

**State of New York
Office of the Inspector General**



**Investigation into State Vehicle Use Practices at the
Division of Human Rights**

December 2013

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Inspector General**

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EXECUTIVE SUMMARY

The New York State Inspector General received a complaint from the New York State Division of Human Rights (DHR) alleging certain improprieties by then Commissioner Galen Kirkland's driver. While these allegations were not substantiated, the investigation caused the Inspector General to question the propriety of Kirkland's use of a driver to drive him to both business and personal events. While that investigation was pending, the Inspector General received an additional allegation of potential violations of state policy related to the state-vehicle usage and parking of then First Deputy Commissioner Luis Burgos, Jr.

Based on the investigation, the Inspector General determined that Kirkland violated state policy regarding the use of a personal driver. Throughout Kirkland's tenure as commissioner until the New York State Division of the Budget defunded the driver position in March 2011, DHR employed a part-time driver who drove Kirkland to both business and personal events. This investigation established that, pursuant to state policy, Kirkland was not entitled to a driver for commuting to and from work or to drive him to personal events.

This investigation also found that even after DHR revised its vehicle policy in October 2009 to conform to newly promulgated state vehicle use policy, DHR continued to employ vehicle use practices that violated that policy. Specifically, the Inspector General found that Burgos commuted to and from work in a state vehicle in violation of state and DHR vehicle policies until June 28, 2012, the day following his interview with the Inspector General. The Inspector General further found that Burgos improperly charged the state for the cost of parking his personal car in a garage near DHR while he improperly commuted with the state vehicle during the work week. As a result of this investigation, Burgos retroactively reimbursed the state for these parking costs.

In addition, while Kirkland properly paid taxes on the fringe benefit of having a driver, that payment did not make the state whole and the practice clearly violated state policy. The Inspector General further found that taxable fringe benefit forms for Burgos were all completed on the same date – May 13, 2011, well after their due date. Notably, on his taxable fringe benefit forms for three years Burgos reported 100 percent, 67 percent, and 78 percent personal use, practice that clearly violated state and DHR policy, yet went unchecked by DHR. Due to a lack of record-keeping and supervisory oversight, the Inspector General finds it infeasible to determine if then-DHR management provided Burgos with taxable fringe benefit forms for the period 2010-2012. Current DHR management is providing these forms to Burgos. The Inspector General is referring this matter to the New York State Department of Taxation and Finance.

In the wake of this investigation, Kirkland and Burgos both resigned their DHR positions on September 3, 2013, and June 14, 2013, respectively. In addition, former Deputy Commissioner for Finance and Administration Stephen Rolandi resigned his employment on August 23, 2013. On September 24, 2013, Helen Foster was appointed DHR Commissioner; Valerie P. Dent currently serves as First Deputy Commissioner.

In December 2013, the state implemented a revised, comprehensive vehicle use policy that strictly prohibits the conduct found in this investigation and clearly outlines the parameters of the use of state vehicles to ensure that such use serves legitimate state needs and is subject to appropriate review and approval.

DHR has informed the Inspector General that it has revised its vehicle policy to comport with the newly promulgated state vehicle policy and has instituted the requisite internal controls to regularly monitor its vehicle use to ensure conformance with this new state policy.

INTRODUCTION AND BACKGROUND

Background

The New York State Division of Human Rights (DHR) enforces New York's Human Rights Law, which protects New York residents from certain discrimination based on a protected class or status. In May 2008, Governor David A. Paterson appointed Galen Kirkland as DHR Commissioner and Luis Burgos, Jr., as its First Deputy Commissioner.

In 2008, former Deputy Secretary to the Governor for Appointments Francine James, who was responsible for effectuating gubernatorial appointments to New York State agencies, met jointly with Kirkland and Burgos to discuss their appointments. According to Kirkland, James informed him at that meeting that as head of an agency, Kirkland was entitled to both unrestricted use of a state vehicle and a driver. James testified that she could not recall the details of this meeting but stated that agency heads were entitled to unrestricted use of a state vehicle. All parties agree that during this initial meeting, James did not discuss any state vehicle car usage with Burgos.

