

**Presentation  
by  
Richard Tobe  
Deputy County Executive  
to  
Erie County Legislature  
Government Affairs Committee**

**Tuesday June 25, 2013**



**On March 22, 2013 the Comptroller Obtained  
Department of Social Services Records Through Deception**



# COUNTY OF ERIE

**MARK C. POLONCARZ**

COUNTY EXECUTIVE

June 25, 2013

Honorable Thomas Mazur, Chair  
Government Affairs Committee  
Erie County Legislature  
92 Franklin Street, 4<sup>th</sup> Floor  
Buffalo, New York 14202

Dear Legislator Mazur:

On June 11, 2013 members of the Administration appeared before the Government Affairs Committee with regard to the retention and disposal of confidential records and to respond to Intro 10-3. I provided the Legislature with 24 documents that supported the statements being made by the Administration. Earlier today, I provided an additional five documents related to the Comptroller's claim that the Legislature and Administration were informed of a records storage problem in fall 2012. In this communication I provide an additional five items including surveillance videos. Including the three cover letters one dated June 11 and two dated today, June 25, 2013, I have now provided you with 34 documents (including the surveillance video) to support the positions that we have taken.

During the June 11 meeting of the Government Affairs Committee, Comptroller Mychajliw and Deputy Comptroller Fraas described to the Legislature how they claim to have obtained certain records from the Department of Social Services. They provided a detailed description of the activities of Deputy Comptroller Teresa Fraas on the morning of March 22, 2013. No evidence was provided to support the description of events.

We have obtained evidence in the form of an affidavit and surveillance video recordings of the events on the morning of March 22, 2013. We then compared this evidence to the transcript of the statements made by the Comptroller and Deputy Comptroller to the Legislature on June 11, 2013. The evidence directly and materially contradicts the statements made by the Comptroller and Deputy Comptroller to the Legislature. We submit this evidence to you now.

Attached please find:

1. A floor plan of the subbasement of the Rath Building.

Note the location on the northwest side of the Rath Building where totes were stored awaiting pick up by Cascade Recovery. This is the location near the loading dock and service

elevator. You reach the tote storage location by turning right into the cross-corridor from the elevator lobby.

Also note the location on the southwest corner of the Rath Building. This location is a storage room used by the Department of Social Services for records that it intends to retain. This storage room is a secure site, not open to the public, kept locked, and a work location of DSS employees. It has a large number of records contained in cardboard boxes. These records are confidential and are being retained pursuant to state law requirements. You access this DSS storage room by turning left into the cross-corridor from the elevator lobby.

The door to this DSS storage area is locked and you must use a buzzer to call a worker to the door who would then grant (or deny) entry.

The only stairs used in the sub-basement are within the secure DSS location.

We invite the Legislature to tour the sub-basement to see firsthand this DSS storage area and the new secure location for the storage of totes. You are welcome to take a tour immediately after the conclusion of this session.

2. A transcript of the Government Affairs Committee meeting held on June 11, 2013.

a. The Comptroller stated:

**"We have heard no talk about boxes. A lot of these documents were being stored in cardboard boxes in the basement that could be opened by anyone walking through there. No this, this area in the basement was not secure in any way, shape or form."**

b. The Deputy Comptroller stated:

**"Ummm...I wanted to ..umm..expand on that a little bit. On the events that happened, on, on that Friday morning. I specif...ummm, again, yes I did go downstairs to determine what, ummm, documents or what bins were being placed out to be collected, the secure bins were supposed to be collected...umm..down in the subbasement unsecured bins, still some sort of documents were still there, they were not, they were not sent out (trailed off)...I asked the DSS employee down in the basement, I identified myself, I asked them ...I,I,I, I selected a tote and said is this tote ready to be recycled and he said yes it was. I asked, I said might I take the bin. I said may I take this bin up to the 11<sup>th</sup> floor so that I may review and look at documents that had been discarded. He said yes you may, but he said the bin is much too heavy for you to take, at which point I went up to...I found, umm, ummm, ummm, a maintenance person to help me to go down to secure the tote for me.**

**Ummm, I went down with him, this DSS employee, indicated to us that he could not take the tote, umm, by the same way he came in because there were stairs, that he needed to take the freight elevator...."**

3. An Sworn Affidavit from James L. Duman dated June 12, 2013

Mr. Duman is a hire worker who had been assigned to cleaning and related duties on the 11<sup>th</sup> floor of the Rath Building, including the Comptroller's set of offices. Mr. Duman in his sworn statement stated that:

**"During the month of March 2013, I was approached by Deputy Comptroller Terry Fraas to assist her. I cannot recall the specific date, however, this happened during the morning at approximately 8:30 a.m."**

**"On that date in March, Terry Fraas approached me to assist her with removing a recycling tote from the sub-basement as she explained, "that her staff had mistakenly placed documents into a recycling tote and they now need to retrieve those documents." She asked that I go to the sub-basement and she would identify the tote that I needed to bring back to the 11<sup>th</sup> floor."**

**"...Together we then went to the sub-basement area used as the DSS store room. We entered the area by taking the public elevator down to the sub-basement area. We proceeded to the DSS store room. We needed to ring a bell to gain entrance to the area as the doors were locked. We were allowed to enter by a worker, whose name I do not know. The worker allowed me and Terry to enter the secure area."**

**"When Terry and I entered the area she identified a large recycling tote as the tote that she needed. ...We left the area by leaving through a locked secure gate and entering elevators. We took these elevators to the 2<sup>nd</sup> floor and then proceeded to the public elevators with the recycling tote, which I recall was very heavy."**

**"Upon bringing the tote to the 11<sup>th</sup> floor, I was instructed by Terry to take it to the Auditors room and leave it there. This room is connected to Terry Fraas' office."**

4. Time line of Deputy Comptroller Teresa Fraas' activities on the morning of March 22, 2013

- a. 8:03 a.m.- Teresa Fraas swiped through the gate in the basement of the Rath Building;
- b. 8:07 a.m.- Fraas arrives on the 11<sup>th</sup> floor and enters the Comptroller's office;
- c. 8:09 a.m.- Fraas and hire worker James L. Duman exit the 11<sup>th</sup> floor Comptroller's office;
- d. 8:10 a.m.- Fraas and Duman enter elevator number 3;
- e. 8:10 a.m.- Fraas and Duman exit elevator in the Rath Building basement;
- f. 8:11 a.m.- Fraas and Duman enter sub-basement lobby and head west to cross-corridor. Duman starts down corridor to north (where totes were stored), but is called back by Fraas and they go to the south (towards DSS secure storeroom);
- g. 8:13 a.m.- A DSS storage room attendant uses his swipe card to allow use of DSS elevators;
- h. 8:15 a.m.- Fraas and Duman on 2<sup>nd</sup> floor elevator lobby with Duman pushing tote;
- i. 8:15 a.m.- Fraas and Duman enter elevator 6, exit on 11<sup>th</sup> floor and enter Comptroller's office with a tote.

