



STATE OF NEW YORK  
OFFICE OF THE STATE INSPECTOR GENERAL  
**Final Report**  
**March 30, 2011**

## SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General found that New York State Department of Transportation (DOT) Transportation Analyst Edwin Kaliku misused state resources to further his personal business interests. Specifically, Kaliku used DOT e-mail systems to engage in the shipment of automobiles and other items to Nigeria, despite earlier formal administrative admonishments by DOT to forego improper use of state resources. Kaliku was also found to have failed to report a prior criminal conviction on his DOT employment application. The Inspector General recommends that DOT take appropriate disciplinary action for Kaliku's misuse of state resources and failure to report his prior criminal conviction.

Similarly, the Inspector General found that DOT Transportation Analyst Chris Nweke used DOT e-mail systems for personal business unrelated to his state duties. The Inspector General recommends that DOT take appropriate disciplinary action against Nweke.

DOT has advised the Inspector General it will take appropriate action.

## ALLEGATION

In June 2008, the Inspector General received a complaint from the DOT Investigations Bureau that alleged that Edwin Kaliku utilized DOT e-mail and telephone systems in furtherance of his private business, engaged in outside employment without the required disclosure to and approval from DOT, and had filed an employment application with DOT which, in response to a direct question, failed to disclose a prior criminal conviction.

## SUMMARY OF INVESTIGATION

### **Background**

DOT policy<sup>1</sup> regarding the use of its telephones, voicemail, and fax systems provides: “State furnished telephone equipment and services shall be used for state business only.” It further defines state business as “any action or endeavor that is undertaken by an employee in the performance of his/her duties to accomplish the goals and objectives of NYSDOT.” DOT’s Internet Access and Use policy<sup>2</sup> also addresses the use of DOT systems, including e-mail, and states: “NYSDOT provides access to the Internet in support of NYSDOT official business. Infrastructure used to interact with the Internet, such as computer hardware, software, networks, related equipment, facilities and/or services, are provided to support NYSDOT official business purposes.” While limited use of NYSDOT e-mail systems for “incidental and necessary personal purposes” is allowed, the policy explicitly bars as “unacceptable use” an employee “[c]onducting commercial ‘for profit’ business activities in support of outside employment.”

In addition to these policies, each time a user logs on to a DOT computer, a dialog box regarding computer use appears. It reads:

NYSDOT computer equipment and systems are provided for official use only. By signing on you are agreeing to comply with NYSDOT’s policies and procedures related to computer usage. Please note there is no right of privacy when using any DOT system. Your system use may be monitored and logged at any time.

Furthermore, on June 18, 2008, former Governor David A. Paterson issued Executive Order No. 7 which provides, in relevant part: “State supplies, equipment, computers, personnel and other resources may not be utilized for non-governmental purposes, including for personal purposes or for outside activities of any kind.” Specifically, Executive Order 7 mandates: “State computers shall be used only for official business, except that state computers may be used for incidental and necessary personal purposes, such as sending personal electronic mail messages, provided that such use is in a limited amount and duration and does not conflict with the proper exercise of the duties of the State employee.”

Regarding outside employment, DOT requires certain employees to notify the Department and request approval for outside employment as a means of ensuring that no

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<sup>1</sup> NYSDOT Policy 1.2-6 (2.8.08). NYSDOT allows “prudent use of telephones for essential [personal] calls . . . under certain circumstances” including those related to “matters of health, welfare, safety, critical appointments and family concerns.”

<sup>2</sup> NYSDOT Policy 1.2-7 (4.1.09).

substantial conflict exists between state employees' private interests and their official duties.<sup>3</sup> Employees are also advised that they must not accept other employment which could reasonably be expected to impair their independence of judgment in the exercise of their official duties or which may require them to disclose confidential DOT information. All "professional employees"<sup>4</sup> are required to file requests (Form PER 79) with the Director of the DOT Office of Human Resources when seeking outside or secondary employment. DOT mandates that "Each employee has the responsibility of submitting a form PER 79 concerning all the activities for which approval is necessary under this procedure."

Edwin Kaliku and Chris Nweke are DOT Transportation Analysts assigned to the DOT offices in Albany. Kaliku has been employed with DOT since 1994 and is currently assigned to the Bicycle and Pedestrian Unit. Nweke, employed with DOT since 1992, currently assists Broome, Chemung and Tompkins counties in the preparation of grant applications for federal transportation funds.

### **The Inspector General's Investigation**

#### *Kaliku's Failure to Disclose a Prior Criminal Conviction and Kaliku's and Nweke's Improper Use of State Resources*

The Inspector General first examined Kaliku's DOT personnel file which contained, among other documents, his 1994 application for employment with DOT and several DOT documents related to his violations of DOT policy. The employment application, signed by Kaliku on March 31, 1994 reads in pertinent part, "Criminal Convictions – Were you ever convicted of any violation of law other than minor traffic violations?" The box marked "No" was checked. The file also included a counseling memorandum, "reminder," notice of discipline, and letter of reprimand, dated November 2005, May 2007, November 2007, and April 2008, respectively, which cited Kaliku for violations of DOT policy regarding loud and frequent personal telephone calls during working hours, use of his DOT e-mail address on a non-work document, improper use of sick leave accruals, and use of a state fax machine for personal purposes. Of note, the file did not contain a request or approval for outside employment.