In fact, at the time of that meeting and throughout Kirkland's tenure at DHR, state vehicle policy permitted the head of an agency unrestricted use of a state vehicle, *i.e.*, both business and personal use of a vehicle.¹ Consistent with that policy, Kirkland utilized a state vehicle for both business and personal use.

Kirkland also asserted, however, that upon his appointment, James informed him that he would be provided with a driver. James again asserted that she did not have a specific recollection of this conversation, but testified that agency heads should drive themselves. When confronted with James's testimony, Kirkland altered his account of the meeting, conceding that James may not have mentioned a driver, but that employing a driver for the commissioner was "standard practice" at DHR when he commenced employment there in 2008. In fact, the Inspector General substantiated that DHR commissioners historically have had use of a state-owned vehicle and driver, employed part-time, and retained for the purpose of driving the commissioner. As such, when

¹As discussed later in this report, federal and state tax law and New York State policy require employees to report the taxable value of their personal use of state vehicles. IRS regulations; DOB Budget Policy & Reporting Manual, D-750; and, State Comptroller Payroll Bulletin.

Kirkland commenced employment at DHR, he utilized a state vehicle and a driver who had been hired by Kirkland's immediate predecessor.

Notwithstanding, state policy in 2008, when Kirkland commenced employment at DHR, did not provide for the unlimited use of a driver, but rather was much more limited and circumscribed. Kirkland nevertheless utilized the services of a driver, employed part-time and retained almost entirely for the purpose of driving him,² for both personal and business use. This investigation established that Kirkland was not entitled to a driver for commuting to and from work or to drive him to personal events.

In addition, on August 13, 2008, shortly after Kirkland and Burgos arrived at DHR, the agency promulgated a new version of its Fleet Management Policy. The policy stated, in pertinent part:

Individual assignment of state-owned vehicles is limited to the commissioner and first deputy commissioner. Per [Division of the Budget (DOB) Policy] only the commissioner has unrestricted use of the state vehicle.

DHR's Fleet Management Policy directed that only the commissioner was permitted unrestricted, or personal, use of a state-owned vehicle.³ Accordingly, this investigation determined that even prior to the promulgation of new state vehicle policy in October 2009 to be discussed herein, state and DHR policy did not permit Burgos to use a state vehicle to commute.

The Promulgation of New State Vehicle Policy in 2009

In 2009, as the state confronted serious fiscal problems, the Paterson administration initiated a series of actions to reduce agency spending. On September 18, 2009, DOB disseminated an updated policy on state vehicle acquisition, usage, and assignment. The revised DOB policy (Budget Policy and Reporting Manual, D-750) took effect immediately and included significant new provisions addressing, in particular, the assignment of agency vehicles to specific employees and the personal use of vehicles.

DOB often promulgates and updates policies and sends them to the appropriate mid-level officials within agencies and authorities for their review and implementation. Highlighting the significance of the updated vehicle usage policy, this particular revision was sent directly to all heads of state agencies and authorities accompanied by a memorandum from Valerie Grey, then Director of State Operations and head of the Office of Taxpayer Accountability. The communication from Grey began:

² Former DHR Deputy Commissioner for Finance & Administration Stephen Rolandi represented to DOB in May 2010 that the driver then earned \$16.32 per hour, and described his duties as follows: 90 percent driving duties; 10 percent administrative duties. In the driver's testimony before the Inspector General, however, he only discussed driving the commissioner and did not testify to conducting any administrative duties.

³ The 2008 version of DHR's Fleet Management Policy was silent as to any requirement to calculate the taxable fringe benefit of personal use of a state vehicle.

This memorandum is to bring your attention to the recently revised Division of the Budget BPRM Item No. D-750 with respect to the acquiring, use and management, reporting, and disposal of state vehicles. In continuing with the series of directives to agencies, aimed at reducing wasteful spending, and eliminating fraud and abuse in state government, the Office of Taxpayer Accountability and the Division of the Budget have instituted necessary revisions to the policies and procedures required by Division of the Budget for managing state vehicles.