## 5. Surveillance Videos

At the June 11, 2013 session of the Government Affairs Committee, the Comptroller advised the committee that the tote was taken on March 22, 2013. When the Administration obtained the date, we conducted a check of the video surveillance system that is in use in the Rath Building. We found evidence on six different cameras that is relevant to the taking of the tote.

The time line contained above is derived from these surveillance cameras.

We provide you with a disk that shows video from all six cameras simultaneously. These six cameras contain relevant action, irrelevant activity and often a blank screen. We also provide you with a second video that links together in sequence the relevant action. The relevant videos are all from the morning of March 22, 2013.

As you can see from the videos and from the Duman affidavit, the Comptroller's office did **not** obtain the tote from the curb, the loading dock, or even the open portion of the sub-basement two levels below ground as the Comptroller claims. Rather, using deception and the authority of her office, Deputy Comptroller Teresa Fraas went into a locked storeroom under the control of the Department of Social Services, gained access under false pretenses, and improperly removed a tote.

No member of the general public could have obtained records using the techniques employed by the Deputy Comptroller. She used her government issued ID card. She deceived a hire worker who knew her from his assignment to the 11<sup>th</sup> floor of the Rath Building. Under the authority of her position as Deputy Comptroller-Audit, she convinced a DSS employee to allow her to take a tote. While allowing the tote to be taken was improper, under no circumstances could a private citizen have been able to duplicate these steps to obtain a tote and trick a DSS worker.

The Comptroller and Deputy Comptroller have also deceived the Legislature. Despite statements made to the Legislature to the contrary there is:

- No evidence that a tote was every left on the curb;
- No evidence that cardboard boxes containing confidential information were ever placed on the curb, loading dock, or in the unsecured hallway of the sub-basement; and
- No evidence that the use of cardboard boxes on shelves in a secure room is in anyway improper.

There is, however:

- Clear evidence that the Deputy Comptroller did not "find" a DSS worker in the sub-basement to help her remove the tote. Rather the affidavit and video surveillance show that Teresa Fraas asked an employee who regularly worked on the 11<sup>th</sup> floor to accompany her to the sub-basement to help move the tote;
- Clear evidence that the tote was within a locked storeroom when taken; and
- Clear evidence that the Deputy Comptroller identified herself and under that authority took the tote.

The Administration has requested the return of the records taken improperly by the Comptroller on three separate occasions. On May 8, 2013<sup>1</sup> and May 23, 2013,<sup>2</sup> I wrote to Comptroller Mychajliw

---

<sup>1</sup> See Tab 10 of June 11, 2013 Submission to the Legislature, Letter Tobe to Mychajliw, May 8, 2013.

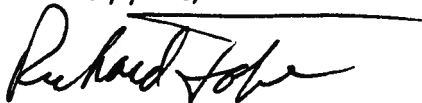
requesting that he return to the Department of Social Services all confidential documents taken by his office.

In a June 7, 2013 letter<sup>3</sup>, Thomas D. Kubiniec, Director of the Office of Legal Affairs, Department of Social Services demanded the return of such information by the close of business on Monday June 10, 2013. He stated:

**"The Erie County Comptroller's Office by your own admission is in the possession of records that they have taken from the County and is storing the records in the Office of the Comptroller. This is a direct violation of the Non-Disclosure Agreements signed by your office. Your office agreed that all records would be retained in the offices of DSS and that access to all records would be limited to certain specific employees of your office.... your office is in breach of said agreements."**

For the fourth and last time, on behalf of the County Executive and the Department of Social Services, I demand that Comptroller Stefan Mychajliw return all Department of Social Services documents taken by any person associated with the Comptroller's office, or acting under the direction of the Comptroller's office, unless such documents were provided with the knowledge of and permission by the Commissioner of the Department of Social Services. If the documents are not provided by the close of business today, Erie County will commence a legal action to recover these documents.

