

State of New York
Office of the Inspector General



Investigation into the Improper Removal
of Court-Imposed Driving Restrictions
By a Department of Motor Vehicles Employee

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Inspector General

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EXECUTIVE SUMMARY

The Inspector General received a complaint alleging Sherri Freitas, a Supervising Driver Improvement Examiner at the New York State Department of Motor Vehicles (DMV), inappropriately contacted a DMV Administrative Law Judge to discuss a Driving While Intoxicated case pending against her boyfriend. The complaint also indicated that Freitas improperly accessed DMV records to obtain information about her boyfriend's case. Subsequently, the Inspector General received an additional complaint that Freitas had improperly removed the ignition interlock restriction from her boyfriend's driver license following his conviction for Driving While Intoxicated.

The Inspector General's investigation revealed that Freitas inappropriately communicated with a DMV Administrative Law Judge prior to a hearing concerning her boyfriend's refusal to consent to a chemical test during his arrest for Driving While Intoxicated. In addition, the investigation found that Freitas improperly and without authorization accessed her boyfriend's driving records over 60 times and contacted the Administrative Law Judge to obtain information concerning the suspension of his license and the hearing date.

The investigation further determined that Freitas, on three separate occasions, removed or caused to be removed the ignition interlock device restriction that had been placed on her boyfriend's license as a result of his conviction for Driving While Intoxicated. The removals of the restriction were without authorization and outside the scope of Freitas's employment responsibilities. The Inspector General also determined that Freitas authored and submitted a letter to her boyfriend's attorney stating that it was DMV's opinion that the ignition interlock restriction should be removed from the defendant's license. This action, too, was outside Freitas's authority.

The Inspector General referred the findings to the Albany County District Attorney's Office for prosecution. DMV took disciplinary action against Freitas resulting in her suspension without pay from January 31, 2013, to February 13, 2014.

INTRODUCTION AND BACKGROUND

Vehicle and Traffic Law Provisions Relating to Driving While Intoxicated and Refusal to Consent to a Chemical Test

Relevant to this investigation, pursuant to New York State Vehicle and Traffic Law, any person who operates a motor vehicle in this state shall be deemed to have given consent to a chemical test – a test of the driver's blood, breath, urine or saliva to detect the presence of alcohol or drugs.¹ The Vehicle and Traffic Law further provides that drivers who refuse to submit to a chemical test after having been placed under arrest for operating a motor vehicle

¹ VTL §1194(2).

while under the influence of alcohol or drugs shall have their license temporarily suspended by the criminal court.² Drivers, however, are entitled to a hearing before an Administrative Law Judge conducted by DMV within 15 days of the suspension to determine whether the temporary suspension will be sustained.³

Regardless of the outcome of the hearing, the Vehicle and Traffic Law requires a six-month revocation of the license of a person convicted of Driving While Intoxicated.⁴ In addition, the Vehicle and Traffic Law requires a judge to impose as part of the sentence the installation of an ignition interlock device in the defendant's vehicle.⁵ Similar to a Breathalyzer, the ignition interlock device measures the driver's breath-alcohol level to ensure that it is not beyond the programmed blood-alcohol concentration before operating the motor vehicle. In the event that the programmed limit is exceeded, the device prevents the vehicle from starting.

Department of Motor Vehicle Policy

Also relevant to this investigation, DMV policy prohibits employees from accessing motorist records for personal reasons. DMV Handbook, section 10.6 – "Disclosure of Information" states:

Any misuse of the file information by an employee (that is, the use of information for any purpose other than the processing of official Department business) could lead to legal action against [DMV]. Therefore, an employee may not obtain, ask any other employees to obtain, or use customer file information for any purpose other than carrying out his or her assigned duties in the Department. Any violation of this policy is subject to disciplinary action.

DMV advised that the policy handbook is available to employees in electronic form; previously, employees were provided a hard copy of the handbook at the time of their hire. In addition, DMV has reiterated policy regarding computer usage and privacy to all employees by email in recent years.

Sherri Freitas's Responsibilities at DMV

Sherri Freitas began employment with DMV in 1986. At the time of the events relevant to this investigation, Freitas was a Supervising Driver Improvement Examiner in DMV's Driver Improvement Bureau, in which she supervised the Commercial Driver License Division and Medical Review Unit.

² VTL §1194.

³ VTL §1194

⁴ VTL §1193.

⁵ VTL §1198. This section of the law is known as "Leandra's Law."

INSPECTOR GENERAL'S INVESTIGATION REVEALS THAT FREITAS ACTED IMPROPERLY REGARDING HER BOYFRIEND'S DMV HEARING AND CRIMINAL PENALTIES

On March 9, 2011, Sherri Freitas's boyfriend was arrested by Town of Coeymans Police and charged with Driving While Intoxicated and Refusal to Submit to a Chemical Test. The boyfriend was arraigned in the Village of Ravena Justice Court on that date and his driver license was temporarily suspended for his refusal to submit to a chemical test, pending a hearing. The Inspector General's investigation revealed that Freitas almost immediately engaged in improper and unauthorized actions concerning her boyfriend's hearing and subsequent court case.