Grey then specifically emphasized the significant change to statewide vehicle policy, calling it a “dramatic shift” from earlier practice, with the expectation that strict application of the new policy would result in significant savings for the state:

It is clear that some of these policies are a dramatic shift from previously allowed practices, but it is expected that agencies will not only achieve savings through the strict application of the policies and guidelines set forth in this bulletin, but will also generate transparent measures of increased accountability in the use of state vehicles. I ask that you pay close attention to the contained policies and use them as the minimum standards as you develop your individual agency fleet policies.

In conspicuous contrast to previous policy that allowed agencies latitude in vehicle assignment and usage, the new D-750 requirements established statewide, strict limitations on how state vehicles are to be used, including the following:

State agency vehicles must be used only for official business, and their use for any personal business is strictly forbidden, except (i) [by state officials of cabinet rank and heads of agencies], *and* (ii) under very limited circumstances, expressly authorized by agency policy, where the personal use is ancillary to official business (such as for occasional commuting purposes within a reasonable distance, where the vehicle is mainly used for agency business) [Emphasis added].

Particularly pertinent to the Inspector General’s examination of DHR’s vehicle usage, the new policy directed that:

- State officials of cabinet rank and heads of agencies shall not be assigned a permanent vehicle, but shall have unrestricted use of their agency fleet vehicles.

- Agencies may not dedicate cars to specific individuals except in extraordinary circumstances approved by the head of the agency and the appropriate Deputy Secretary, and the use of such car shall strictly be for carrying out agency duties.

In response to this DOB directive, DHR modified its fleet policy to incorporate the above-language in its policy, effective October 15, 2009. As will be demonstrated, however, while DHR modified its policy to conform to Budget Bulletin D-750, its practices did not change in any way.

DHR State Vehicle Usage After October 15, 2009

As noted, DHR modified its vehicle policy by the deadline of October 15, 2009. DHR's Fleet Management Policy and its vehicle usage were overseen by former Deputy Commissioner for Finance and Administration Stephen Rolandi. Rolandi joined DHR in October 2008. Rolandi told the Inspector General that when Budget Bulletin D-750 was disseminated to all state agencies in September 2009, revisions to DHR's vehicle policy were made by DHR's general counsel's office and its internal controls officer. However, revisions to any DHR policy were also reviewed by the first deputy and ultimately approved by the commissioner. When asked, Burgos indicated that he had "probably" seen DHR's 2009 update to its vehicle policy, but could not recall. Burgos could also not recall whether he reviewed or approved the policy. Kirkland recalled approving the 2009 revisions to DHR Fleet Management Policy. In addition, DHR policies are available to all employees via a policy portal on every employee's computer. Moreover, DHR engages in mandatory yearly training on its policies and every employee must either attend or watch a taped presentation.

Under the updated policy, Kirkland clearly was permitted unrestricted use of a state vehicle.⁴ Nevertheless, no effort was made by anyone at DHR to ascertain whether DHR's employment and the commissioner's use of a driver comported with this new policy or the policies that preceded it. Indeed, Director of State Operations Grey, in her cover letter which accompanied the dissemination of D-750, highlighted the fact that D-750 was part of a "continuing . . . series of directives to agencies, aimed at reducing wasteful spending, and eliminating fraud and abuse in state government." Having made no inquiry, DHR continued to employ a driver to pick up the commissioner each morning from his home, drop him off each evening, and chauffeur him to both business and personal meetings.⁵

Had DHR inquired as to the propriety of Kirkland's use of an employee dedicated exclusively as the commissioner's driver, the use would have been stopped and Kirkland would have been advised that he may use DHR employees otherwise employed to drive

⁴ Kirkland also admitted that, on a few occasions, his wife would ride in the state vehicle with him to events – a violation of state vehicle policy under both the prior and updated policies.

