

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



**Investigation of Allegations Concerning
the Confidentiality of the
New York Statewide Central Register
of Child Abuse and Maltreatment**

December 2008

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Executive Summary

Following a report of child abuse to the Statewide Central Register of Child Abuse and Maltreatment (“SCR”), which was determined by the local investigating agency to be unfounded, the New York State Inspector General uncovered several serious deficiencies at the SCR and its parent agency, the New York State Office of Children and Family Services (“OCFS”). In addition, the investigation determined that John Doe, the subject of the now-expunged report, acted improperly in his efforts to identify the individual who made the initial allegation against him. In particular, Doe misrepresented himself to obtain the confidential telephone records of calls to the SCR’s child abuse hotline directly from the telephone provider, and then attempted to secure payment from the state and the telephone provider in exchange for return of the telephone records. Finally, Doe’s success at obtaining the records from the telephone provider revealed a potential weakness in New York’s laws protecting the confidentiality of callers to the SCR.

In July 2006, an anonymous caller to the SCR alleged that Doe sexually abused his two daughters. The caller also accused the elder daughter of condoning the abuse of the younger daughter. An investigation by the Suffolk County Department of Social Services determined that the allegation was unfounded, and this finding was transmitted to the SCR. Doe successfully sought expungement of the records. However, Doe was unsuccessful in his persistent attempts to learn the identity of the caller who reported the abuse, despite having obtained the SCR’s telephone records for the date of the complaint against Doe. In attempting to seek redress for the perceived wrong against him, Doe repeatedly telephoned numerous state employees. Doe eventually revealed to members of OCFS’s counsel’s office that he had obtained the records, and

demanded a cash payment for their return to the state. Doe has since continued his demands, contacting various state officials, including members of the governor's office.

In October 2007, both OCFS and Doe complained to the Inspector General. OCFS informed the Inspector General of Doe's possession of the telephone records and his demands for payment. In turn, Doe made numerous complaints to the Inspector General about OCFS, including that the agency refused to provide him with the name of the caller who reported that Doe was abusing his children and that OCFS maintained a secret list of persons whose records were supposed to be expunged.

The Inspector General determined that attorneys in OCFS's counsel's office were correct in informing Doe that the identity of callers to the SCR is protected by law. However, the Inspector General did find that one now-retired employee did agree to give information to Doe about the person who reported Doe to the SCR, although other OCFS employees said that the information she provided was incorrect. More significantly, the investigation revealed that OCFS improperly maintained records related to expunged cases, although not for the illicit purpose alleged by Doe. An OCFS secretary responsible for coordinating requests for expungement maintained a spreadsheet to track her work that improperly included the names of individuals who had been granted expungement. In addition, the Inspector General learned that a relatively new computer system used by SCR employees was faultily designed to retain records of correspondence relating to expungement requests. The database included information identifying Doe and others who had been granted expungement as subjects of unfounded child abuse allegations. The state's law requires that OCFS, as well as other agencies provided

information in the course of a child abuse investigation, expunge all records identifying a person as a subject of a child abuse allegation if the criteria for expungement is met.

The Inspector General also determined that, prior to granting Doe's request for expungement, OCFS maintained information designating Doe's older daughter, a minor, as a subject of the child abuse allegation in the SCR, even after learning the minor's true date of birth. New York's Social Services Law prohibits a minor who is not the abused child's parent from being a subject of a child abuse investigation. OCFS subsequently gave the Inspector General conflicting information about the agency's ability to correct the error. OCFS ultimately required Doe to wait for a determination on his request for expungement, rather than immediately correcting the record. OCFS took five months to review Doe's request for expungement.

Finally, the investigation revealed that OCFS violated its own record retention policy in failing to keep telephone records for three years. Instead, SCR employees arbitrarily used the capacity of a file cabinet drawer to determine the length of time records should be kept, and regardless of the practice followed, were missing several months of records. As a result of these lapses, OCFS was unable to provide responsive materials to a Suffolk County Grand Jury subpoena requesting information regarding the call to the SCR about Doe.

During the course of the investigation, the Inspector General informed OCFS of its preliminary findings regarding improper maintenance of electronic records of expunged child abuse reports. OCFS addressed these problems by deleting any records that were improperly maintained. At the conclusion of the investigation, the Inspector General provided OCFS with an opportunity to review this report, and to submit a formal response. Where appropriate, OCFS's responses to the report's findings are incorporated in the following discussion.

A copy of this report has been provided to the Suffolk County District Attorney's office for its review of Doe's actions in obtaining records from the telephone company by deception and subsequently using the records to attempt to secure payment from the state. Doe's ability to obtain the SCR's telephone records, even through deceit, reveals potential weaknesses in the state's protection of this confidential information. The Inspector General recommends both legislative and administrative action to prevent additional unauthorized release of these records.