Sincerely yours,



Richard Tobe  
Deputy County Executive

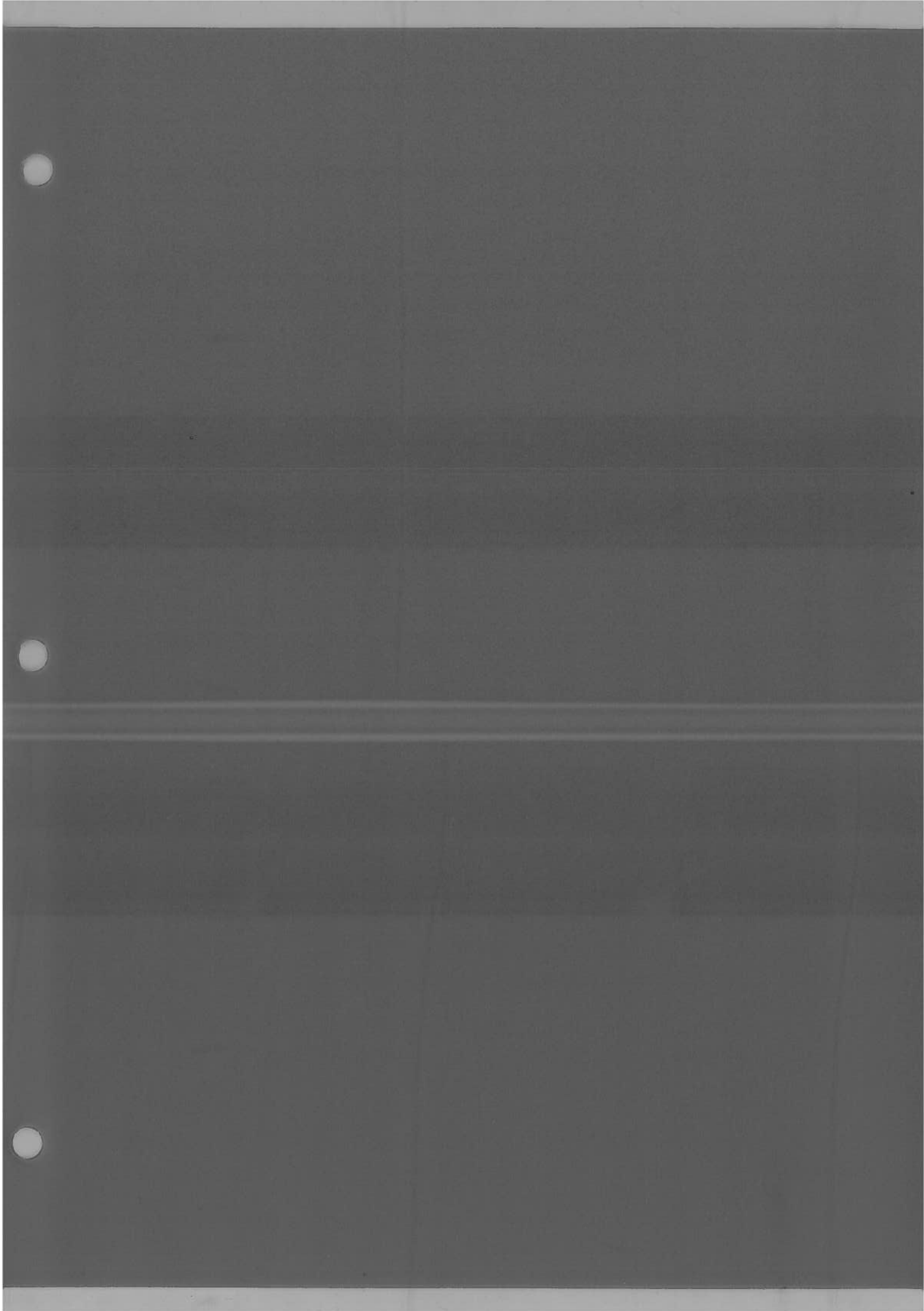
Enc. 5

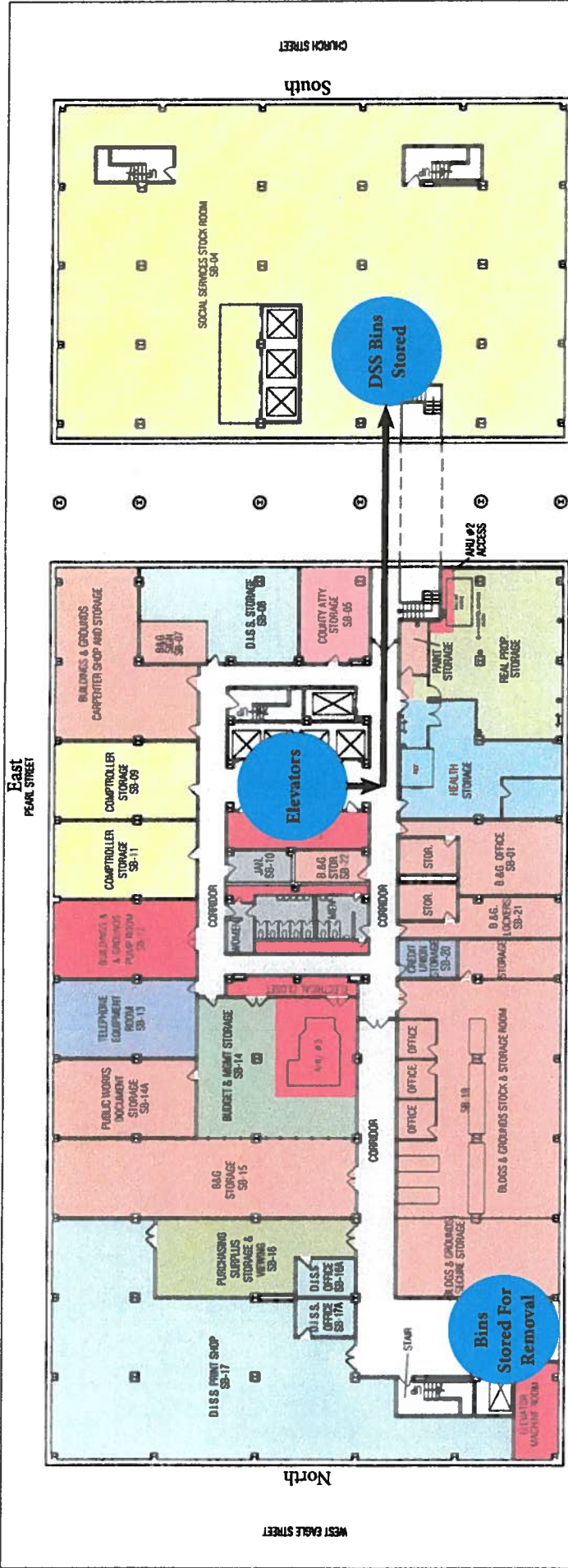
Cc: County Executive Mark Poloncarz  
County Attorney Mike Siragusa  
County Comptroller Stefan Mychajliw  
Erie County Legislature  
Erie County Fiscal Stability Authority

---

<sup>2</sup> See Tab 14 of June 11, 2013 Submission to the Legislature, Letter Tobe to Mychajliw, May 23, 2013.

<sup>3</sup> See Tab 22 of June 11, 2013 Submission to the Legislature, Letter to Comptroller Mychajliw from Thomas Kubiniec, June 7, 2013.





**2010 SPACE ALLOCATIONS**

DEPARTMENT	DEPT SF
MECHANICAL AREA	2,127 SF
COLLATION AREA	4,891 SF
PUBLIC WORKS	8,321 SF
HEALTH	990 SF
REAL PROPERTY	1,229 SF
SOCIAL SERVICES	6,798 SF
COMPTROLLER	410 SF
DM HEALTH REPORT SERV	4,842 SF
COMPTROLLER	13,374 SF
SHARED BY DEPTS	508 SF
LEASED SPACES	628 SF
PURCHASING	804 SF
BUDGET AND MEAT	889 SF
TOTAL NET AREA	37,229 SF
GROSS FLOOR AREA	42,008 SF