⁵ It must be noted that if the commissioner had no appointments for the day, the driver left the agency and did not charge the hours to wait to take the commissioner home in the evening.

him occasionally to business-related events. The Inspector General's investigation revealed that on May 15, 2008, shortly after Governor Paterson assumed office and around the time that Kirkland was appointed DHR Commissioner, David Nocenti, Counsel to then-Governor Paterson, issued a memorandum on exactly this issue to all members of the governor's staff, which would have included the deputy secretary who oversaw DHR and Deputy Secretary for Appointments James. The memorandum was disseminated via an e-mail entitled, "Guidelines for Use of State Vehicles and Drivers." In the e-mail, Nocenti: "Counsel's Office has been receiving a number of questions regarding the appropriate use of State vehicles and drivers. Attached is a four-page document providing general guidelines, which hopefully you will find helpful." The section of the memorandum entitled "State Drivers" delineates the following:

At times, senior officials utilize the services of state drivers. It is appropriate to utilize the services of state drivers:

- to travel from one's work station to engagements requiring attendance in connection with one's official duties
- to travel from one's home to a location (other than one's work station) where the individual is engaged in official State business

With the exception of specified high-level officials who have received prior approval from Counsel's Office, State drivers should not be used to drive an employee:

- from home to his or her official work station
- to a function unrelated to official state business

In the event that a State driver is used for either of these purposes without prior approval, it must be reported immediately, and you may be required to reimburse the state for any costs incurred for the use of state resources, including an allocable share of the driver's salary and fringe benefits.

[Emphases in original]

When confronted with this document, both Kirkland and Rolandi denied ever having seen it. According to the e-mail to which it was attached, the memorandum was disseminated to the governor's staff. Therefore, it is possible that the memorandum did not reach heads of agencies. Nevertheless, had anyone at DHR inquired of the deputy secretary charged with its oversight or the governor's counsel's office as to the propriety of employing a driver for the commissioner, a response consistent with these guidelines should have ended the practice.

In March 2011, Kirkland's use of a driver ended after DOB inquired of the driver's civil service "student assistant" title, as Kirkland's driver had been hired under such a title. In late February 2011, when DOB asked DHR whether the driver met the

civil service criteria for that title, DHR ascertained that he did not and DOB defunded the position.

Following the termination of the DHR-employee driver, however, Kirkland did not cease utilizing a driver. Instead, DHR hired a temporary employee to drive the commissioner. From March 2011, immediately following the termination of Kirkland's driver, until May 2011, DHR submitted "quick pay" vouchers,⁶ signed by Kirkland, to pay the commissioner's temporary driver. In early May 2011, DOB began denying payment. In June 2011, Kirkland inquired of Deputy Secretary for Civil Rights Alphonso David, to whom he reported, about payment for this driver. David informed Kirkland that, regardless of the outstanding payments, he was no longer allowed to use the driver. Kirkland stated that once he learned that the practice of having a driver was not acceptable, he stopped using a driver. Following that conversation, Kirkland used public transportation to go to and from work and used DHR employees otherwise employed to drive him occasionally to business-related events.

Of note, for the entire period that Kirkland utilized a state vehicle and driver for personal use, Rolandi annually computed Kirkland's personal use of the vehicle and driver and Kirkland annually paid the taxable fringe benefit.⁷ Nevertheless, while Kirkland properly paid taxes on the fringe benefit of having a driver, that payment did not make the state whole and the practice clearly violated state policy. For instance, from April 2010 until March 2011, the part-time driver was paid approximately \$32,000 and received state benefits. Kirkland merely paid the taxable fringe benefit on the portion of the driver's salary deemed to have been associated with commuting and other personal use.

State Vehicle Usage of First Deputy Luis Burgos

In June 2011, Kirkland learned of a \$5,566.55 payment by Burgos to the state's General Fund as repayment for parking for an almost three-year period. Questioning the propriety of the repayment, Kirkland referred the matter to the Inspector General.

During the pendency of this investigation, DHR paid for approximately nine⁸ parking spaces at a nearby garage for the three DHR state vehicles and additional spaces for the personal vehicles of DHR's deputy commissioners and first deputy. According to Burgos, an April 2011 discussion occurred at DHR about cost saving measures, which included a suggestion that DHR relinquish parking spaces reserved for the deputy commissioners at the private garage. While that plan was not implemented, Burgos testified to the Inspector General that the discussion regarding cost saving caused him to

⁶ Quick pay vouchers are submitted to DOB for payments under \$15,000.

