



STATE OF NEW YORK  
OFFICE OF THE STATE INSPECTOR GENERAL  
**Final Report**  
**November 23, 2010**

## SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General found that Jacqueline Balikowski, a former employee of the Wyoming County Public Defender's Office, improperly accessed New York State Department of Motor Vehicles (DMV) records through the Public Defender's "Dial-In" account without authority to obtain information from DMV's electronic database. As a result of this investigation, Balikowski was arrested, charged with computer trespass and other related offenses; she subsequently pleaded guilty to a violation and paid \$497 in restitution to the state.

The Inspector General also found that the Wyoming County Public Defender's Office failed to take reasonable steps to protect the Dial-In account from unauthorized use and failed to document use of the Dial-In account as required. The Inspector General recommended that the Public Defender's Office review its policies to ensure the integrity of its Dial-In account, to include at a minimum, the periodic changing of the password.

## ALLEGATION

On September 14, 2009, DMV advised the Inspector General that an audit of the Wyoming County Public Defender's Office's Dial-In account found a significant number of unauthorized data searches. One of the unauthorized searches was of an individual who was a known associate of former office employee Jacqueline Balikowski.

## SUMMARY OF INVESTIGATION

DMV provides certain entities a service known as "Dial-In" account which allows authorized users to remotely access various DMV electronic records via computer. Specifically, a Dial-In account allows access to driver license, vehicle registration, vehicle title, and vehicle insurance records. Entities wishing to utilize this system are required to submit an application to DMV. Commercial entities are charged a fee of \$7 for each search conducted. Governmental agencies, such as the Wyoming County Public Defender's Office, are not charged a fee. Confidentiality of these DMV records is governed by the Federal Driver's Privacy Protection Act (18 U.S.C. § 2721, *et seq*) which, in relevant part, allows use of certain information in the possession of DMV by governmental agencies in conducting official functions and use in connection with criminal and civil court actions.

On August 22, 1997, the Wyoming County Public Defender's Office was granted a Dial-In account by DMV. As part of the application, Norman Effman, the Wyoming County Public Defender, executed a "Memorandum of Understanding Driver's Privacy Protection Act" (the MOU) regarding the use of the account. As suggested by its title, the MOU primarily dealt with compliance with federal law. In the MOU, the Public Defender's Office agreed to not utilize the system for any purpose not authorized by law. As a condition of access, it also agreed to document its use of the account, detail the purpose of each use, and maintain these records for a period of five years.

The Dial-In system requires the use of a password designed to prevent unauthorized access. A password was provided to the Public Defender's Office upon its receipt of the Dial-In account. From 1998 to 2004, Jacqueline Balikowski was an employee of the Public Defender's Office and was provided with this password in order to fulfill her official duties.

On or about July 9, 2004, Balikowski ceased employment at the Public Defender's Office and commenced a private investigation business. After Balikowski's departure, the Public Defender's Office failed to change the password on the Dial-In account. Balikowski therefore was able to continue to access the Public Defender's Office's Dial-In account from her personal computer absent authorization which allowed her to obtain DMV information without creating her own account and without paying for it as required for a private business.

On September 2, 2009, during the course of an audit of the Wyoming County Public Defenders Office's Dial-In account, a DMV auditor discovered 71 searches of 39 entities which the Public Defender's Office was unable to identify as being related to official business. The account in turn was suspended, and a new account for the Public Defender's Office was later established with a new password.

On June 15, 2010, the Inspector General and DMV interviewed Balikowski who admitted to regularly accessing the Public Defender's Office's Dial-In account after leaving employment without permission until September 2009, when she was informed of the results of the DMV audit. Balikowski also confessed that even prior to leaving the Public Defender's Office, she utilized the Dial-In system for her personal private investigation business specifically to obtain a person's date of birth. She would then use that information to obtain additional information from other databases to which she had access as a private investigator.

The Inspector General determined that the Public Defender's Office failed to properly document use of its Dial-In account. The MOU with DMV requires that, "[c]ontractor[s] keep for a period of five years records identifying each person or entity that receives information and the permitted purpose for which the information will be used." Public Defender Effman admitted to the Inspector General that prior to the September 2009 audit, the Public Defender's Office did not maintain the required records. This failure to properly document and account for use of the Dial-In account provided an opportunity upon which Balikowski capitalized for her personal benefit.

Effman also admitted to the Inspector General that he accessed the Dial-In database to obtain information of a family member. He explained that he did this to ascertain the family member's outstanding traffic fines so that payment could be made. He added that it is possible he also used the Dial-In account to obtain similar information on one or two of his private cases, but he had no specific recollection of doing so. Effman admitted to the Inspector General that "if there is a question of whether I conformed to the requirements of the contract, it's clear that I was too lax and took things for granted and wasn't focused on what the limitations were." He maintained that once he read the contract and became aware of the conditions, he complied with them. Effman added that, since DMV reinstated his office's Dial-In account, the Public Defender's Office has maintained a log documenting the use of the account, as required. The Inspector General confirmed that this log is now maintained.

Because Balikowski's unauthorized use of the Dial-In account was in furtherance of investigations related to criminal and civil court cases, it does not appear to violate the Federal Driver's Protection Act; however, New York State Penal Law prohibits the unauthorized use of a computer. Accordingly, Balikowski was arrested on July 22, 2010, and charged with computer trespass and unauthorized use of a computer, a misdemeanor. Balikowski was also charged with petit larceny for use of the DMV database without paying the required fee. On August 9, 2010, Balikowski pleaded to a violation and was ordered to pay \$497 in restitution to the state.

## FINDINGS AND RECOMMENDATIONS

The Inspector General found that Jacqueline Balikowski, a former employee of the Wyoming County Public Defender's Office, improperly utilized her former employer's DMV Dial-In account, in order to obtain information from the DMV database to further her personal business. As a result of this investigation, Balikowski was arrested and subsequently pleaded guilty to a criminal violation and was ordered to pay \$497 in restitution to the state.

The Inspector General further determined that the Public Defender's Office failed to safeguard the password of the Dial-In account. This failure allowed the former employee to access the account for over five years after leaving employment. It was further found that the Public Defender's Office failed to document its use of the Dial-In account as required under its agreement with the state, and on at least three occasions, Public Defender Norman Effman himself improperly used the Dial-In account for non-governmental use.

The Inspector General recommended that the Wyoming County Public Defender's Office review its policies and develop a procedure to ensure the integrity of its Dial-In account, to include at a minimum, the periodic changing of the password. The Wyoming County Public Defender's Office advised the Inspector General that it was implementing these recommendations.

The Inspector General also provided these findings to the Wyoming County Board of Supervisors for review and action as appropriate.