



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
July 17, 2009

SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General determined that on December 30, 2008, Debbie Mitchell, who has since resigned from employment with the New York State Department of Motor Vehicles (DMV), improperly used her state computer to access DMV information for personal reasons unrelated to her employment, in violation of the Federal Drivers Privacy Protection Act (DPPA) and DMV policy. While her resignation from DMV precludes disciplinary action against Mitchell by DMV, the Inspector General has forwarded a copy of this report to the New York State Commission on Public Integrity for its determination regarding a potential violation of Public Officers Law § 74 and the Albany County District Attorney's Office for review of potential criminal charges.

ALLEGATION

On January 29, 2009, a complainant requesting confidentiality alleged to the Inspector General that DMV employee Debbie Mitchell had obtained the complainant's confidential driver information and insurance information from DMV's computer system absent consent, in order to file a claim with complainant's insurance carrier for damages to Mitchell's car purportedly caused by the complainant.

SUMMARY OF INVESTIGATION

Debbie Mitchell was employed by DMV as a Data Entry Machine Operator in DMV's Albany office from July 2008 until her resignation on February 26, 2009. Mitchell worked in the Traffic Ticket Recording and Processing Unit. Her primary duty was to enter traffic ticket information from courts into the DMV data system.

In order to fulfill their duties, DMV employees are granted electronic access to New York State drivers' personal information contained in DMV's database. Under federal and state law and DMV policy, a DMV employee provided with access to DMV records is prohibited from using this information for non-official DMV matters or from disclosing this information to others. The Federal Driver's Privacy Protection Act (Title 18 of the United States Code §§ 2721-2725) bars the knowing disclosure of personal information about an individual maintained by any state department of motor vehicles, unless the disclosure is for one of the specific limited uses set forth in the statute. While

under federal law one of the permissible uses of driver information is in connection with a civil, criminal, administrative or arbitral proceeding, in order to properly obtain this information, one must file the appropriate application with DMV and pay a fee. Additionally, section 10.6 of the DMV Employee Handbook, entitled “Disclosure of Information,” states:

Any misuse of file information by an employee (that is, the use of information for any purpose other than the processing of official Department business) could lead to legal action against the Department [of Motor Vehicles]. Therefore, an employee may not obtain, ask any other employees to obtain, or use customer file information for any purpose other than carrying out his or her assigned duties in the Department. Any violation of this policy is subject to disciplinary action.

Mitchell’s unauthorized access to the complainant’s records apparently stemmed from a personal dispute between her and the complainant which occurred on December 28, 2008. This conflict regarded Mitchell’s accusation that the complainant had damaged Mitchell’s car by scratching it with a key and repeatedly slamming the complainant’s car door into Mitchell’s vehicle. Mitchell filed a complaint with the Albany Police Department, and the complainant was arrested. The complainant has denied damaging Mitchell’s vehicle and the criminal case is pending as of the date of this report. Mitchell also filed a civil suit against the complainant which was subsequently dismissed.

The complainant told that Inspector General that an unidentified third party informed the complainant that Mitchell had advised this third party that Mitchell had looked up the complainant’s vehicle information in the DMV database in order to file a claim with the complainant’s insurance company without the complainant’s knowledge. The complainant also received a call from a representative of the insurance company advising that Mitchell had filed a claim for damages to her vehicle. When the insurance company learned that Mitchell’s claim was not a result of a motor vehicle accident, it denied the claim.

The Inspector General, through the assistance of DMV’s Division of Field Investigations, found that on December 30, 2008, two days after the alleged “keying” incident, Mitchell accessed information about the complainant contained in DMV’s computer database, including the complainant’s driver identification number, which is specifically protected by the DPPA, and, ultimately, her insurance company’s code and name. DMV records establish that Mitchell improperly accessed the complainant’s information within the 40 minutes preceding her filing a claim with complainant’s insurance provider. The Inspector General also spoke with Mitchell’s supervisor, who advised that Mitchell had no legitimate reason in the course of her official duties to access the complainant’s information in the DMV system. The Inspector General also learned from DMV that Mitchell resigned from employment with DMV for reasons unrelated to this investigation.

The Inspector General contacted Mitchell who claimed that she learned of the complainant's insurance information from a car dealership in Albany whose sticker was affixed to the complainant's vehicle. Mitchell claimed that she went to the dealership, where an employee identified the complainant's insurance company. When informed that the Inspector General was conducting an investigation concerning her access of information from the DMV database, Mitchell acknowledged she was not permitted to access anyone's information on DMV computers unrelated to her duties. However, she refused to be further interviewed by the Inspector General.

Notwithstanding the fact that DMV records confirm that Mitchell illicitly accessed the complainant's information, the Inspector General pursued Mitchell's claim that she obtained the insurance information from the car dealership. The manager of the dealership and two employees indicated that they do not divulge insurance information to anyone other than the rightful owner of the vehicle and said they could not recall anyone asking about the complainant's insurance information in late December 2008 or early January 2009.

Because Mitchell is no longer a state employee, DMV cannot discipline her for her violation of agency policy. However, Public Officers Law § 74(3)(d) provides that "[n]o officer or employee of a state agency . . . should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others." The Inspector General has forwarded a copy of his findings to the New York State Commission on Public Integrity, the agency charged with adjudicating violations of the Public Officers Law, which may bring charges against a former state employee within one year of the employee's departure from state service. The Inspector General is further forwarding a copy of his findings to the Albany County District Attorney for his review of potential criminal charges of official misconduct and computer trespass.

FINDINGS AND RECOMMENDATIONS

The Inspector General found that on December 30, 2008, then-DMV employee Debbie Mitchell improperly used her state computer to access DMV information for personal reasons unrelated to her employment, in violation of the DPPA and DMV policy.

The Inspector General has forwarded a copy of this report to the Commission on Public Integrity and the Albany County District Attorney's Office.