⁷ Travel logs are maintained in each vehicle that delineate, among other information, the person using the vehicle and the purpose. Although DHR was unable to provide all of the travel logs, some of which had apparently been misplaced, the Inspector General was able to confirm Rolandi's calculations for the taxable fringe benefit of Kirkland's personal use of the vehicle because he provided his work sheets; however, the work sheets did not include the calculations for the taxable fringe benefit of the driver.

⁸ DHR has relinquished all but two of the spaces, which are now used for unassigned state vehicles.

reconsider his parking situation which ultimately resulted in his repayment to the state.⁹ However, in order to evaluate Burgos's parking repayment, the Inspector General also examined Burgos's state vehicle use.

Since Burgos commenced employment with DHR until the day following his interview with the Inspector General, he used a state vehicle to commute to and from his home. Burgos explained that he would drive his personal vehicle to DHR's offices in the Bronx on Monday, park his vehicle in the spot designated for the first deputy's personal vehicle, and then drive one of DHR's state vehicles, the Crown Victoria, to and from his residence for the work week. On Friday, he would park the state vehicle in its designated spot and take his personal vehicle home for the weekend. This pattern continued until May 2011 following his repayment for the parking space. At that point, Burgos ceased driving his personal vehicle to the office and began taking the state vehicle home on weekends. Burgos noted to the Inspector General that, although he commuted daily in the state vehicle, the car was available for use by others at the agency during the day if needed.

Burgos further testified that although he used the state vehicle for commuting, he used his personal E-ZPass at all times. Accordingly, the Inspector General requested and received E-ZPass records for July 2009 through 2011 and noted that there were periods when the E-ZPass in the Crown Victoria driven by Burgos was used at intervals indicative of commuting. Subsequently, Burgos informed the Inspector General via e-mail on August 14, 2012, to "Please note that I erroneously utilized the state's EZ pass on a number of occasions believing it was my personal EZ pass when I drove the Crown Victoria. I reimbursed the state for the erroneous usage." On August 17, 2012, DHR provided an e-mail to the Inspector General that Burgos had sent to Kirkland and Rolandi on that same date. In that e-mail Burgos detailed his "erroneous" E-ZPass usage, the bulk of which occurred from May 2010 through September 2010. Burgos represented to Kirkland and Rolandi that in October 2010 he had reimbursed for part of this erroneous usage based on calculations by someone in the finance department. He therefore deducted that amount from his total improper E-ZPass usage of \$478.70, and reimbursed DHR the difference on August 8, 2012.

The Inspector General also queried Burgos regarding DHR Fleet Management Policy. While he could not recall specifically reviewing the October 2009 update to the policy based on DOB Bulletin D-750, he acknowledged that as first deputy, as a matter of course, he would have reviewed any updates to the policy prior to its submission to the commissioner for final approval. Burgos also recognized that the changes to DHR's vehicle policy conformed to the directives of D-750. The Inspector General then inquired how Burgos's commuting in the state vehicle comported with DHR and state policies

⁹ In a June 1, 2011 internal DHR e-mail responding to a question regarding the reason for his \$5,566.55 repayment, Burgos stated: "With a new administration in place [Governor Cuomo took office in January 2011], and not having been reappointed as of late April 2011, I wanted to make sure that any debts which I may owe the state are paid up now, so I would not have to pay them once I was out of the office. At this time, I am not certain whether I actually owe this money, since there is no policy in place regarding this issue. If I do not owe the state this money, I would like to have my check for \$5,566.55 returned to me."

which mandate, “Agencies may not dedicate cars to specific individuals except in extraordinary circumstances approved by the head of the agency and the appropriate Deputy Secretary, and the use of such car shall strictly be for carrying out agency duties.”

Initially, Burgos noted that the vehicle was not “dedicated” to him and was available to other DHR employees for use. With regard to his commuting, Burgos explained that upon his appointment, he inquired of Appointments Secretary James as to whether he would be provided a state vehicle for commuting. Burgos stated that this conversation took place over the telephone sometime after the face-to-face meeting that included Burgos, Kirkland and James. He related that James said that he was “entitled to use a state vehicle for commuting” and should choose a state vehicle from DHR’s pool of cars. The Inspector General questioned James about this purported conversation. James did not recall such a conversation and stated that Burgos’s commuting “seems to violate the car use policy of the state, which I am aware of, so if that was presented to me I would have quoted from the policy.” When confronted with James’s testimony, Burgos became visibly upset and assured the Inspector General that such a conversation had taken place and that he would not have used a state vehicle for commuting without James’s express authorization.

