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ERIE COUNTY COMPTROLLER

HON. STEFAN I. MYCHAJLIW

July 14th, 2021

Mr. Timothy Hogues, Personnel Commissioner
95 Franklin Street
Buffalo, NY 14202

Dear Mr. Hogues,

It appears the Personnel Department is sending unclear and mixed messages on whether or not Erie County employees are mandated to provide private health information to your department. In an email to independently elected officials and department heads, this is what your Deputy Commissioner instructed:

"Employees are not required at this time to disclose their vaccination status."

Source: Deputy Commissioners of Personnel Angela Marinucci, erie.gov email, 7/13/21

A reasonable person can infer that order directly contradicts this edict about the government obtaining private health information without employee permission:

"If the employee refuses to disclose their vaccination status, they should be treated as though they have not been vaccinated and referred to the Department of Personnel for guidance. The Dept of Personnel is able to independently verify vaccination status, if needed."

Source: Erie County Masking Policy for Employees While in the Workplace, Commissioner Timothy Hogues, 7/9/21

Secretly obtaining private health information without the consent of an employee is an extremely slippery and dangerous slope Erie County should not be venturing on.

- How will you secretly obtain independent verification of vaccination status without an employee's consent?
- What is the process to covertly obtain the private and personal health records of an employee?
- Why is this even necessary considering practically all COVID-19 restrictions and regulations regarding mask wearing are being dropped or severely curtailed?
- Prior to the COVID-19 pandemic, has the Department of Personnel ever used secretive, private methods to obtain the private medical records of workers without their consent?

Threatening to secretly obtain medical records of employees without them knowing is setting a dark and dangerous precedent. Erie County should not go down this path, especially since most COVID related restrictions are being lifted.

I have already reached out to our Law Department to request outside counsel on two legal fronts: stopping the threat of the Poloncarz administration to discipline employees of independently elected officials, and now the legality of secretly obtaining private medical records of workers without their knowledge. Please clarify or modify your position prior to the commencement of legal action. Thank you for the consideration.

Sincerely,

Hon. Stefan I. Mychajliw Jr.
ERIE COUNTY COMPTROLLER

Cc: Erie County Attorney Michael Siragusa, Erie County Legislature, Richard Canazzi, AFSCME, Denise Szymura, CSEA