



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
March 18, 2009

**DOT Employee Played Politics at Work in
Apparent Violation of Public Officers Law**

SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General determined that New York State Department of Transportation (DOT) employee Karen Lorf likely violated the New York State Public Officers Law and DOT policies by conducting outside political activities without notice to, or permission from, DOT, using her state-assigned telephone and computer to aid in these activities. The Inspector General also learned that, while DOT's telephone usage policy directs supervisors to review their subordinates' monthly telephone usage, the supervisors are unable to do so because they are not provided necessary information.

In addition, the Inspector General determined that Lorf's New York State driver license was suspended at the time she notified DOT that her license was valid. Notwithstanding her suspended license, Lorf drove state vehicles.

ALLEGATION

A complainant requesting confidentiality alleged to the Inspector General that DOT employee Karen Lorf was using her state-assigned computer for personal purposes including harassing employees of the Town of Stillwater.

SUMMARY OF INVESTIGATION

Landscape Architect 1 Karen Lorf began working for DOT on November 6, 2006. According to Lorf's supervisor, Lorf's duties as a landscape architect require her to conduct field work approximately 10 percent of the time. Lorf utilizes state vehicles to travel to DOT sites she is assigned to evaluate.

Lorf's Use of State Resources for Political Purposes

The Inspector General's investigation revealed that Lorf conducted campaign activities from her state office during business hours, in violation of the New York State

Public Officers Law and DOT policies. Public Officer's Law § 74(3), as applied to political campaigning and detailed in New York State Ethics Commission Advisory Opinion 98-12, prohibits campaign activities being conducted (1) from a state office or using state resources, or (2) during state business hours unless charged to leave. Furthermore, DOT's employee handbook requires employees to file the appropriate agency form to notify and receive permission from DOT prior to engaging in outside political or civic activity.

Lorf had been advised of the prohibition against using state resources and time in furtherance of campaign activities and of agency requirements to disclose outside political or civic activity. Lorf received the DOT employee handbook, which advises, "Department employees must file a Notice of Extra Employment or Activity Form (PER-79) before engaging in any outside employment, political/civic activity. . . ." As a new employee, Lorf attended an orientation session during which she received detailed information about the Public Officers Law and conflicts of interest, and was advised to seek permission from DOT if she wished to conduct outside activities such as working on a campaign. Additionally, DOT issues an annual internal notice and bulletin reminding employees of the policy regarding separation of political activities and the conduct of official state business.

Lorf was also advised that DOT policies restrict use of state computers and telephones for non-state business. DOT's Internet Access policy states that computer "[a]ccess is provided to enable information exchange that facilitates NYSDOT's official work. Infrastructure used to interact with the Internet, such as computer hardware, software, networks, related equipment, facilities and/or services, are provided solely for NYSDOT business purposes." Prior to each access to DOT's system, DOT employees such as Lorf are reminded of this policy through a banner declaring: "NYSDOT computer equipment and systems are provided for official use only. By signing on, you are agreeing to comply with NYSDOT's policies and procedures related to computer usage. Please note there is no right of privacy when using any DOT system. Your system use may be monitored and logged at any time." Additionally, DOT's telephone usage policy in effect during the relevant time stated, "STATE FURNISHED TELEPHONE EQUIPMENT AND SERVICES SHALL BE USED FOR STATE BUSINESS ONLY. . . . PRUDENT USE OF THE TELEPHONES IS PERMITTED FOR ESSENTIAL LOCAL CALLS." (Emphasis in original) "Essential calls" are further defined in this policy as "matters of health, welfare, safety, critical appointments and family concerns."