While the Inspector General cannot resolve the issue regarding the occurrence or content of the conversation, it is clear that when DHR modified its vehicle policy to conform to D-750, no meaningful review of Burgos’s actual car usage, or the agency’s in general, was conducted. Had such a review occurred, Burgos’s commuting would have been examined and should have been discontinued. Indeed, even if James had given Burgos authorization to commute in a state vehicle, D-750 and its accompanying memorandum from then Director of State Operations and head of the Office of Taxpayer Accountability Grey most certainly overrode that original authorization; in the very least, it demanded presentation and reexamination of the arrangement by the then deputy secretary charged with oversight of DHR and/or an official of DOB.

More troubling is Kirkland’s and Rolandi’s apparent lack of knowledge of Burgos’s car usage. Burgos was first questioned by DHR management about his state vehicle usage following the submission of his repayment check in May 2011. Because Burgos reported only to the commissioner, DOB contacted Kirkland for supporting documentation as to the basis for the repayment and the accuracy of the calculation. Kirkland tasked the DHR Director of Regulatory Compliance and Internal Control to conduct an inquiry of Burgos’s repayment. Initially, Burgos explained,

I was provided a parking pass for my personal vehicle, to park it at the One Fordham Plaza garage, which I did. However, after parking the vehicle in the garage, I would utilize the Crown Victoria to commute to/from home Monday through Friday, and drive my personal vehicle home on Fridays. Since I utilize the Crown Victoria to commute, I should have turned in the parking pass for my personal vehicle which I did in April of 2011. I felt it is only fair to pay back to the state, the garage

rental that was paid for my personal vehicle going back to 2008. If you have any further questions, please advise. Thank you.

This response prompted Kirkland to ask the Director of Regulatory Compliance and Internal Control to inquire further of Burgos. In a June 2, 2011 e-mail, the Director wrote:

The Commissioner has further asked that you supply him with documentation as to the approval of your use of a state owned vehicle for commuting. Please note that the Division's Fleet Management Policy . . . states that "In accordance with state policy, DHR does not dedicate cars to specific individuals except in extraordinary circumstances approved by the head of the agency and the appropriate deputy secretary."

The policy also states that "All state owned vehicles must be used exclusively for official state purposes in direct support of agency activities and in compliance with all New York State Laws . . . If an employee is permitted a state vehicle for unrestricted use, such as commuting the Deputy Commissioner for Finance & Administration will ensure that an amount that represents the taxable value of the personal use of the vehicle is included in the employee's wages." [Ellipses in original]

Please forward this information directly to the Commissioner.

Burgos responded to Kirkland that, as noted earlier in this report, he received authorization to commute in a state vehicle from Appointments Secretary James.

DHR's Lack of Attentiveness and Compliance with State Vehicle Policy

This e-mail exchange among Kirkland, the Director of Regulatory Compliance and Internal Control, and Burgos highlights many problems regarding state vehicle use at DHR. Initially, Burgos had been commuting in a state vehicle in violation of state and agency policy, and this violation went unnoticed and unchecked. Specifically, Burgos's vehicle usage was not known to Kirkland, the head of the agency and from whom Burgos was, according to policy, required to obtain approval. When confronted with this e-mail which implies that Kirkland had no knowledge of Burgos's usage or deputy secretary-level approval, Burgos asserted that Kirkland had seen him drive the vehicle to commute and he, therefore, believed that he had Kirkland's tacit approval; furthermore, Burgos believed that James's purported approval satisfied the required deputy secretary approval. Notwithstanding this assertion, when the Inspector General questioned Kirkland regarding his knowledge of Burgos's state vehicle use for commuting, he testified that he had no knowledge until May 2011 when inquiry was made of Burgos regarding the parking repayment.