**Sub-Basement Plan**



Drawing For General Information Only

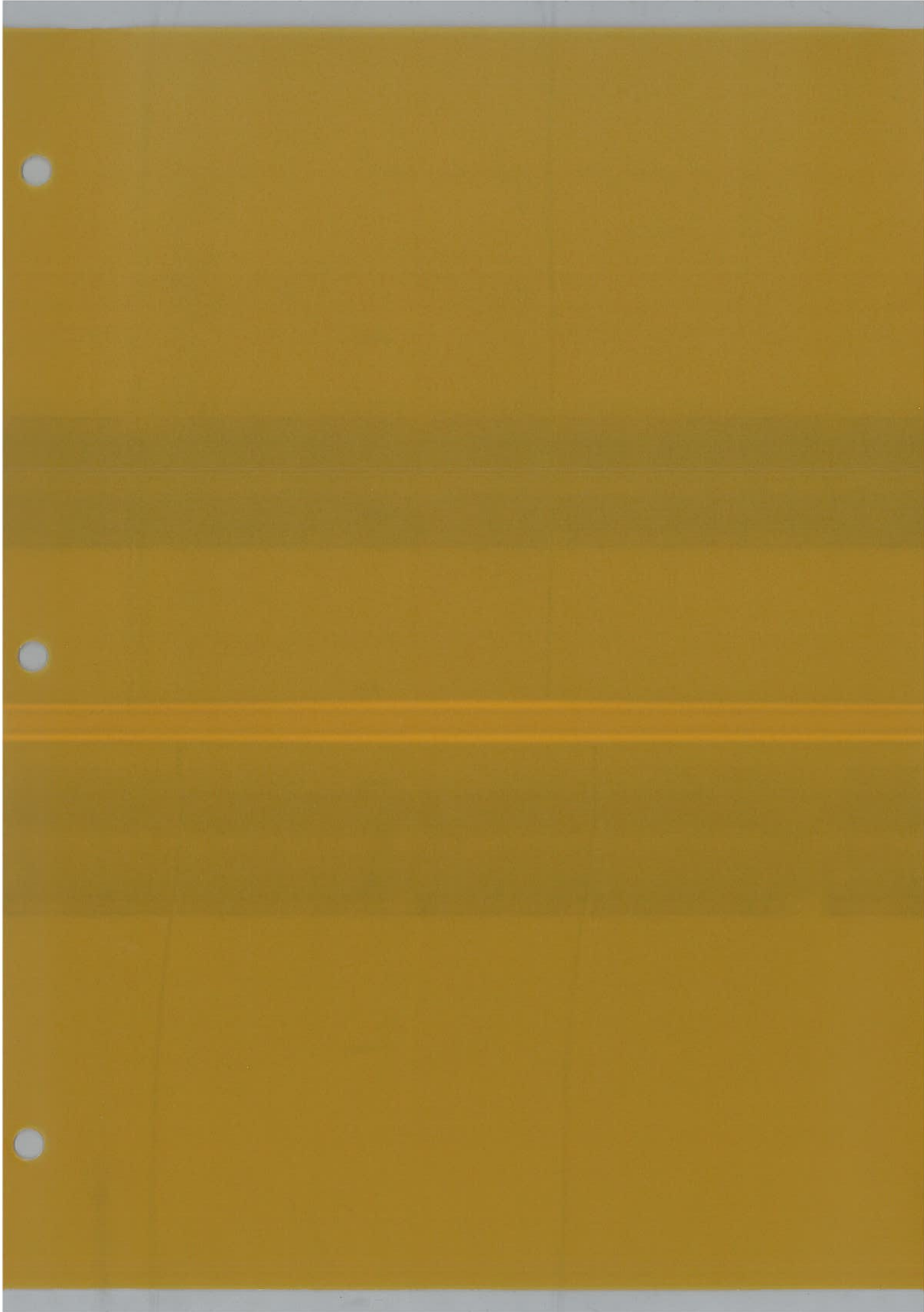
**Inventory of County Buildings**  
**Year Ending 2010**  
**Site Group: Downtown**  
**Building: Rath Building**

Drawn	Revised

**Division of Real Estate and Asset Management**  
 Michelle Mazzoni, Director of Real Estate  
 Eric County Department of Public Works  
 93 Franklin Street  
 Buffalo, New York 14202

Sheet No. **1**





**Erie County Legislature  
Government Affairs Committee Meeting**

**Date: June 11, 2013**

**Name**

**Testimony**

Stefan Mychajliw

We absolutely would love to. I mean, we understand the administration is thoroughly embarrassed, umm that this has become public. Uh the county executive's said this has gone back many years. Well guess who the comptroller was back in 2006: Mark Poloncarz. This happened under his watch for many years. Uh and we, basically, discovered this information, this year, our first few months in office. I understand the embarrassment on the part of the administration and we heard a lot of rhetoric that is not based in reality. Uh, in their artificial timeline that was just put forth by the deputy county executive. Here are the facts. We focus on the facts. Again, there's a lot of information we just heard, uh, that does not blend with reality. Here are the facts. Uh, we just heard the question of, from Mr. Tobe, basically that we can't find out what had happened, when it happened. That is not true. We go back to 2007, Mr. Bill Graham was the deputy commissioner, uh, in the department of social services and we interviewed him as part of our audit. Mr. Graham let us know that a news reporter in 2007 approached him with documents similar to the ones being haphazardly stored by the Department of Social Services that were found blowing in the wind outside of the Rath Building. Um, Mr. Graham let us know that the Department of Social Services was placing these highly confidential records in unlocked boxes at the curb and this reporter actually found the documents blowing around in the street in 2007, when Mr. Poloncarz was the comptroller. He had mentioned back, at that point in time he was responsible for putting in the controls that make sure that it never happened again. This is going back to 2007.

And, yes, the administration was aware of the program support unit and this Legislature was made aware of the deep cuts to the program support unit. According to many of those employees we had interviews with and according to those employees that actually testified before this honorable body, one of the big parts of their job was making sure the Department of Social Services remain in compliance with state regulations. Another big part of their job, according to these employees, that they ensured that records were stored in a confidential manner and were disposed of properly. Uh, these employees let us know they had met with Comptroller David Shenk and brought forth their concerns numerous times, the fact that if your cutting this unit, we're not going to be able to do this job. They had a private meeting with Dr. Callan to express their concern on occasion, the fact that a big part of our job, the program support unit, is that they were responsible for overseeing the proper storage of documents. So, we go back to two-thous....I can tell you exactly when it happened: in 2007. And, in 2012. Long before I entered the office as comptroller. I'll start right off the bat with these employees that talked with us had a private meeting with Dr. Callan. When we met with Tim Callan we were