Freitas's Improper Involvement Relating to Her Boyfriend's Hearing

The hearing on the temporary license suspension of Freitas's boyfriend was scheduled for March 22, 2011, but was adjourned to June 28, 2011, at the request of his attorney. On March 28, 2011, Freitas separately emailed the Administrative Law Judge assigned to the matter and another Administrative Law Judge seeking information about the status of her boyfriend's license suspension and the hearing date. In one of the emails, Freitas referred to her boyfriend and included information concerning his license suspension. On April 27, 2011, Freitas emailed an Administrative Law Judge's secretary again asking about her boyfriend's hearing. Freitas used the DMV email system for all these communications, which identified her as a DMV employee.

The Administrative Law Judge assigned to the matter became concerned about Freitas's conduct when, at the June 28, 2011 hearing, he observed Freitas in attendance and heard her relationship with the boyfriend mentioned. On July 5, 2011, the Administrative Law Judge submitted a complaint to the Inspector General alleging that Freitas had improperly accessed her boyfriend's DMV records. The Inspector General's investigation revealed that from March 10, 2011, the day after the boyfriend's arrest, through June 30, 2011, two days after the hearing, Freitas accessed the boyfriend's records in the DMV computer database on more than 60 occasions. All of these record searches were unauthorized and improper as Freitas had no official business purpose for conducting the searches.

Freitas's Improper Actions Relating to Her Boyfriend's DWI Sanctions

On September 14, 2011, the boyfriend pled guilty in the Village of Ravena Justice Court to Driving While Intoxicated. On that date, the court sentenced him to a conditional discharge for a period of one year, a six-month revocation of his license, \$900 fine and surcharge, and ordered him to attend defensive driving and victim impact programs. Despite the statutory requirement that an ignition interlock device be ordered as part of the sentence, the judge indicated that he had questions about the requirement and therefore was "holding off on putting interlock devices on until we resolve the issue." The court then completed an Order of Suspension or Revocation (Form MV-1192) which included the terms of sentence, but which

was silent on whether the defendant was being sentenced to install an ignition interlock device. While the court did not forward the 1192 form to DMV, it did provide a copy to the boyfriend's attorney at his request. Two days later, on September 16, 2011, having determined that the ignition interlock restriction was in fact required, the court updated the previous 1192 form to reflect that the ignition interlock device was required. The court electronically transmitted the now-complete 1192 to DMV, and faxed it to the boyfriend's attorney and probation office. On September 24, 2011, DMV mailed an Order of Suspension or Revocation to the boyfriend, indicating that his license would be revoked as of October 4, 2011. The notice further indicated that he was required to install an ignition interlock device. The conviction, license revocation, and ignition interlock requirement were entered into his DMV computerized driving record.

On September 28, 2011, Freitas performed one of her many unauthorized and improper computer searches of her boyfriend's DMV driving records, which, as noted, showed an ignition interlock restriction in place. That day Freitas spoke with Denise Watson, Supervising Driver Improvement Examiner, who is specifically assigned to the Driver Responsibility Assessment Unit and the Interlock Unit. Freitas told Watson that the ignition interlock restriction had been incorrectly placed on her boyfriend's license because it was not part of the original sentence. In support of this claim, Freitas showed Watson the incomplete September 14, 2011 version of the 1192 form which did not designate that an ignition interlock device was required. Freitas had obtained a copy of this form from her boyfriend's attorney. Noting the lack of the ignition interlock device requirement on the form, Watson directed a subordinate to remove the restriction from the boyfriend's driving record, despite her knowledge of the relationship between Freitas and her boyfriend. Both Watson and Joseph DeThomasis, Director of the DMV Driver Regulations Bureau, testified that they previously had been advised by the DMV legal department that if the court failed to sentence a person to the restriction, it should not be placed on the record until the person is resentenced.

Freitas engaged in further misconduct when, on October 3, 2011, she wrote a letter on DMV letterhead to her boyfriend's attorney indicating, that "Although required by law, an interlock restriction may not be placed on a motorist driving record without being part of a plea and informed at the time of sentencing," and that the MV-1192 Form did not require the restriction. "Based upon this information, Driver Improvement has removed the interlock restriction from [the boyfriend's] driving record." Freitas signed the letter in her capacity as a Supervising Driver Improvement Examiner in the DMV Driver Improvement Unit. The boyfriend's attorney forwarded the letter to the Village of Ravenna Justice Court. According to DeThomasis, Freitas had no authority to author such a letter.

