



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL

**Investigation Finding that Lifeguards at State Beaches
on Long Island Failed to Disclose Convictions Leads to Criminal
Background Checks of Lifeguard Applicants**

August 27, 2007

SUMMARY OF FINDINGS AND RECOMMENDATIONS

An investigation by State Inspector General Kristine Hamann, conducted with the assistance of the New York State Office of Parks, Recreation and Historic Preservation (OPRHP), has resulted in new measures by OPRHP, including criminal history checks, to improve screening of applicants for lifeguard positions. The new procedures address investigative findings by the Inspector General's Office that a number of lifeguards employed by OPRHP on Long Island ocean beaches during the 2005 season had failed to disclose criminal convictions on their 2005 job applications.

BACKGROUND AND SUMMARY OF INVESTIGATION

In the summer of 2005, OPRHP notified the Inspector General's Office that they suspected that Robert Kaefer, an OPRHP lifeguard at Jones Beach State Park, had submitted a forged doctor's note to that agency. The Inspector General commenced an investigation, conducted with the assistance of the New York State Park Police, a unit of OPRHP, and found that Kaefer had provided his supervisor with two handwritten notes on the letterhead of a local hospital, purportedly signed by a local physician, stating that he was fit to return to duty after having undergone a medical procedure. We determined that the notes were fraudulent, as neither the hospital nor the physician had treated Kaefer. We also learned that Kaefer had obtained the hospital letterhead from James Green, a fellow OPRHP lifeguard at Jones Beach.

OPRHP hires lifeguards on a seasonal basis, and all candidates for the position are required to complete and sign an employment application. Above the signature line, the application further clearly requires applicants to swear to the truth of the information they provide on the application: "I affirm under penalties of perjury that all statements made on this application are true. I understand that all statements made by me in connection with this application are subject to investigation and verification and that an omission,

material misstatement or fraud may disqualify me from appointment and/or lead to revocation of my appointment or criminal prosecution.” The application further contains the unambiguous question: “Except for minor traffic violations, have you ever been convicted of a violation of the law?”

On the applications submitted by Kaefer and Green over the five years preceding 2005, they both indicated they had no prior convictions for violations of law. Despite these sworn statements in their employment applications, further investigation revealed that Kaefer and Green both had criminal convictions and that both had failed to disclose this fact to OPRHP. In fact, Kaefer was convicted in 1987 of Attempted Criminal Possession of a Weapon in the Fourth Degree, Attempted Possession of Stolen property in the Fifth Degree, and Aggravated Unlicensed Operation of a Motor Vehicle, all misdemeanors, and was the subject of an active warrant for a violation of a Nassau County park ordinance. Green had been convicted in 1994 of Assault in the Third Degree, a misdemeanor, and in 2001 of Disorderly Conduct, a violation.

The results of the investigation were referred to the Nassau County District Attorney’s Office and Kaefer was subsequently arrested and charged with seven counts of Offering a False Instrument for Filing — two counts for the fraudulent doctor’s notes and one count each for the misinformation submitted on his employment applications filed with OPRHP over the previous five years. Green was arrested and charged with five counts of Offering a False Instrument for Filing, one for each year he submitted a false employment application.

In view of the cases involving Kaefer and Green, the Inspector General conducted a review of all 507 ocean lifeguards employed by OPRHP in the Long Island region during the 2005 summer season. This examination found that 33 of the lifeguards employed during the 2005 season had prior convictions for violations of the law that they had failed to disclose on their 2005 employment applications. Sixteen of the individuals failed to disclose convictions for Driving While Ability Impaired. Convictions for the remaining 17 individuals included Robbery, Assault, Attempted Conspiracy, Driving While Intoxicated, Pettit Larceny, Public Lewdness, Contempt of Court, Reckless Endangerment, and Criminal Trespassing, among other law violations. Based upon our review of lifeguard applications, the Inspector General further noted numerous instances where applicants left blank the check box pertaining to past criminal convictions.

The Inspector General’s Office provided this information to OPRHP prior to the 2006 hiring season. The Inspector General’s Office further provided this information to the Nassau County District Attorney’s Office. We have been advised by the Nassau County District Attorney’s Office that, after individual case reviews in consultation with OPRHP, criminal prosecutions could not be brought against the remaining lifeguards who had failed to disclose their prior convictions under applicable law.

This investigation demonstrated that OPRHP’s practice of requiring lifeguard candidates to voluntarily disclose prior criminal convictions on their employment applications did not sufficiently deter candidates from providing false information

regarding their criminal backgrounds. As a result, OPRHP was prevented from adequately determining whether an individual candidate's criminal history warranted their employment in a position implicating public safety and health.

The Inspector General recommended to OPRHP that all seasonal employees in positions that affect the public health or safety be subjected to criminal background checks as part of the hiring or re-hiring process. In addition, we recommended that OPRHP ensure that all questions on employment applications are fully answered. We further recommended that OPRHP consider participating in the New York State Department of Motor Vehicles' "License Event Notification Program", which notifies State agencies when employees are involved in incidents that negatively impact the status of their driver licenses. Participation in this program could provide OPRHP with timely information about arrests or other serious incidents involving lifeguards and other agency employees.

Inspector General Hamann notes that OPRHP has implemented the recommendations made by her office, as follows:

First, OPRHP revised its employment application for the 2006 summer hiring season to include new and expanded questions about an applicant's criminal history. OPRHP has also provided ongoing additional training and instruction for managers involved in hiring to ensure that applications are properly and fully completed, and now requires those managers to sign and date the application as the reviewer. OPRHP also stated that agency legal and human resources staff provided additional review of Long Island lifeguard applications in 2006 to ensure they were complete. These resources included assigning extra staff on site in Long island on the date that the majority of lifeguard applications are processed and lifeguards hired, and OPRHP has advised us that this additional support will be provided annually.

Second, upon consultation with the New York Division of Criminal Justice Services and the New York State Department of Civil Service, as facilitated by the Inspector General, OPRHP is implementing criminal background checks for all applicants in security and public safety related positions, whether permanent or seasonal, including lifeguards. This criminal history check will be in addition to the Sex Offender Registry check currently conducted for all new and returning employees and OPRHP's expanded participation in DMV's "License Event Notification Program" which will now include all permanent and seasonal employees.