The Inspector General obtained copies of e-mails sent and received by Lorf through her state e-mail account and reviewed records of telephone calls conducted by Lorf from her assigned state telephone. Although the Inspector General did not unearth any harassing e-mails from Lorf to employees of Stillwater, the investigation revealed that Lorf frequently used her state computer and telephone to conduct non-state business, and to support Shawn Connelly, the challenger in the election for town supervisor in Stillwater. For example, Lorf utilized her state e-mail account to contact Connelly or his wife approximately 30 times between September 1, 2007, and Election Day, November 6, 2007. On September 19, 2007, after receiving an e-mail from Connelly regarding alleged inappropriate use of a town-owned truck, Lorf replied to Connelly, "Another reason not to vote for [sitting Town Supervisor Greg] Connors this fall." On September 21, 2007,

Lorf and Connelly's wife exchanged e-mails over the state network to discuss changes that would occur in the local government if Connelly was elected.

More significantly, on September 25, 2007, Lorf used her state-email account to relay an assignment of handing out fliers to another Connelly supporter. Lorf also communicated draft campaign slogans and transmitted a letter in support of Connelly to the e-mail's recipient. Lorf also used her state e-mail account to solicit a financial contribution for Connelly's political campaign from another state worker. On October 24, 2007, Lorf sent the other state worker a document opposing Connors, which Lorf intended to publish in a local newspaper. Lorf then solicited a contribution from the other worker to help pay for the advertisement by asking, "Want to chip in?" Lorf added, "I have no problem paying for it, but won't complain if people chip in. . . ." The other state worker agreed to contribute. Connelly's campaign was successful; he was elected town supervisor on November 6, 2007.

In addition to assisting in Connelly's campaign using state resources, Lorf frequently used her state e-mail account and telephone to participate in local town business. Lorf used her state e-mail account to contact then-Town Supervisor Connors regarding issues before various town boards, and to request minutes and other associated documents. The Inspector General determined that none of the Stillwater documents Lorf requested from her state e-mail were related to any DOT project assigned to her. Lorf also e-mailed Stillwater Town Clerk Susan Cunningham approximately 25 times from her state e-mail account between September 1, 2007, and November 6, 2007. None of the e-mails were related to Lorf's duties at DOT, but rather discussed the upcoming local election. During the same period, Lorf also placed approximately 40 telephone calls to Cunningham. Cunningham advised the Inspector General that Lorf often called regarding Freedom of Information Law requests, but that the two never discussed campaign matters. Even if Lorf's calls to Cunningham were confined to Freedom of Information Law requests, they were nonetheless unrelated to her DOT responsibilities.

When interviewed by the Inspector General, now-Town Supervisor Connelly specifically denied that Lorf worked on his campaign saying, "She was not involved in my campaign at all . . . she was not part of the Republican Committee . . . she was not part of running my campaign. . . ." Seemingly contradicting this denial, the Inspector General obtained a September 13, 2007, e-mail copied to Lorf's state e-mail account in which Connelly described Lorf to a third party as, "a person that is working on my campaign. . . ." Connelly then requested that Lorf contact the third party on his behalf.

Lorf refused to speak to the Inspector General about these matters.

DOT's Failure to Enforce Its Phone Usage Policy

DOT telephone usage policy III(C)(4)(a) advises that supervisors should "review their employees' telephone usage to ensure personal telephone calls made or received requires the immediate attention of the employee in a matter of health, welfare, safety, critical appointments and/or family concerns." Lorf's supervisor might have learned she was engaged in outside political activity if the supervisor had been provided with a report of Lorf's telephone usage. However, DOT officials informed the Inspector General that

the agency ceased providing telephone usage reports to supervisors several years ago because it was deemed an inefficient use of resources.

Lorf's Operation of a State Vehicle with a Suspended Driver License

During the course of the investigation, the Inspector General learned that Lorf's New York State driver license was suspended on June 21, 2003 after she failed to appear in court and answer a summons related to disobeying a traffic device. According to New York State Department of Motor Vehicles records, Lorf received notices at her home informing her of the court date and the suspension. Despite the suspension and notice, on her application for employment with New York State dated November 2, 2006, Lorf inaccurately stated that she possessed a valid driver license.

