



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
August 19, 2009

DMV Service Rep Gave Data In Exchange For Gratuity

SUMMARY OF FINDINGS/RECOMMENDATIONS

The Inspector General found that Lori Myers, a telephone representative for the Department of Motor Vehicles (DMV) Title Bureau, unlawfully accepted a gratuity from M&T Bank in exchange for her services. The Inspector General further found that Myers made other unauthorized use of her computer on behalf of a relative by accessing information that was outside the scope of her assigned duties at the Title Bureau. The Inspector General recommended that DMV take appropriate disciplinary action against Myers and provided these findings to the New York State Commission on Public Integrity and the Albany County District Attorney for review.

DMV advised the Inspector General that it has taken steps to commence disciplinary action against Myers.

ALLEGATION

On February 17, 2009, Timothy Lennon, Deputy Commissioner for Integrity at the New York State DMV, reported to the Inspector General that Lori Myers had been making unauthorized use of her computer and accepted an unlawful gratuity.

SUMMARY OF INVESTIGATION

Receipt of an Unlawful Gratuity from M&T Bank

Lori Myers has been employed as a service representative in the DMV's Title Bureau since 1992. Her duties include answering telephone inquiries from consumers regarding titles recorded with DMV. During the week of February 9, 2009, Myers took a leave of absence. During that time, Eileen Herman, Myers's supervisor, was notified that Myers had received a package from M&T Bank which was labeled "Private and Confidential." DMV policy prohibits employees from receiving private or confidential mail; furthermore, as a matter of standard practice, all envelopes and packages are opened upon receipt and logged. Accordingly, the package addressed to Myers was

opened and logged by bureau staff, and then brought to Herman's attention. Inside the package, Herman found a \$25 Visa gift card, pens, and a leather checkbook cover bearing the M&T Bank logo, all of which she determined were sent from Jason Schmand, an employee at M&T Bank. The package also contained several pages of data containing names, hull identification numbers, and year and model numbers of what appeared to be watercraft. Herman then examined Myers's fax mailbox, and found similar lists. Pursuant to Executive Law § 55(1), the matter was reported to the Inspector General.

In its investigation of Myers, the Inspector General examined DMV policy concerning dissemination of DMV information regarding vehicle and watercraft liens. Lien holders have an interest in ensuring that their liens are reflected correctly in the title of vehicles and watercraft filed with DMV. In regard to automobiles, a lien holder may verify for no charge, via the Internet, that the lien is memorialized in the title. Titles for boats and other vessels, however, cannot be verified via DMV's Web site. A lien holder wishing to verify the lien's inclusion in the title of a vessel may contact DMV. Consistent with the DMV's limitation on the number of transactions processed via telephone or in person at one time, a lien holder may check only three titles per telephone call. DMV's policy of three transactions per customer is designed to keep a single customer or caller from monopolizing an employee's time thereby delaying assistance to other customers.

That policy notwithstanding, individuals or commercial enterprises who conduct regular business with DMV, such as banks, have an alternative option which affords them unlimited searches. DMV allows authorized institutions or individuals to obtain certification to access such information through a dial-in service. Pursuant to Vehicle and Traffic Law § 202, those entities and individuals who are registered and authorized by DMV to utilize the dial-in service are required to pay a \$7 search fee per search conducted through the service before any information may be retrieved.

Schmand, an Operations Associate at M&T Bank, informed the Inspector General that he had been assigned by the bank to obtain information regarding the title status of several hundred boats: specifically, whether the titles of identified boats had been issued and, if so, when they were issued and whether M&T was named as a lien holder. Although the bank was registered to obtain this information at a cost of \$7 per title through DMV's dial-in service, Schmand informed the Inspector General that he was unaware of this option and instead called DMV's Title Bureau to obtain the required information. Schmand reported to the Inspector General that, at first, he had called the DMV numerous times a day, each time being placed on hold while he waited for assistance and then transferred from employee to employee until he reached a representative from the Title Bureau. Once he was connected to the Title Bureau, he was permitted only three inquiries before having to disconnect and repeat the process. After several such calls, by happenstance, Schmand was connected with Myers, with whom he had no previous contact. To Schmand's surprise and satisfaction and contrary to DMV's three search limit, Myers agreed to accept 3-5 lists containing more than 200 names each for which she would obtain the requested information and return the information to Schmand by fax at no charge.