concerned with the duties that we had, the duties included making sure that records were destroyed in a confidential manner and they weren't haphazardly put at the curb. We had a lot of duties, a lot of program areas. We were concerned how one person, maybe two people were going to handle that task. I'll go back to their testimony before this honorable body, twice, going back to October 30, 2012 and then before this honorable body on, um, December 13, 2012. Annette Cole is one of the employees, uh uh, it's almost haunting she told this honorable body and I quote "because of the elimination of the program support unit" again a big part of their responsibilities was to ensure records were stored in a safe and secure manner and they were disposed of in a safe and secure manner. Quote, "there are things that I probably think will come before this body in the immediate future that will be repercussions of the elimination of this department and these jobs." She couldn't be more correct in December of last year what the repercussions would be. The repercussions would be the Department of Social Services, even though they were aware going back to 2007 that records were being stored in a haphazard and unsafe way that they did nothing going back to then that should fix this incorrectness. Also, she had mentioned numerous times, we'll go back to the meeting on October 2013, the testimony before this honorable body. As program support specialists we help these divisions remain compliant with state and federal mandates, saving the county from being cited and fined during program audits. A big part of this department was to make sure that if an audit was coming up like ours that they would go through controls and see if records were being stored in a correct manner. But fast forward again, how they told this honorable body. Senior Program Support Specialist assisted the Department of Social Services remaining compliant with state and federal mandates. We help the county from being cited and fined during program audits. Numerous times, uh, even in this December meeting, point-blank, it is not a matter of destroying our positions, it's a matter of restoring the job duties. Part of their job duties was maintaining the records and making sure they were stored in a confidential manner. Uh, many times, again, they talked multiple times with the administration last year, they met privately with Dr. Callan. And according to the employees they told us their concerns were, if you eliminate this program, you eliminate our jobs then some of the duties we do will not be done. That is evident. I go back to her testimony in December, there are things that will probably come before this body, in the immediate future, that there will be repercussions from the elimination of this department and these jobs. She couldn't be more on the money. Unfortunately, last year, in her testimony before this honorable body and in her discussions privately with Dr. Callan. And again, before the Comptroller David Shenk.

Another thing that our deputy county executive did not talk about once. We've heard no talk about boxes. A lot of these documents were being stored in cardboard boxes in the basement that could be opened by anyone walking through there. No this, this area in the basement was not secure in any way, shape or form. There are actually, from what I am being told by our auditors, there are actually shelving units, locked shelving units in the Rath Building that they could have easily placed these boxes on and they would have been locked. But according to our auditors there are rows and rows and rows upon boxes of these documents being stored in an unsecure manner, again, for many years.

Now, let's go through the facts. The factual timeline, and again, not the factually incorrect timeline that's been put forth by our deputy county executive, Terry Frass our deputy comptroller will also clear up fact from fiction. We've heard a lot of fiction this morning. Here are the facts. We go back to December of 2014, I'm sorry, February 14<sup>th</sup> of 2013. Numerous employees had emailed us from the Department of Social Services and they communicated to us they were so short staffed that they were told an order to rubber stamp people who were being recertified for public assistance. In layman's terms, they were so short staffed; they're not checking records they're rubber stamping people to get benefits. Not just for two or three months, but for a full year. We have emails from one of the supervisors in the Department of Social Services and this email was clear, this email was clear. Do not tell the clients that we are doing this. Basically saying, don't tell the public that we're doing this. And, again, it's a tradition in the Department of Social Services to do what is called 'bump up' or temporarily approve someone for benefits, while they go back and check for one to two months whether or not that person was eligible. But what the Commissioner of Social Services does not know is that numerous employees have come to us as part of our audit and told us point blank, we were not to go back and check each record to determine whether or not they were eligible. It was their understanding, point blank, that they were to simply rubber stamp someone to certify for benefits, not check and try to catch up in a full year. That's what the commissioners own employees are telling us as part of our audit. We have an email where a supervisor said don't tell the clients that we're doing this. Right down black and white, crystal clear.

So we started this audit back in February 14<sup>th</sup> of um twenty, 2013. For a full month put up roadblock after roadblock about our department not looking at county records. I told our auditors, every time the Department of Social Services put up a brick wall either plow through it, go above it or go around it. We basically fought and butt heads for a month with the Department of Social Services claiming these records are so secret and so confidential that we cannot look at, yet those same records they were dumping in the trash where anyone could have walked into the basement, anyone could walk to the loading dock and pick up. It blows my mind they made this argument that these records are so confidential that comptroller's auditors cannot look at them but they were haphazardly dumping them in unopened bins and unlocked cardboard boxes in the basement of the Rath Building that were eventually taken to the loading dock where anyone could have grabbed them. So, we fought for over a month and we finally signed a confidentiality agreement on March 14<sup>th</sup>.

Now as part of the field work involved, this is critically important here, and we're...this piece of factual information basically makes the entire timeline of the administration moot and factually incorrect. On Friday, the 15<sup>th</sup> of March, as part of the walkthrough, the administration's own employees. Three of their employees, including Carol Rubecki and Frank DeCarlo basically our audit team exactly how they store the documents. Let me say that again. The administration showed us exactly how these documents were being stored. They're trying to play it off as though they had no idea and they were surprised on April 1<sup>st</sup>, low and behold we're leaving our residents open to identity theft. That is not true. On April 15<sup>th</sup> the administration or, I'm sorry, March 15<sup>th</sup> the

administration's own employees, as part of the audit, showed us the storage of these documents.

Now I tell our auditors right away, trust but verify. That's the most important part of our job as auditors. Trust what you're being told but verify the information is critically important. At that point in time we still had no idea what had happened to documents once they are placed in boxes or once they are placed in bins. We had no idea if 15 minutes later someone came downstairs put them in a secured truck and shredded them, took care of them for that matter. We had no idea. So I tell our auditors verify the information. So again, there's knowledge according to Bill Graham this was an issue in 2007, this honorable body and privately Dr. Tim Callan was told what the consequences would be for these employees if you cut their unit they're responsible, in part, for the handling of secured documents and so later in the audit, March 20<sup>th</sup>, um, actually I remember that day because it's the day my mother passed away, um, Terry Fraas got the actual contract from Mark Johnson, obtained a contract that showed there were two pick-ups unsecured on Wednesday and secured on Friday. And, sure enough, there was a contract for secured bins with the Department of Social Services. Obviously the administration's employees could care less about the safety and security of these documents because they had secured bins to use, they weren't using them and they were placing them in open cardboard boxes.

