to determine if sanctions should be issued against the establishment, such as

suspension of its license or closure. The Government Accountability Office (GAO) report entitled *Internal Control Management and Evaluation Tool* (GAO-01-1008G, August 2001) recommends that an agency ensure that “[a]ppropriate policies, procedures, techniques, and mechanisms exist with respect to each of the agency’s activities.”¹

Observations

ABRA does not have written policies and procedures to ensure coordination with the MPD. This deficiency may create conflicts with criminal investigations.

ABRA’s response to a crime scene is typically prompted by notification from the MPD through the Office of Unified Communications. An ABRA senior official stated that the ABC Board and a District Councilmember believe that ABRA investigators should immediately go to crime scenes. A Board member told the team that the Board wants ABRA investigators to go to the scene of a crime as soon as possible, adding that witnesses’ memories may become less clear as time passes.² However, interviewees from the MPD and ABRA stated that ABRA’s investigative practices and the information it obtains, if not properly coordinated with the MPD, have the potential to conflict with criminal investigations.

Following violent crimes, ABRA investigators go to crime scenes and interview individuals the MPD has interviewed or plans to interview. This may result in conflicting statements from a witness, which have the potential to undermine criminal cases. According to interviewees, defense attorneys can undermine the credibility of a witness who makes conflicting statements, and conflicting information creates an issue as to which version is more accurate and credible. An MPD official stated that the MPD would have to testify about discrepancies in statements gathered and recorded. A senior ABRA official stated that there have been instances when ABRA and the MPD have gathered conflicting information from witnesses. Another senior ABRA official stated he/she was not aware of instances when issues with ABRA investigations had affected the outcome of criminal cases, but added that this could happen.

An MPD interviewee raised a communication issue, stating that ABRA should always provide the MPD with copies of statements its investigators have taken from witnesses when there is an MPD investigation. Without effective coordination, the MPD may not be aware of all individuals interviewed by ABRA or if it has received all statements that ABRA gathered.

¹ *Id.* at 34.

² An ABRA senior official stated that ABC Board hearings are administrative. Hearsay information, such as that gathered from the MPD, is admissible. However, the official added that a case should not be built entirely on hearsay and an eyewitness is preferable.

An MPD official raised an additional concern. Following one homicide, an MPD officer incorrectly allowed an ABRA investigator to walk through a crime scene before the MPD had cleared the scene. ABRA's former Director stated that ABRA has instructed its investigators to request permission to enter a crime scene from the commanding MPD officer at the scene to ensure the MPD has cleared the area.

ABRA's Interim Director noted that by contacting the lead MPD detective, ABRA investigators can confirm that they do not interview anyone that the MPD or the U.S. Attorney's Office (USAO) does not want ABRA to interview, such as key witnesses in homicides. This official stated that ABRA has to balance its need to obtain information regarding possible violations with not interfering with criminal investigations.

ABRA does not have written policies and procedures or a written agreement with the MPD regarding ABRA's practices in instances where the MPD is conducting a criminal investigation. ABRA's Interim Director stated that he has identified a need for written procedures in this area and that the MPD has agreed to meet with ABRA to develop them. He has also suggested that ABRA and the MPD develop an agreement with the input of the USAO and that the results be shared with the Office of the Attorney General (OAG). An MPD official stated that it is always a concern when a law enforcement agency and an administrative agency conduct investigations related to the same incident, but that when the agencies are clear on their roles, it is not a problem.

Recommendations

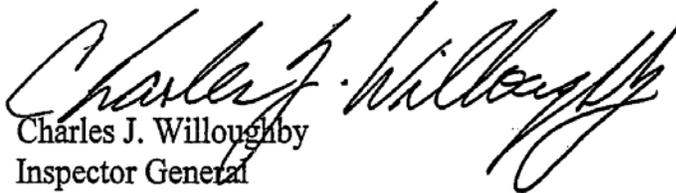
The conditions cited above may interfere with criminal investigations. Accordingly, the OIG recommends placing a high priority on the following actions:

1. That the Interim Director of ABRA, in consultation with the MPD, develop and implement written policies and procedures for ABRA investigations to ensure that ABRA's on-scene practices and investigations do not conflict with or jeopardize the results of the MPD's criminal investigations.
2. That the Interim Director of ABRA and the Chief of Police formalize a Memorandum of Understanding that details procedures both agencies will follow to ensure that ABRA investigations do not conflict with criminal investigations.

