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COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

May 8, 2013

Honorable Stefan I. Mychajliw
Erie County Comptroller
95 Franklin Street, 11th Floor
Buffalo, New York 14202

Re: Department of Social Services Recycling and Comptroller Inquiry

Dear Comptroller Mychajliw:

As I think you know, our Administration has been working over the last month to ensure that governmental records are retained as required by state law. In addition, we have been working to insure that confidential documents that are not being retained are properly protected and then destroyed. We discovered some weaknesses in the security and destruction process and have moved aggressively to cure all defects. We immediately imposed certain temporary solutions and have developed and now implemented a longer term plan to guarantee the security of all confidential records that are scheduled for disposal.

I have been advised by the Department of Social Services ("DSS") that members of your office, perhaps including you personally, were observed entering a secure DSS storage area in the sub-basement of the Rath Building and reviewing paper items from recycling totes. It is alleged that this occurred in late March or early April of this year.

Please advise me:

- If anyone from the Comptroller's Office removed any confidential records belonging to any county department;
- If your office still has any such records; and,
- If such records were taken, but are no longer in the possession of your office, what has happened to them, including whether or not they were they properly disposed of.

If your office still has any such records, please return them to the appropriate department so that they can be properly destroyed.

Please be advised that Section 805 of the General Municipal Law subjects any municipal officer or employee to very severe penalties for the disclosure of "confidential information acquired by him in the course of his official duties...."

Based on an April 22nd letter from Deputy Comptroller-Audit Teresa Fraas to DSS Commissioner Carol Dankert-Maurer as well as comments made to Commissioner Dankert-Maurer by Ms. Fraas at a meeting on May 2nd, it is clear that your office knew about a possible security issue with recycling totes, but elected to keep that information to yourself. When asked why the Comptroller's Office chose not to report the issue to DSS or my office, Ms. Fraas could not or would not provide an answer other than to confirm you entered a secure DSS space without permission and removed paper documents from a tote or totes and did not notify the department that is the custodian of such records or our office of a possible safekeeping issue.

This administration is committed to securing client, employee and other data which is required to be confidential and/or securely maintained. In late March, we were made aware that there was a potential issue with the disposal of confidential records. Certain actions were immediately taken to secure all totes. After an initial review, on April 2, 2013, the County Executive issued a memorandum to his executive department heads reiterating the need for protecting and securing records and information, as well as the appropriate process and protocol for disposing of unneeded paper documents through both secure and non-secure recycling totes. The administration twice met with a representative of Cascades Recovery, the County's recycling vendor, and reviewed procedures for the secure recycling and shredding of paper. The administration also took steps to place secure totes on floors and make such devices available to County employees, as well as securing totes in the sub-basement in an alternative locked area.

We were responding to our own concerns about the security of documents and the potential for documents to be inappropriately disposed. In fact, we found several areas of concern, and we immediately took action to address the issues. Unfortunately, there will always be some employees in any organization who do not comply with policy or behave irresponsibly. Where necessary and appropriate, we will take disciplinary action to ensure that client and other sensitive data is disposed of securely and properly under State law.

While the Comptroller's Office may have elected not to take any action to address this matter, we have taken corrective measures and will continue to do so. I can only hope that in the future, if you or your auditors find an area of concern, you will bring it to my attention for immediate action and not wait weeks or months later.

We know that our systems and the humans who implement them can be fallible. It is our job to seek continuous improvements in systems and performance. Problems, when discovered, must be addressed and addressed promptly. What is most troubling about these events is not that there was a need to improve a county system but that once you became aware of this need, you failed—for over a month—to notify the administration, thus allowing a serious problem to go unaddressed. Fortunately, we also became aware of the weakness and immediately addressed it.

In the future, should you discover a serious matter that requires prompt action, please notify our administration as soon as practicable. We will act promptly, as we did in this matter.

Sincerely,



Richard M. Tobe, Esq.
Deputy County Executive

cc: Erie County Executive Mark C. Poloncarz
Erie County Legislature
Erie County Fiscal Stability Authority
Erie County Attorney Michael Siragusa
Carol Dankert-Maurer, Commissioner of Social Services