We go down to Friday, March 22<sup>nd</sup>, we actually, our auditors had to make sure we observed what totes were being taken on Wednesday and what totes were being taken on Friday. We were told one thing and had to verify the information as part of our audit. The same day we asked the county employees in the basement of the Rath Building. Ok, are these going to be going to the recycling bin, are going as secure or unsecured totes. Now, this is where, this is where, again, this piece of factual information, again, blows the administration's timeline right out of the water. That's also when an administration employee actually provided, and we've talked about this a little bit, we asked, ok, can we look to see what was discarded and an administration employee not only brought the documents for us up to our office, because the unsecured bin was so big, they actually helped us take it down from the loading dock and gave us specific directions, here you gotta take this up to the loading dock. So that's a fourth worker that showed us the process.

Teresa Fraas

Ummm...I just wanted to..umm.. expand on that a little bit. On the events that happened, on, on that Friday morning. I specif... ummm, again, yes, I did go downstairs to determine what, umm, documents or what bins were being placed out to be collected, the secured bins that were supposed to be collected...umm...down in the subbasement unsecured bins, still some sort of documents were still there, they were not, they were not sent out (trailed off)...I asked the DSS employee down in the basement, I identified myself, I asked them...I, I, I, I selected a tote, and I said is this tote ready to be recycled and he said yes it was. I asked, I said might I take that bin. I said may I take this bin up to the 11<sup>th</sup> floor so that I may review and look at the documents that had been discarded. He said yes you may, but he also said the bin is much too heavy for you to take, at which point I went up to...I found, umm, ummm, ummm, a maintenance person to help me to go down to secure the tote for me.

Ummm, I went down with him, this DSS employee, indicated to us that he could not take the tote, umm, by the same way he came in because there were stairs, that he needed to take the freight elevator and proceeded to take the freight opened up the door for us to take the freight elevator to take it up to the 11<sup>th</sup> floor. So the documents were taken with full knowledge of the DSS employees, I asked permission to take those, I was given permission to take them. I told them what the purpose for me to take them and ummm, that's...(trailed off)

Stefan Mychajliw

So I'll take this a step further then. And again, they're employee actually stated the bins are too big, we'll help you. He not only gave us permission but gave us help in bringing the documents up. So again at that point in time, we still had no idea what the documents were, what they entailed or what the process was. Trust and verify. And then we go to, basically, March 27<sup>th</sup> there was a 9:30am secure pick-up of the totes at that point in time, and again, our auditors are still verifying what information we have and what the process is. And that's when they began to empty the bins and going through the documents. There's nothing to inform the administration of, because the administration already knew about this serious security breach, they showed it to us. And so its total baloney for them to duck, dodge responsibility for their own irresponsibility when they were the ones that actually showed it to us. I'll go forward on that on April 2<sup>nd</sup> of 2013 the administration put forth documentation or some sort of letter that said they had fixed the problem. On April 3<sup>rd</sup>, um, there's an observation about, from our auditors, when it comes to the suspicion that there was an unsecured pick-up of these documents where we still hadn't observed that they actually physically taken them to the trash. Uh, immediately then when it comes to, uh, April 4<sup>th</sup> that's when Ms. Dankert was notified that there was a standard portion of the audit. Now keep in mind, they were also notified on February 14<sup>th</sup> that we would be auditing this and looking at this specific example. So finally on April 8<sup>th</sup>, on April 8<sup>th</sup> after observations after going through the documents, after reviewing the process of, um, where the documents were. On April 8<sup>th</sup>, according to our auditors, that's when there was confirmation that backs this security breach indeed that that happened. On April 9<sup>th</sup>, deputy, uh, comptroller Fraas talked about this a little bit as well, she actually was prepared to talk to Commissioner Dankert and Social Services. Again, we confirmed that visually on April 9<sup>th</sup>. And then we talked to an employee named Mike Clark, who actually buzzed them in, which wasn't before. That area, anyone could just walk in to that area of the Rath Building was unlocked. Anyone could have walked down there. On April 9<sup>th</sup> they were buzzed in and, uh, basically were then told ok, and then we have a confirmation they had basically fixed the problem. So, April 8<sup>th</sup> we were, uh, confirmed it, we were ready to approach the Commissioner and then we were confirmed that on April 9<sup>th</sup>. Now let's go back, again, to the point, ah, when it comes to these employees before this honorable body and in their private meeting with Dr. Callan. Uh, they were very clear. According to these employees. I wholeheartedly trust these employees, we have transcripts of them here before the legislature. The fact that they were adamant about the program support unit and the fact that once their job was eliminated they felt they should probably communicate what would happen if they were gone. And what happened is the documents being stored in social services would not be in a safe and secure

manner. Umm, here's one of their direct quotes from one of our interviews and our audit is still ongoing. Umm, our frustration with the elimination is that while they kept one director and one person the amount of work and volume to be generated the responsibilities would not get done. And that was the point they kept hitting home privately with Dr. Callan and before this honorable body, that their work would not get done. They mentioned many times they were more concerned about the work and the safety and security of these documents than the actual jobs themselves. And I will now let (inaudible) our deputy comptroller Terry Fraas will expand more on fact vs. fiction.