Please provide your comments on this MAR by March 12, 2009. Your response should include actions taken or planned, dates for completion of planned actions, and reasons for any disagreements with the concerns and recommendations presented. Please distribute this MAR only to those who will be directly involved in preparing your response.

Should you have any questions prior to preparing your response, please contact [REDACTED]
[REDACTED], Director of Planning and Inspections, at [REDACTED].

Sincerely,


Charles J. Willoughby
Inspector General

CJW/kb

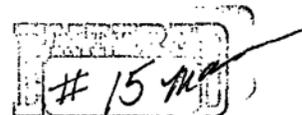
cc: Mr. Daniel M. Tangherlini, City Administrator and Deputy Mayor, District
of Columbia
The Honorable Vincent C. Gray, Chairman, Council of the District of Columbia
The Honorable Mary M. Cheh, Chairperson, Committee on Government
Operations and the Environment
The Honorable Phil Mendelson, Chairperson, Committee on Public Safety and the
Judiciary
The Honorable Jim Graham, Chairperson, Committee on Public Works and
Transportation
Mr. Peter Nickles, Attorney General, Office of the Attorney General
Mr. G. Bradley Weinsheimer, Chief, Superior Court Division, United States
Attorney's Office for the District of Columbia
Mr. Peter B. Feather, Chairperson, Alcoholic Beverage Control Board

GOVERNMENT OF THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION



RECEIVED
70627

2009 MAR 18 PM 2 38



March 12, 2009

Charles J. Willoughby
Inspector General
District of Columbia
717 14th Street, N.W.
Washington D.C. 20005

Dear Mr. Willoughby:

This is in response to your Management Alert Report (MAR) dated February 20, 2009, wherein the Office of the Inspector General determined that the Alcoholic Beverage Regulation Administration (ABRA) and the D.C. Metropolitan Police Department (MPD) are in need of written investigative policies and procedures to avoid potential conflicts with criminal investigations. Specifically, the MAR raises concerns that the lack of written procedures for ABRA investigators to follow in coordinating and sharing information with MPD during related investigations could potentially conflict with and jeopardize the results of MPD's criminal investigations.

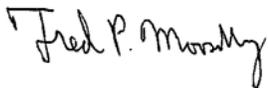
ABRA is committed to working with MPD to ensure the adoption of the two recommendations contained in the MAR regarding these concerns. As noted in the MAR, I identified a need for written procedures in this area shortly after becoming Interim Director, and I contacted MPD about scheduling a meeting with ABRA to develop them. ABRA and MPD met on Tuesday, March 3, 2009, to discuss the implementation of the two recommendations contained in the MAR. This meeting was productive and resulted in an oral agreement between MPD and ABRA to create both a Memorandum of Understanding and written procedures setting forth the protocol for (1) ABRA investigator activities at crime scenes, and (2) limiting ABRA investigators' contact with witnesses to avoid potential conflicting statements as a way to avoid potential conflicts with MPD criminal investigations in the future.

ABRA is currently drafting both a Memorandum of Understanding and written procedures, in consultation with MPD, to address the issues raised in the MAR, which are expected to be implemented by April 10, 2009. A copy of both the Memorandum of Understanding and the written procedures will be provided to your Office by this date. In the interim, ABRA investigators will initiate communications with the MPD on-scene detective supervisor or lead detective when arriving at crime scenes to avoid any scene contamination issues. Additionally, debriefings will be held between MPD and ABRA after serious violent crimes that occur inside

of ABC establishments in an effort to share information and avoid any potential conflicting statements by witnesses.

I trust that this approach is responsive to the concerns raised in the MAR. If you have any questions, or require additional information regarding this matter, please call me at (202) 442-4355.

Sincerely,

A handwritten signature in black ink that reads "Fred P. Moosally". The signature is written in a cursive style with a distinct loop at the end of the last name.

Fred P. Moosally
Interim Director
Alcoholic Beverage Regulation Administration

cc: Mr. Daniel M. Tangherlini, City Administrator and Deputy Mayor, District of Columbia
The Honorable Vincent C. Gray, Chairman, Council of the District of Columbia
The Honorable Mary M. Cheh, Chairperson, Committee on Government Operations and the Environment
The Honorable Phil Mendelson, Chairperson, Committee on Public Safety and the Judiciary
The Honorable Jim Graham, Chairperson, Committee on Public Works and Transportation
Mr. Peter Nickles, Attorney General, Office of the Attorney General
Mr. G. Bradley Weinsheimer, Chief, Superior Court Division, United States Attorney's Office for the District of Columbia