



COUNTY OF ERIE
STEFAN I. MYCHAJLIW
COMPTROLLER

February 8th, 2013

Michael A. Siragusa
County Attorney
95 Franklin Street, 16th Floor
Buffalo, New York 14202

Dear Mr. Siragusa,

Our office requests a legal opinion regarding Internal Audit's authority to access Medicaid eligibility files and also obtain a copy of an internal email that we believe was written by employees in the Department of Social Services.

We are conducting an audit of the Medicaid and Public Assistance Eligibility processes to evaluate internal controls and to determine that regulatory guidelines are followed. One audit step in our audit plan includes the review of files to validate that required documentation is present and properly prepared. We were informed by the Department of Social Services Director of Legal Affairs Thomas Kubiniec and Commissioner Carol Dankert that internal audit is not allowed to access Medicaid eligibility files. It is my understanding that this rationale was not used before when the Office of Erie County Comptroller conducted Medicaid related audits in December of 1996.

Based on an email provided by a whistleblower, it can be inferred that Department of Social Services employees may be directing lower level workers to "rubber stamp" Medicaid certifications without checking documentation to show people are still eligible to receive benefits. Our office is trying to determine whether or not Social Service workers are automatically recertifying Erie County residents without checking a single piece of documentation. We want to determine who gave the instructions pertaining to auto-recertification for Medicaid benefits.

As part of our inquiry, we are trying to determine the origin of an internal email. In my discussions with the Director of Information Technology Lori Stilwell I was told that I would have to complete a FOIA request. When I told her I did not have a name, only dates and very specific content, content she told me that the FOIA request must include a name or it would be denied.

In addition she stated that it was illegal for her to search through everyone's email trying to find the one I want. If I were to file a FOIA and it was denied, I could file an appeal through the Comptroller's office. Does that mean that the Comptroller will review all FOIA requests that are denied and make a final determination? If my own FOIA is denied it appears we would have to appeal to ourselves.

These two incidents are very perplexing for me. I believe the Erie County Charter Section 1802 (e) and (g) gives internal audit the authority to not only review Medicaid files but also the authority to audit all records of employees of Erie County which would include emails.

Further, it is my understanding that the Comptroller has subpoena authority. Could you please provide guidance regarding the use of this authority to obtain public information within Erie County government? Please provide information pertaining to the purported subpoena power of the Erie County Comptroller.

Sincerely,

Teresa M. Fraas
Deputy Controller- Audit and Control