Teresa Fraas

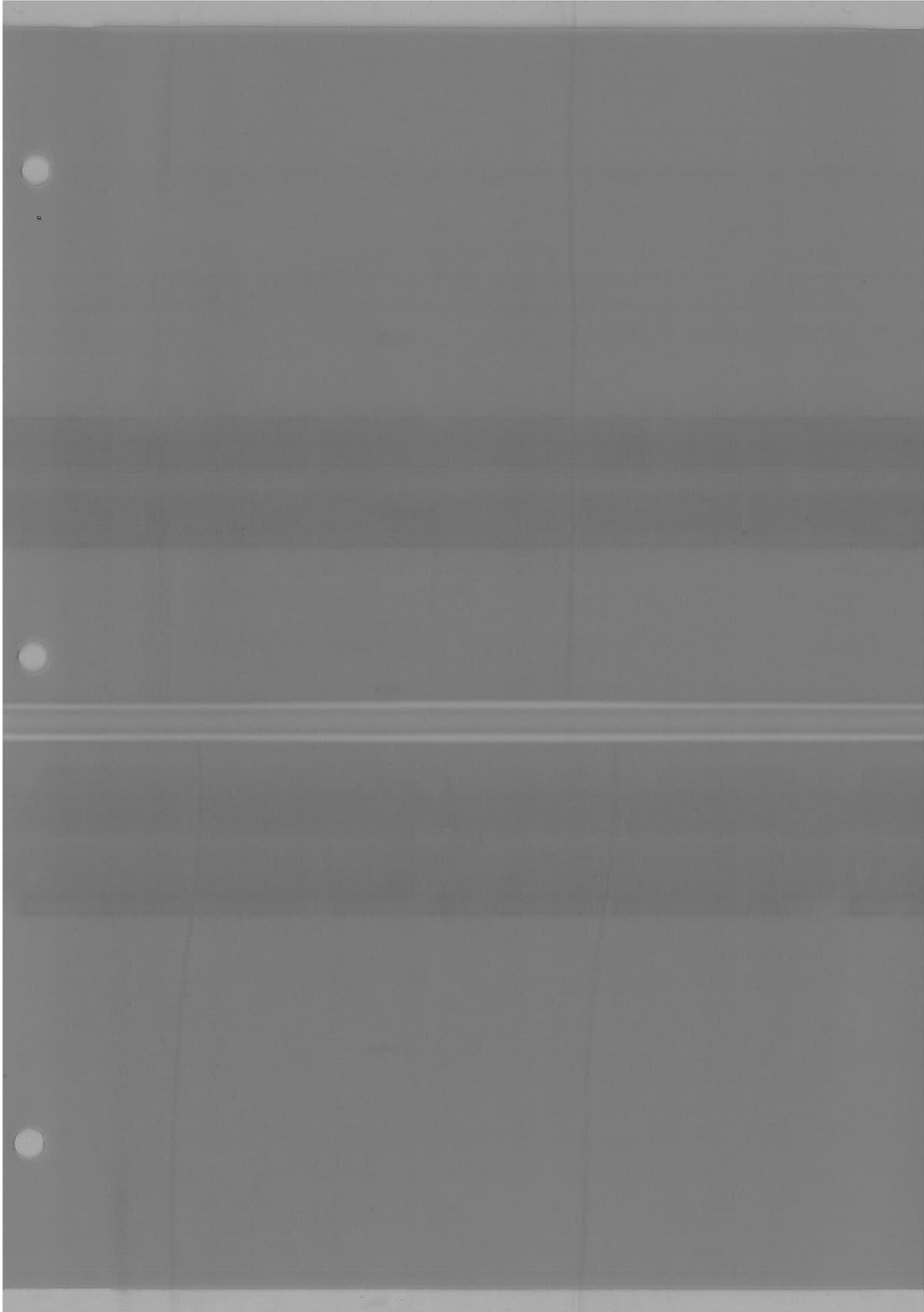
Ok, thank you. Couple things, umm, umm it was mentioned by Mr. Tobe that umm starting April 17<sup>th</sup> 2009 that we had a procedure in place for the disposal of secure documents. What we hadn't heard from him is what were the internal policies and procedures that were put in place to inform the individuals in DSS what the use of these totes were and what were the umm other controls that were put in place to ensure that this communication happened and that this policies and procedures were monitored to ensure that everybody followed them. That is standard procedure for any manager, any entity, that procedure that you communicate that procedure and implement processes to ensure that procedure is followed. Based on information from Mr. Tobe in his letter is an employee that umm a quote that says there will always be some employees within an organization who do not follow the policy or behavior responsibly. I, yes that's true but we also have an obligation as managers to be aware and can detect when that happens. That is part of of good management process. I also want to indicate that from March, from on March 15<sup>th</sup> when we were first told of this procedure we were shown how documents were taken taken out of the unsecured cardboard boxes and in the unsecured totes in the subbasement of which there are six or seven. Some had no tops, half tops on them that could not be locked even if you wanted to. And from that and Karen Rubecki who was part of the team who showed us that process was part of that program support unit umm years back that that was charged with monitoring the the policy and procedures for uh the uh disclosure of documents. Umm and she was there and at that time, she knew that umm how much they were telling us was umm not the proper process of how confidential documents should be disclosed. From March 15<sup>th</sup> until April 3<sup>rd</sup> umm or a little after April 3<sup>rd</sup> there were three pick-ups umm of unsecured documents from that point on so to the extent that they knew that that was there process it continued to allow those unsecured those undesclosure totes and confidential information to continue to be taken to the curb and continued to be placed in the umm recycle bins before any processes were put in place. Umm, let's see here.

Stefan Mychajliw

I have one more thing here as well. Mr. Tobe also mentioned that umm talking about how these workers actually testified before this honorable body about this issue we had people there there's no evidence of that, meaning there's no evidence that the administration's employees where here to hear it their concerns or witness it, that is not true. Dr. Callan himself, this administration, I will quote it directly from Dr. Callan. This administration legislator became aware of this issue on October 5<sup>th</sup> of 2012. Again, this is Dr. Callan's own words. This administration Legislator, became aware of this issue on October 5<sup>th</sup> of 2012. He also stated, quote: "I subsequently spoke with Ms. (inaudible)" that's another woman who testified before this honorable body, "we traded

voicemails for about a week and we subsequently spoke last week for over half an hour on the 26<sup>th</sup> of October of 2012 about this situation where she relayed to me the concerns of herself and her colleagues, period.





**AFFIDAVIT OF JAMES L. DUMAN**

STATE OF NEW YORK     )  
COUNTY OF ERIE        )     SS:  
CITY OF BUFFALO        )

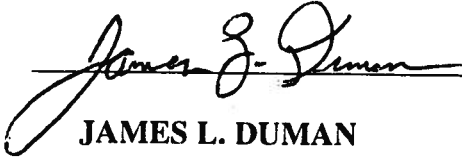
**JAMES L. DUMAN**, being duly sworn, under penalty of perjury, deposes and says:

1. That I am currently a hire worker for the County of Erie and I am assigned to perform maintenance work with the Department of Buildings and Grounds.
2. I am assigned to the 11th Floor of the Rath Building to clean bathrooms, remove garbage and upon request remove recycling totes as well as other duties as needed.
3. During the month of March 2013, I was approached by the Deputy Comptroller, Terry Fraas to assist her. I cannot recall the specific date, however, this happened during the morning at approximately 8:30 a.m. My shift is always over by 11:30 a.m. or 12:00 p.m.
4. On that day in March, Terry Fraas approached me to assist her with removing a recycling tote from the sub-basement as she explained, "that her staff had mistakenly placed documents into a recycling tote and they now need to retrieve those documents". She asked that I go with her to the sub-basement and she would identify the tote that I needed to bring back to the 11th floor for her.
5. At that time, I did not believe this to be a problem as this seemed to be a reasonable request from the Deputy Comptroller. Together we then went to the sub-basement area used as the DSS store room. We entered the area by taking the public elevators down to the sub-basement area. We proceeded to the DSS store


room. We needed to ring a bell to gain entrance to the area as the doors were locked. We were allowed entrance by a worker, whose name I do not know. The worker allowed me and Terry Fraas to enter the secure area.