As noted above, Lorf's duties involved the operation of state vehicles. The Inspector General notified DOT that Lorf's license was suspended. DOT informed Lorf's supervisor who prohibited her from driving state vehicles while the license was suspended. Lorf's license was reinstated in March 2008.

DOT could have learned of Lorf's suspension through the New York State Department of Motor Vehicles (DMV) License Event Notification Service. DOT participates in this program, which allows employers to receive notice directly from DMV when an employee is involved in a traffic-related infraction. Had DOT enrolled Lorf in the program, it would have been notified upon her enrollment that her license was suspended. According to DOT, employees who drive a state vehicle 25 or more times a year are enrolled in the program. However, DOT officials reported that landscape architects, including Lorf, are not enrolled in the program despite their regular use of state vehicles.

FINDINGS AND RECOMMENDATIONS

The Inspector General determined that DOT employee Karen Lorf likely violated the New York State Public Officers Law and DOT policies by conducting outside political activities without notice or permission and using New York State resources to aid in these activities. The Inspector General forwarded a copy of this report to the New York State Commission on Public Integrity for further action in regard to Lorf's apparent violation of the state Public Officers Law.

Although Lorf failed to inform the agency that she was engaged in this outside activity, her supervisor might have discovered her misconduct had DOT enforced its telephone usage policy. If DOT has determined that supervisor review of telephone usage is no longer necessary or cost effective, it should revise its policy accordingly. Otherwise, DOT should follow its written policy and provide supervisors with reports detailing their subordinates' telephone usage so that they may conduct the review.

The Inspector General further determined that Lorf had a suspended New York State driver license at the time she notified DOT that her license was valid.

Notwithstanding her suspended license, Lorf drove state vehicles. Had DOT enrolled Lorf in the DMV License Event Notification Service, it would have learned that her license was suspended. The Inspector General recommended that DOT enroll all DOT landscape architects in the License Event Notification Service.

Under Vehicle and Traffic Law § 511(1)(a), it is a misdemeanor for a person to operate a motor vehicle on a public highway “while knowing or having reason to know that such person’s license or privilege of operating such motor vehicle in this state or privilege of obtaining a license to operate such motor vehicle issued . . . is suspended, revoked or otherwise withdrawn by the commissioner [of the Department of Motor Vehicles]”. The Inspector General forwarded this report to the Albany County District Attorney to review for possible criminal charges. The Inspector General recommended that DOT take appropriate administrative action against Lorf.

Finally, Town Supervisor Shawn Connelly appears to have misrepresented to the Inspector General that Karen Lorf did not work on his campaign. While the Inspector General lacks jurisdiction over local elected officials, the Inspector General is forwarding this report to the Stillwater Town Attorney for review.

Response by the Department of Transportation

By letter dated February 22, 2009, DOT’s Director of Audit and Civil Rights responded to the Inspector General’s recommendation.

In regard to the Inspector General’s recommendation that DOT review its policy regarding supervisory oversight of employees’ telephone usage, DOT responded:

Currently, DOT’s telecommunication function is centralized, provides services for approximately 10,000 employees in approximately 973 facilities and does not have an electronic method of distributing OGS billing printouts. As implementation of the current policy is currently not cost effective, in the short term, DOT will accept the Inspector General’s recommendation and revise its policy. However, DOT is in the process of developing a system which would not only allow employees to review their own phone bill, but also provide exception reports to managers. Once the system is implemented, DOT will again revise its policy.

In response to the Inspector General’s recommendation that all landscape architects be enrolled in the LENS system, DOT stated that it “is sensitive to the issue that the Inspector General has raised and has proactively identified those landscape architects who regularly drive a vehicle as part of their duties, regardless of whether a state vehicle is involved, and has proactively enrolled them in the LENS program.”

DOT further informed the Inspector General that it has initiated disciplinary proceedings against Lorf based upon the Inspector General’s findings.