On October 17, 2011, the boyfriend's newly assigned probation officer conducted a routine check of his driving record and noticed that the ignition interlock restriction was not part of the record. The probation officer then contacted the Village of Ravenna Justice Court clerk, who confirmed that the restriction had been ordered and therefore should have been part of the boyfriend's driving record. The court clerk contacted staff in DMV's interlock unit, who

confirmed that the interlock restriction was not on the boyfriend's record. Interlock unit staff reported the omission to DeThomasis, who, on October 20, 2011, instructed staff to reinstate the restriction on the boyfriend's driving record.

On October 28, 2011, Freitas conducted an improper and unauthorized search of her boyfriend's DMV driving record and noticed that the restriction had been reinstated. Freitas, without discussing the matter with Watson or any other DMV employee, removed the restriction. Thereafter, on October 31, 2011, Freitas advised Watson and unit staff of her actions. On that date, DeThomasis, having been informed of Freitas's conduct, again directed staff to reinstate the restriction. DeThomasis also reported the matter to the Inspector General at that time. According to DeThomasis, because Freitas did not work in the interlock unit, she lacked the authority to alter any records concerning the implementation of an ignition interlock device.

On November 4, 2011, Freitas conducted an improper and unauthorized search of her boyfriend's driving record. Noting that the interlock restriction had been reinstated, she again removed the restriction without authority. After being advised of this action, DeThomasis again reinstated the restriction. Thereafter, upon learning that it was DeThomasis, her supervisor, who had taken this step, Freitas did not further interfere with her boyfriend's record.

In addition, Freitas was aware of DMV policy regarding computer access. At the time her employment at DMV commenced, she signed an acknowledgement of her receipt of the DMV policy handbook. Further, DeThomasis testified that Freitas would have received four email updates of policy regarding computer usage and privacy, beginning in 2006.

Testimony of Sherry Freitas

On December 1, 2011, the Inspector General's Office conducted an interview, under oath, of Freitas, during which she made several admissions, including that she inappropriately accessed her boyfriend's driving records, improperly removed the ignition interlock device restriction on October 28, 2011, and November 4, 2011, and wrote a letter on DMV letterhead to her boyfriend's attorney indicating that the restriction should not have been imposed.

Freitas further admitted that she was present in the Village of Ravena Justice Court on September 14, 2011, when her boyfriend pled guilty to Driving While Intoxicated and was thereafter sentenced. She further acknowledged that she understood that a conviction for Driving While Intoxicated requires the imposition of the ignition interlock restriction, but that the court did not do so when her boyfriend was sentenced. She also admitted that she checked his DMV records on numerous occasions during the period September to November 2011.

Freitas further admitted to approaching Watson on September 28, 2011, with information concerning her boyfriend's sentence and the incomplete 1192 Form, which resulted in the restriction being removed from the boyfriend's license. She also admitted to having removed the

ignition interlock restriction on both October 28, 2011, and November 4, 2011. These improper removals occurred after DeThomasis had instructed the Ignition Interlock Unit to re-instate the restriction on the boyfriend's license.

Freitas also admitted to having written and signed the letter on DMV letterhead, at the request of her boyfriend's lawyer, indicating that DMV removed the ignition interlock restriction because it was DMV's opinion that the defendant was not properly sentenced to the restriction.

FINDINGS AND RECOMMENDATIONS

The Inspector General's investigation determined that DMV employee Sherri Freitas improperly communicated with DMV Administrative Law Judges to obtain information concerning the license suspension and hearing resulting from her boyfriend's refusal to consent to a chemical test during his arrest for Driving While Intoxicated. In addition, the investigation found that Freitas improperly and without authorization accessed her boyfriend's driving record more than 60 times prior to and during the period she was communicating with the hearing officers.

The investigation further determined that Freitas, on three separate occasions, removed or caused to be removed the ignition interlock device restriction that had been imposed on her boyfriend's license as a result of his conviction for Driving While Intoxicated. The removals of the restriction were without authorization and outside the scope of Freitas employment responsibilities. The Inspector General also determined that Freitas authored and submitted a letter on DMV letterhead to her boyfriend's attorney stating it was DMV's opinion that the ignition interlock restriction should be removed from the boyfriend's license. This action, too, was outside Freitas's authority.

The Inspector General referred these findings to the Albany County District Attorney's Office for prosecution. On January 31, 2013, DMV suspended Freitas without pay. On February 28, 2013, DMV served her with a Notice of Discipline charging her with misconduct regarding her actions concerning her boyfriend and seeking her termination. An arbitration decision issued on February 13, 2014, determined that Freitas acted improperly when she accessed her boyfriend's driving record, removed his ignition interlock restriction, and wrote and sent a letter to his attorney. The arbitrator imposed a penalty of suspension without pay from January 31, 2013, to February 13, 2014. DMV reassigned Freitas.