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November 7, 2014

Jerome L. Hauer
Commissioner
New York State Department of Homeland Security
and Emergency Services
Albany, New York 12144-2735

RE: NYSIG 1389-168-2012

Dear Commissioner Hauer:

In November 2012, my office commenced an investigation into the conduct of ██████████ who at the time was an Assistant Commissioner at New York State Department of Homeland Security and Emergency Services (DHSES) and Director of the Office of Emergency Management (OEM). The investigation was initiated following media reports that ██████████ had ordered his staff to remove a fallen tree at his private residence in Suffolk County in the aftermath of Super Storm Sandy. Specifically, my office examined whether ██████████ had abused his authority and improperly utilized state resources, and whether his conduct violated the New York State Public Officers Law. Shortly after media reports about this matter appeared, and prior to the conclusion of our investigation, ██████████ employment was terminated.

As you are aware, Super Storm Sandy's storm surge hit the New York metropolitan area on October 29, 2012, causing significant damage and life-threatening situations that required response well beyond that date. Our investigation confirmed that on October 30, 2012, ██████████ directed both his then chief of staff and the OEM Suffolk County Regional Director to remove a tree that had fallen at ██████████ personal residence in Suffolk County during the storm. In response to ██████████ order, on October 31, 2012, a Storm Emergency Fire Unit that had been deployed to Long Island from Tompkins County to assist in the storm clean-up was directed to ██████████ residence where, according to a member of the unit, he and another unit member "cleared the branches away from the door [in order to] ma[k]e the entrance to ██████████ house accessible." At the time of the tree removal, ██████████ and his ██████████ were in Albany, and his ██████████ were at college in upstate New York. Therefore, the house was empty and no emergency existed that

warranted an immediate response. My office determined that [REDACTED] abused his position by directing emergency responders to provide tree removal service at his home, diverting state resources during an emergency.

While reviewing [REDACTED] conduct, we also received an allegation that DHSES had loaned several state-owned pumps and generators to a non-government entity during Super Storm Sandy, contrary to DHSES protocols. Because our preliminary inquiry revealed that this allegation was already being addressed by several entities including PricewaterhouseCoopers, which conducted an audit of all DHSES equipment used during the storm response, we reached no findings on this matter.

In addition, during our investigation we received information that raised questions about the hiring of a number of individuals pursuant to Memorandums of Understanding (MOUs) executed between DHSES and the State University of New York, University at Albany (SUNY Albany). Beginning in 2012, the MOUs provided for individuals employed by the National Center for Security and Preparedness at SUNY Albany "to be stationed at and supervised by OEM." Among other provisions, the MOUs state that no such employment can occur unless SUNY Albany receives written approval from DHSES that the SUNY Albany employee assigned to OEM has successfully passed a DHSES conducted "finger-print based criminal history and background check" (emphasis added). Accordingly, my office sought confirmation that employees placed within OEM pursuant to the MOUs were subject to the required scrutiny prior to placement.

We obtained a list of SUNY Albany employees assigned to OEM and requested all background documentation from SUNY Albany and OEM. Neither entity could provide such records. While email exchanges between SUNY Albany and DHSES reveal that DHSES approved SUNY Albany hires to be stationed at OEM, these communications contained no specific references to the completion of the required fingerprint and background checks. Upon further inquiry, DHSES staff explained that the only checks performed for employees hired under the MOUs are fingerprint checks. Staff opined that the fingerprint inquiry alone satisfies the requirements of the MOUs, despite the language of the MOUs that a background check also be conducted.

DHSES staff further advised that fingerprint inquiry records – the only inquiry made by DHSES – are not maintained, even when a criminal history is revealed. Rather, DHSES only maintains a list of names that have been checked with no further information. Based on this investigation, I recommend that DHSES adopt policy requiring the retention of documents generated in connection with fingerprint-based criminal history checks of individuals hired pursuant to the MOUs with SUNY Albany. In addition, DHSES should conduct the separate background check as mandated in the MOUs.

I have forwarded our findings regarding [REDACTED] conduct to the Joint Commission on Public Ethics.

Within 45 days of this letter, please advise me of DHSES's review and actions, including copies of any revised policies. If you have any questions, please contact do not hesitate to contact me.

Sincerely



Catherine Leahy Scott
Inspector General