Moreover, DHR does not manage a large fleet of cars: only three vehicles comprise its entire fleet, and they are all maintained at DHR headquarters in the Bronx,

New York.¹⁰ Yet, it appears that former Deputy Commissioner for Finance & Administration Rolandi, who was tasked with monitoring both the vehicles and their usage, ignored Burgos's commuting in a state vehicle, which was in violation of state and DHR policy at least since the update to the policies in October 2009, and arguably before then. A cursory review of the travel logs would have indicated to Rolandi that Burgos was primarily using the state vehicle to commute. In fact, although Rolandi was tasked with monitoring the vehicle usage at DHR, he testified that he reviewed the logs only sporadically except to calculate the taxable fringe benefit for the commissioner at the end of each fiscal year.

In June 2012, when the Inspector General asked Rolandi what his understanding was of Burgos's car use, he replied that he believes it's a mixture of business, personal, and commuting noting "I suspect it's mostly business" adding that he did not notice significant commuting and/or personal use. Rolandi offered this explanation in June 2012 despite having been copied on the May 24, 2011 e-mail wherein Burgos explained to the Director of Regulatory Compliance and Internal Control that he was commuting regularly in the state vehicle. Rolandi also offered this explanation after having completed Burgos's taxable fringe benefit forms for the years 2007-2008, 2008-2009, and 2009-2010, in which he reported 100 percent, 67 percent, and 78 percent personal use, respectively. Of further note, these taxable fringe benefit forms were all completed on the same date – May 13, 2011, well after their due date. When confronted with this fact, Rolandi asserted that the Office of the State Comptroller never asked Burgos to complete a taxable fringe benefit form; although Rolandi could not explain how the State Comptroller would know to ask Burgos to complete this form absent information from Rolandi. Due to a lack of record-keeping and supervisory oversight, the Inspector General finds it infeasible to determine if then-DHR management provided Burgos with taxable fringe benefit forms for the period 2010-2012. Current DHR management is reviewing and organizing vehicle use records from that period and will be providing taxable fringe benefit forms to Burgos for the period that they were not filed.

When the Inspector General showed Kirkland Burgos's taxable fringe benefit forms that included such high percentages of personal use and were all dated May 13, 2011, he expressed shock on both accounts. He testified that Rolandi never informed him of the delinquency in reporting Burgos's taxable fringe benefits. In addition, when Burgos told Kirkland in his June 15, 2011 e-mail that he had authorization from Appointments Secretary James to commute in a state vehicle, he added, "Also, the Deputy Commissioner for Finance and Administration has ensured that an amount that represents the taxable value of the personal use of the vehicle is included in my wages." One could certainly infer – and it appears that Kirkland did so infer – that Burgos had been paying his taxable fringe benefits for the entire period of his vehicle use, and not simply all on May 13, 2011.

Finally, when the Inspector General queried Kirkland as to why on June 15, 2011, he did not order Burgos to stop commuting in a state vehicle and merely referred the matter to the Inspector General, he replied, "I had the impression . . . that this was being

¹⁰ DHR currently operates only two unassigned vehicles.

discontinued.” Kirkland recognized that it was “clearly inappropriate . . . but [didn’t] remember issuing any directive.” Kirkland stated that he assumed that “the discontinuance of the use of the parking space was also going to be reflected in discontinuing the misuse of the car.” Kirkland said that after all this came about, it “seemed so obvious to me” that Burgos would “curtail” commuting. Kirkland took no affirmative action to ensure Burgos’s compliance with state vehicle policy.

Burgos Stops Commuting in a State Vehicle and Further Reimburses the State for Parking

When Burgos appeared before the Inspector General, he was forthcoming about his commuting and reiterated his position that he received authorization from James to commute in a state vehicle. However, upon being presented with D-750 and DHR policy, he stated that he would stop using the state vehicle, and provided documentation to that effect to the Inspector General the day after his appearance.