The Inspector General reviewed Kaliku's DOT e-mail and telephone accounts and discovered numerous communications in which Kaliku conducted private, non-DOT business transactions during state work hours. Many e-mails, approximately 50 during one year, were related to the repair, shipment to Nigeria, and sale of at least 12 automobiles, computers and other items. Frequent and regular telephone calls were made by Kaliku to a garage which repairs vehicles determined to have been shipped by Kaliku

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<sup>3</sup> NYSDOT Procedure 4.15-1

<sup>4</sup> NYSDOT Procedure 4.15-1 (6.11.09) defines "professional employees" as "including professional engineers, surveyors, landscape architects, attorneys, accountants, educators and any other persons who are or will be required to be licensed or certified by the State or other entity in order to be appointed to or retain their position of employment with the Department in an area, as well as people training for those positions."

to Africa. Furthermore, an examination of Kaliku's DOT Internet activity revealed the majority of Web sites accessed were non-DOT related and were largely associated with travel, automobiles, and electronics. During the course of this review, another DOT employee, Chris Nweke, was identified as complicit with Kaliku in this non-work related activity. Nweke's DOT e-mail account was similarly examined and a small number of e-mails describing Nweke's purchase, shipment to Nigeria, and sale of vehicles were discovered.

Kaliku's e-mails concerning this shipping activity contained two e-mails of note. One such e-mail chain, originally posted by Kaliku from his work computer on January 22, 2010, contained communications with an individual in Africa and described the forwarding of several packages by Kaliku to Nigeria, including one containing a laser sight for a pistol. Another earlier e-mail from Kaliku described the shipment of vehicles and other items, including generators, in a cargo shipping container aboard a vessel. It reads, "The generators are very small ones. I did not declare them in the manifest . . . These generators are hidden and covered with clothes, there is no way they can find them because the chairs and the cars cover them inside the container."

Accordingly, the Inspector General contacted United States Immigration and Customs Enforcement (ICE) regarding Kaliku's apparent failure to declare items on a manifest. ICE advised the Inspector General that Kaliku had been arrested on April 26, 1990, at John F. Kennedy Jr. International Airport in New York, charged with attempting to smuggle three aliens into the United States, and subsequently pleaded guilty to one count of attempted alien smuggling.<sup>5</sup> However, claiming fear of persecution in his native Liberia, Kaliku was subsequently given asylum in the United States and granted citizenship in 2004.

The Inspector General conducted sworn interviews of both Kaliku and Nweke. Kaliku confirmed his 1990 arrest and guilty plea to an alien smuggling charge, and that he had not disclosed this to DOT on his application for employment, as required. He testified, "There was no need for it. It wasn't asked, so I didn't disclose it." Regarding the concealed generators, Kaliku testified the generators were not contraband and he was merely trying to avoid customs charges. Later Kaliku amended his statement stating it was not customs charges he was trying to avoid but rather extra charges on the part of the shipping agent.

Kaliku testified that while he purchases vehicles, computers and other items and arranges for their shipment to Africa, this activity is not a business but a philanthropic endeavor, and he does not conduct these transactions on state time or using state resources, but for "one or two" e-mails related to the shipping containers that were sent from his state computer. Notwithstanding Kaliku's testimony to the contrary, as noted earlier, a review of Kaliku's DOT e-mail account reveals almost 50 e-mails in a single year concerned solely with these shipments. Indeed, it appears from these e-mails that more than 12 vehicles were shipped by Kaliku to Africa, and many of the e-mails discuss the prices to be assigned to the vehicles for sale. Regardless of the nature of these

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<sup>5</sup> 8 USC § 1324.

transactions, Kaliku utilized state resources and time in furthering these interests that were not part of his DOT duties.

Nweke also testified before the Inspector General that he purchases vehicles, computers and other items and arranges for their shipment to Africa. Nweke stated that he began shipping cars to Nigeria to assist his brother who was to start a car business there and had also considered this as a retirement business. Nweke admitted using DOT e-mail systems on one occasion to send photographs of a vehicle he had purchased and was shipping to Africa. Although Nweke's use of DOT's e-mail systems in this business endeavor appears limited, multiple e-mails were found on Nweke's DOT computer containing spreadsheet attachments detailing a number of purchases Nweke made for Kaliku of laptops and auto parts.

## FINDINGS AND RECOMMENDATIONS

The Inspector General found that DOT Transportation Analyst Edwin Kaliku used state resources to further his personal business interests. Specifically, Kaliku used DOT e-mail systems to transact business, the shipping of automobiles and other items to Nigeria, despite earlier admonishments by DOT to forego improper use of state resources. Kaliku was also found to have failed to report a prior criminal conviction on his application for employment with DOT, and when questioned about the omission, offered an implausible excuse. The Inspector General recommends that DOT take appropriate disciplinary action against Kaliku.<sup>6</sup>

In addition, the Inspector General found that DOT Transportation Analyst Chris Nweke used DOT e-mail systems for personal business purposes unrelated to his state duties, although his misconduct was more limited than that of Kaliku's. The Inspector General nonetheless recommends that DOT take the appropriate disciplinary action against Nweke. A copy of this report will be provided to ICE for its review.

### **Response of the Department of Transportation**

DOT advised the Inspector General that it has reviewed the findings of this investigation and will take appropriate action

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<sup>6</sup> Due to the passage of time, a referral to a prosecutor for review of Kaliku's submission of a false statement on his employment application cannot be made.