6. When Terry and I entered the area she identified a large recycling tote as the tote that she needed. This did not appear to be an issue as this was the only recycling tote in the area at that time. We left this area by leaving through a locked secure gate and entering elevators. We took these elevators to the 2nd floor and then proceeded to the public elevators with the recycling tote, which I recall was very heavy.
7. Upon bringing the tote to the 11th floor, I was instructed by Terry Fraas to take it to the Auditors room and leave it there. This room is connected to Terry Fraas' office. At that time, I didn't notice if the recycling tote was locked, however, I thought this was unusual as I never put recycling totes into rooms and the recycling tote is always out by the freight elevator. Terry Fraas then thanked me for my help. I returned to my cleaning work.
8. I do not know what happened to the material in the bin, however, a few days later the bin was out by the freight elevators, as Terry Fraas told me the bin had been put back by the freight elevator, and she was through with it.

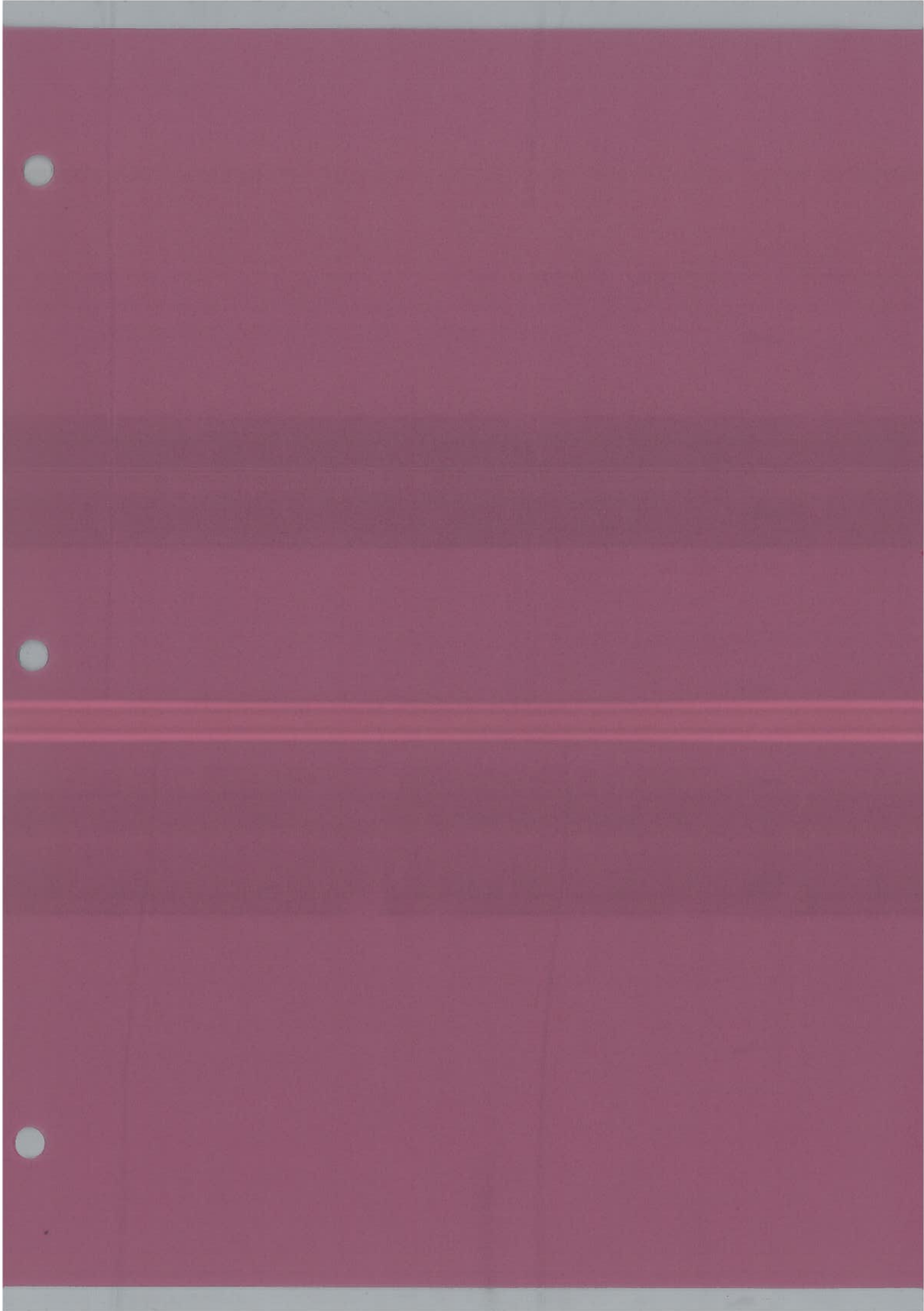
9. At no time did I believe I was compromising information as I was directed to do this by the person whom I knew to be the Deputy Comptroller, Terry Fraas.

  
JAMES L. DUMAN

Sworn to before me this  
12<sup>th</sup> day of June 2013

  
NOTARY PUBLIC

JUDITH A. SHANLEY  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires Oct. 18, 20 13



**Time line of Deputy Comptroller Teresa Fraas' activities on the morning of March 22, 2013**

- 8:03 a.m. Fraas swiped through the gate in the basement of the Rath Building.
- 8:07 a.m. Fraas arrives on the 11<sup>th</sup> floor and enters the Comptroller's office.
- 8:09 a.m. Fraas and hire worker James L. Duman exit the 11<sup>th</sup> floor Comptroller's office.
- 8:10 a.m. Fraas and Duman enter elevator number 3.
- 8:10 a.m. Fraas and Duman exit elevator in the Rath Building basement.
- 8:11 a.m. Fraas and Duman enter sub-basement lobby and head to west to cross- corridor. Duman starts down corridor to north (where totes were stored), but is called back by Fraas and they go to the south (towards DSS secure storeroom).
- 8:13 a.m. A DSS storage room attendant uses his swipe card to allow use of DSS elevators.
- 8:15 a.m. Fraas and Duman on 2<sup>nd</sup> floor elevator lobby with Duman pushing tote.
- 8:15 a.m. Fraas and Duman enter elevator 6, exit on 11<sup>th</sup> floor and enter Comptroller's office with a tote.