



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
June 13, 2008

**Two ORPS Employees Disciplined for Improper
Disclosure of Information**

*Potential “Revolving Door” Violation Referred to
NYS Commission on Public Integrity*

SUMMARY OF FINDINGS/RECOMMENDATIONS

An investigation by the New York State Inspector General (Inspector General) determined that Property Analyst Robert Buell and his supervisor Property Analyst John Petrino, employees of the New York State Office of Real Property Services (ORPS), improperly gave non-public information to Bruce Sauter, a former ORPS employee who was acting as a private consultant. The Inspector General also determined that Sauter’s interactions with ORPS as a consultant may have violated state laws prohibiting him from appearing before his former agency within two years of his departure from state service. In addition, the Inspector General found that, on one occasion, Petrino allowed Sauter to access a state computer at the ORPS office in Newburgh, New York. Petrino and Buell have been disciplined by ORPS. The Inspector General is referring this matter to the New York State Commission on Public Integrity for its review and for appropriate action under the New York Public Officers Law.

ALLEGATIONS

In May 2007, the Inspector General received a referral from the New York State Attorney General, which had been contacted by Mary Marvin, the Mayor of Bronxville, New York. Mayor Marvin alleged that confidential information gathered in the course of a village-wide property revaluation project had been improperly given by ORPS employee Robert Buell to a private consultant, and that the information was then posted on the Web site “Bronxville.us.”

SUMMARY OF INVESTIGATION

The New York State Office of Real Property Services oversees the local

administration of real property assessments and ensures the equitable apportionment of local non-income taxes and state aid between and within municipalities throughout the state. In fulfilling these responsibilities, the ORPS regional office in Newburgh monitored a village-wide revaluation of all residential and commercial property in the Westchester County town of Bronxville between 2004 and 2006. According to ORPS Regional Director John Wolham, ORPS' role in the project was to "ensure that appropriate procedures were followed for collecting the inventory and producing individual value estimates of each property."

The village-wide revaluation had been promoted by a group of Bronxville residents who had discovered that, prior to 2004, the village had only reassessed 39 properties in the previous nine years. The group alleged that the failure to obtain up-to-date assessments resulted in an unfair distribution of the property tax burden within the community. A Web site entitled "Bronxville.us" was established to encourage the town to conduct the revaluation, and later was updated with information regarding the revaluation and related property tax issues.

In the midst of Bronxville's revaluation project, in or about July 2005, the Bronxville.us group hired the International Association of Assessing Officers (IAAO) to assist them in determining if the new village revaluation was both fair and accurate. The IAAO engaged former ORPS employee Bruce Sauter as the project's principal coordinator. The previous month, Sauter had retired from his position as Chief Technology Officer of ORPS and was now working as a consultant. His consulting practice also included assignments related to property assessments for the Villages of Rye and Greenburgh, both in Westchester County. At some point prior to November 2006, Sauter contacted his former colleagues at ORPS on behalf of the Village of Rye and received property assessment data from Property Analyst Robert Buell.

Buell and ORPS Property Analyst John Petrino were interviewed during the Inspector General's investigation. Petrino is Buell's supervisor and the ORPS Representative to Westchester County. According to Buell, on November 8, 2006, Sauter telephoned him again to request property assessment data, this time regarding the Village of Bronxville. Buell asked Sauter to send his request to him via e-mail, with a copy to Petrino. With Petrino's knowledge, Buell provided the Bronxville reassessment data to Sauter.

Petrino later informed the Inspector General's investigators that the Bronxville data provided to Sauter included information that ORPS does not generally disclose to the public, specifically square footage and bedroom and bathroom counts, regarding the assessed houses. Internal ORPS communications referred to the data provided to Sauter as "preliminary."

Mayor Marvin asserted in her complaint that the data obtained from Buell was posted on the Bronxville.us Web site. When the Inspector General interviewed Bruce Sauter, he admitted having obtained data from Buell, but claimed that the data were "too raw" to have been posted on the Bronxville.us Web site. He said that he did turn over

this data in written form to his client, but only after the Village of Bronxville had posted it on the official village Web site. Sauter stated that he believed that the information had also been given to the village assessor and several other people who work in the real estate and legal fields. He further stated the Village of Bronxville first posted the information on its Web site and then removed it several hours later. The data has since been removed from the Bronxville.us Web site, and the Inspector General was not able to establish who posted what version of the Bronxville assessment data on the site.

A few weeks after Sauter's request to Buell, on November 20, 2006, Sauter appeared in person at the Newburgh office of ORPS. According to Petrino, Sauter told Petrino that he would be attending a meeting in Bronxville that evening with an ORPS senior official but had left some needed information at his home. Sauter requested Petrino's help in obtaining this information from the ORPS Web site. When Petrino resisted, Sauter asked to use a state computer. Petrino took Sauter to Buell's workstation and logged on to the computer. Sauter used the computer for between 45 and 120 minutes and then left. At the request of the Inspector General, ORPS reviewed all activity on Buell's computer during the relevant period. ORPS determined that Sauter accessed public information available on the Internet and used the ORPS printer, but did not access the ORPS internal network. When interviewed by the Inspector General's investigators, Sauter acknowledged having used a state computer at the ORPS Newburgh office on November 20, 2006.