Finally, the Inspector General questioned Burgos about his repayment. Burgos explained that he felt it appropriate given his commuting in the state vehicle. The Inspector General further inquired as to the basis for his calculation. A space in the parking garage costs DHR \$191.95 per month, so Burgos stated that he reached his total by adding the value of the space for December 2008, all of 2009 and 2010, and January, February, March and April 2011. The Inspector General questioned why, if he commenced employment at DHR in or about May 2008, did he choose to repay the parking only for December 2008. Burgos pointed to the explanation he had provided to Kirkland, Rolandi and the Director of Regulatory Compliance and Internal Control in June 2011:

I chose December 2008, as 6 months after I started working. Since the Crown Victoria is from the “car pool” and other employees have access to it to conduct field visits, for the Information Technology unit to transport computers, etc., a 6 month period provided me with an idea as to the regularity of use of the Crown Victoria by staff, whether it was being utilized overnight, whether they would return the vehicle late, etc., which would result in using my personal vehicle.

When the Inspector General noted that there existed parking records and mileage logs that could calculate other employee usage for this six-month period, and therefore accurately calculate his usage, Burgos admitted that the calculation could have been accomplished. Following the interview, Burgos asked Rolandi to calculate the cost of the parking for June 2008 through November 2008. On June 3, 2012, Burgos submitted a check in the amount of \$1,151.70 (\$191.95 x six months). Since Burgos ceased commuting in a state vehicle on June 28, 2012, he resumed using his personal vehicle and parking in a DHR parking space until his resignation in June 2013.

INSPECTOR GENERAL'S FINDINGS

Based on the investigation, the Inspector General determined that former Division of Human Rights Commissioner Galen Kirkland violated state policy regarding the use of a personal driver. Throughout Kirkland's tenure as commissioner until the New York State Division of the Budget defunded the driver position in March 2011, DHR employed a part-time driver who drove Kirkland to both business and personal events. This investigation established that, pursuant to state policy, Kirkland was not entitled to a driver for commuting to and from work or to drive him to personal events.

This investigation also found that even after DHR revised its vehicle policy in October 2009 to conform to newly promulgated state vehicle use policy, DHR continued to employ vehicle use practices that violated that policy. Specifically, the Inspector General found that former First Deputy Commissioner Luis Burgos, Jr., commuted to and from work in a state vehicle in violation of state and DHR vehicle policies until June 28, 2012, the day following his interview with the Inspector General. The Inspector General further found that Burgos improperly charged the state for the cost of parking his personal car in a garage near DHR while he improperly commuted with the state vehicle during the work week. Burgos retroactively reimbursed the state for these parking costs.

In addition, while Kirkland properly paid taxes on the fringe benefit of having a driver, that payment did not make the state whole and the practice clearly violated state policy. The Inspector General further found that taxable fringe benefit forms for Burgos were all completed on the same date – May 13, 2011, well after their due date. Notably, on his taxable fringe benefit forms for three years Burgos reported 100 percent, 67 percent, and 78 percent personal use, practice that clearly violated state and DHR policy, yet went unchecked by DHR. Due to a lack of record-keeping and supervisory oversight, the Inspector General finds it infeasible to determine if then-DHR management provided Burgos with taxable fringe benefit forms for the period 2010-2012. Current DHR management is providing these forms to Burgos. The Inspector General is referring this matter to the New York State Department of Taxation and Finance.

NEW STATE VEHICLE POLICY AND CORRECTIVE ACTION AT THE DIVISION OF HUMAN RIGHTS

In the wake of this investigation, Kirkland and Burgos both resigned their DHR positions on September 3, 2013, and June 14, 2013, respectively. In addition, former Deputy Commissioner for Finance and Administration Stephen Rolandi resigned his employment on August 23, 2013. On September 24, 2013, Helen Foster was appointed DHR Commissioner; Valerie P. Dent currently serves as First Deputy Commissioner.

In December 2013, the state implemented a revised, comprehensive vehicle use policy that strictly prohibits the conduct found in this investigation and clearly outlines the parameters of the use of state vehicles to ensure that such use serves legitimate state needs and is subject to appropriate review and approval.

DHR has informed the Inspector General that it has revised its vehicle policy to comport with the newly promulgated state vehicle policy and has instituted the requisite internal controls to regularly monitor its vehicle use to ensure conformance with this new state policy.