Schmand stated that, after consulting with his supervisors at the bank, he sent the Visa gift card and memorabilia to Myers in appreciation of Myers's efforts. The Inspector

General determined that Myers's acceptance of this gift was not unexpected or unwitting. In fact, telephone conversations between the two, recorded by DMV for quality control purposes, reveal that Schmand offered Myers the gift which she gladly agreed to receive. During the conversation, Schmand specifically asked Myers if it would be appropriate to send her "a little something," as his managers "were impressed" by her work, to which Myers responded "that's fine." Myers then provided Schmand the correct spelling of her name to ensure that a similarly named DMV employee did not mistakenly receive the package adding, "I wouldn't want nobody getting nothing that's mine." Also, along with the packaged gift was another list of more than 200 names for which another search was impliedly requested. Upon receiving the package intended for Myers, Herman telephoned Schmand and informed him that the package would be returned because DMV employees are forbidden from accepting gratuities for services performed in their official capacities.

When interviewed by the Inspector General, Myers claimed to be unaware that she acted improperly in her interactions with the M&T Bank representative. Despite the aforementioned three-searches per call policy, Myers posited that the official procedure could be very time consuming and inefficient for any person with a large number of inquiries. Therefore, according to Myers, her offer to conduct such a large number of inquiries for one customer was simply done to provide good customer service. Myers further claimed to have been unaware of whether there was a required fee for the services that M&T had requested and implied that she had very little experience with transactions that dealt with payments. Had M&T used the dial-in service to verify the title information on 3-5 lists of 200 names each, it would have been charged between \$4,200 and \$7,000 for the information.

When questioned about the gift she accepted from the bank for her efforts, Myers maintained that she did not know how to "graciously" refuse the gift during her telephone conversation with Schmand and that she had intended to return the gift with a letter stating that she could not accept it. This claim is belied by the recorded conversation with the bank representative.

Under Public Officers Law § 73(5)(a), a state employee may not

solicit, accept or receive any gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part.

As set forth above, the gift Myers agreed to accept was expressly offered to her in appreciation of her actions as a state employee in providing a service to M&T bank. Additionally, a public servant is guilty of the crime of Receiving Unlawful Gratuities (Penal Law § 200.35) when she "solicits, accepts or agrees to accept any benefit for having engaged in official conduct which she was required or authorized to perform, and

for which she was not entitled to any special or additional compensation.” Conversely, it is a crime to knowingly confer, offer, or agree to confer any benefit on a public servant for engaging in official conduct which she is required or authorized to perform (Penal Law § 200.30). The Inspector General has forwarded a copy of this report to the Commission on Public Integrity, the state agency charged with adjudicating potential violations of the Public Officers Law, and the Albany County District Attorney for their review.

Disclosure of Confidential Information

In addition to the incident with M&T Bank, the Inspector General also found that Myers made unauthorized use of her computer as a favor to her cousin, Linda Stewart. The Inspector General learned that Stewart’s son had recently lost his driver license. During the time he was waiting to receive a replacement from DMV, he carried his previous license which did not reflect his current address. Subsequently, he was stopped for a traffic infraction by the police and given a summons for failing to notify the DMV of a change of address. Myers, acting beyond the scope of her assigned duties, retrieved his license information from the DMV database and faxed it to Stewart for her son to bring to court and have the summons dismissed. Access to DMV information is strictly limited under the Federal Driver Privacy Protection Act. Consistent with federal law, DMV’s Privacy and Security Statement declares that access to personal information by DMV employees is limited to what is needed to perform their official duties; computer access is restricted to business purposes only. Myers, an employee in the Title Bureau, accessed information outside the scope of her assigned duties and provided it to her cousin in violation of DMV policy.

FINDINGS AND RECOMMENDATIONS

The Inspector General determined that Lori Myers unlawfully and improperly accepted a gratuity for performance of her official duties by accepting a gift from a representative of M&T Bank. The Inspector General further finds that Myers violated DMV policy by making unauthorized use of her computer on behalf of her cousin.

The Inspector General recommended that DMV take appropriate disciplinary action against Myers. The Inspector General also forwarded this report to the New York State Commission on Public Integrity, which has jurisdiction to adjudicate violations of the Public Officers Law, and to the Albany County District Attorney for review of Myers’s and Schmand’s actions. Additionally, the Inspector General forwarded these findings to M&T Bank, requesting that bank employees be reminded of the impropriety of providing gifts or other benefits to public employees for the performance of their official duties.

DMV advised the Inspector General that it has taken steps to commence disciplinary action against Myers.