Both Sauter and his former colleagues at ORPS may have violated provisions of the Public Officers Law related to ethical conduct of state employees. Specifically, Buell and Petrino may have violated Public Officers Law § 73(3), which prohibits a state employee from using his official position to "secure unwarranted privileges or exemptions for himself or others" by providing Sauter with non-public information. In their defenses, Buell and Petrino each stated that Sauter had given him the impression that Sauter had been hired by the Village of Bronxville, which was entitled to the assessment data. When interviewed during his investigation, Sauter said he "could see how" both Buell and Petrino would have gotten the mistaken impression that he was working for the Village of Bronxville. The Inspector General's findings are referred to the Commission on Public Integrity for their assessment of whether Buell and Petrino willfully violated the state's ethics rules.

Although the ORPS employees did disclose information that is not generally available to the public to Sauter, the Inspector General has determined that the information was not "confidential" as contemplated by state ethics laws. Public Officers Law § 74(3)(c) does prohibit state employees from divulging confidential information they acquire in their official duties, but information only is deemed "confidential" under this section when the Legislature has explicitly barred its disclosure. See Committee on Open Gov't Adv.Op. 12558; Capital Newspapers Div. of Hearst Corp. v. Burns, 67 N.Y.2d 562, 567 (1986). Therefore, although the ORPS employees' actions in providing Sauter with certain information may have violated agency policy, the information he gleaned has not been barred from disclosure under any statute and does not fall within § 74(3)(c).

In regard to Sauter, regardless of whether he acted as a consultant to a municipality, his activities before ORPS may have been prohibited by another section of the state's Public Officers Law. Public Officers Law § 73(8) contains the state's "revolving door" laws, which prohibit former state employees from engaging in certain business transactions involving their former agencies. In sum, a former state employee is banned from "appearing or practicing" on "any case, proceeding or application or other matter" before his former agency for a period two years after leaving state employ. The employee is further banned for life from appearing before his former agency on any matter in which he was personally involved while employed by the agency. When interviewed by the Inspector General's investigators, Sauter stated that he was aware of these prohibitions, but that he believed he was not in violation of the Public Officers Law because his activities did not entail an "appearance" before the agency. However, the Commission on Public Integrity has ruled explicitly that the two-year ban should be read broadly, and does apply to efforts to "gain information from the agency that is not generally available to the public." See Advisory Opinions Nos. 99-17, 00-4. Accordingly, the Inspector General is referring these findings to the Commission on Public Integrity for its review.

Notably, upon becoming aware of Sauter's activities, officials at ORPS took steps to remedy the problems. ORPS conducted its own inquiry into the matter during December 2006 and determined that Buell and Petrino had acted improperly. Each was given a counseling memorandum. In addition, ORPS established a procedure pertaining to release of preliminary assessment data. The procedure allows a requesting party with evidence that he or she is representing a municipality to contact the appropriate Regional Manager, but requires that ORPS receive permission from the municipality before releasing the information. Otherwise, members of the public must submit Freedom of Information Law requests to the agency's Records Access Officer to obtain ORPS data. ORPS Director of Regional Operations David Williams notified Sauter of the procedure by letter dated December 8, 2006. In the letter, Williams asked Sauter not to contact ORPS staff members directly to obtain data.

In addition, ORPS Executive Director Donald C. DeWitt posed several general questions to the then-New York State Ethics Commission related to permissible activities of former ORPS employees. By letter dated March 13, 2007, Ethics Commission Acting Executive Director Suzanne M. Dugan cautioned ORPS employees that they should not deal with a former ORPS employee who is within the two-year period after the termination of state service and is subsequently in the private sector. Dugan informed ORPS that the ban applies even if the former employee is acting as a consultant to a governmental entity. Dugan instructed ORPS to refer any post-employment violations to the Ethics Commission.

Based upon the informal opinion received from the Ethics Commission, ORPS issued a memorandum dated March 27, 2007 to notify staff members that Sauter's involvement with a local government does not exempt him from the bans imposed by the

Public Officers Law. However, ORPS did not refer Sauter, Buell, or Petrino to the New York State Commission on Public Integrity.

FINDINGS AND RECOMMENDATIONS

The Inspector General found that ORPS employees Robert Buell and John Petrino acted improperly by releasing non-public property assessment data to former ORPS employee Bruce Sauter, and that ORPS employee John Petrino acted improperly by allowing Sauter to use a state computer at the ORPS office in Newburgh. Both ORPS employees have been disciplined by the agency. In addition, the agency has implemented procedures to prevent future unauthorized release of data. The Inspector General found that Sauter's interactions with ORPS employees may constitute a violation of "revolving door" prohibitions set forth in Public Officers Law § 73(8). The Inspector General is referring the findings in this case to the New York State Commission on Public Integrity.

The Inspector General received this complaint, via the Attorney General, from the Mayor of Bronxville. The Inspector General reminds all ORPS employees and officials of their responsibility under Executive Law § 55 to "report promptly to the state inspector general any information concerning corruption, fraud, criminal activity, conflicts of interest or abuse by another state officer or employee relating to his or her office or employment, or by a person having business dealings with a covered agency relating to those dealings."