Allegations

In October 2007, the Inspector General received near-simultaneous complaints from OCFS and a John Doe¹ stemming from a 2006 investigation of Doe's family by the Suffolk County Department of Social Services. The Suffolk County Department of Social Services had investigated an allegation received by the SCR that Doe had sexually abused his daughters, but determined that the allegation was unfounded.

The John Doe Complaint

On October 1, 2007, John Doe telephoned the Inspector General complaining that OCFS Assistant Deputy Counsel John Stupp wrongfully refused to provide him with the name of the person who had called the SCR to accuse him of child abuse. Doe further alleged that OCFS improperly had listed his eldest daughter as an abuser on the SCR although she was a minor; that OCFS failed to expunge his family's records in a timely manner; and that SCR secretly and

¹ The Inspector General has omitted Mr. Doe's true name from this report pursuant to the confidentiality provisions of New York State Social Services Law § 422(4)(A).

intentionally maintained records of the investigation, despite claiming to have granted Doe's request to expunge the records.²

The OCFS Complaint

Shortly following Doe's complaint, Kevin Mahar, then-Director of Special Investigations, alleged to the Inspector General that John Doe had gained possession of confidential SCR telephone records and had demanded a cash payment of an unspecified amount in exchange for return of the records. OCFS requested that the Inspector General determine how Doe obtained the SCR phone records and whether any laws were violated in Doe's acquisition of such records.

Background

The Statewide Central Register of Child Abuse and Maltreatment

OCFS operates and maintains the SCR, a central location to report and refer cases of suspected child abuse or maltreatment to the appropriate investigative agency, as well as a repository for names of individuals alleged to have abused or maltreated a child. The SCR is in continuous operation and receives telephone calls from mandated reporters (such as teachers and medical personnel) as well as the general public alleging child abuse or maltreatment within New York State. Callers may give anonymous reports, and, as discussed below, their identities are protected by law.

OCFS utilizes a computer system called CONNECTIONS to store information from calls to the SCR, and to share that information with local agencies that are charged with investigating

² Doe also raised various claims against the Suffolk County Department of Social Services, which conducted the investigation of the allegations reported to the SCR. The Inspector General's jurisdiction extends to state executive branch agencies and employees and those having business with such agencies. Accordingly, this report will only discuss the actions of county officials as they relate to the Inspector General's findings regarding state officials.

the allegations. CONNECTIONS allows local case workers to view limited data in the SCR, and to record information about their investigations, which is then available to the SCR. OCFS maintains CONNECTIONS, and conducts training, issues manuals, and controls access to the database. OCFS provides a user manual to every OCFS employee accessing CONNECTIONS. All new SCR employees receive eight weeks of training including specific training on using CONNECTIONS. Each time a user accesses CONNECTIONS, the user views a warning stating that information maintained in CONNECTIONS should only be accessed for authorized purposes.

Upon receipt of a call, a trained specialist at the SCR determines whether the information provided “could reasonably constitute a report of child abuse or maltreatment” or “if true would constitute child abuse or maltreatment.” If one of these standards is met, the complaint is accepted and referred to the appropriate agency for investigation, most commonly a county child protective service office.

If the investigating agency determines that the complaint is substantiated, then the identity of the individual named in the complaint as a subject and all accompanying case information are retained in the SCR. The law mandates that only adults, age 18 years or older, may be listed as subjects in the SCR, unless the minor is the parent of the allegedly abused or maltreated child.

Pursuant to Social Services Law § 422(5), if “some credible evidence” of child abuse is not discovered, the record of the complaint is designated as “unfounded” and is legally sealed. This sealing does not result in the eradication of the records and underlying information from the SCR. Rather, state law mandates that sealed unfounded reports be maintained in the SCR for a period of 10 years. During the 10-year period of sealing, the records are available only to select

persons and entities including the subject of the report (with, as discussed below, the name of the reporter redacted); agencies investigating subsequent allegations of abuse or maltreatment involving a subject of the unfounded report, a child named in an unfounded report, or a sibling of child named in an unfounded report; law enforcement officials investigating criminally false reports to the SCR; and for purposes of oversight of the child welfare system. After 10 years, unfounded reports are automatically expunged from the SCR.

Upon expungement, state law mandates that the SCR destroy the allegation, notes, computer records, and other information surrounding the investigation. No records of the child abuse allegation are to be maintained by the state. In addition, the investigating agency is notified and advised to expunge records relating to its investigation.

In its written response to the Inspector General, OCFS noted that “[t]he statutes do not define what is meant by ‘expungement’ nor do they further specify what is meant by those references. OCFS understands the term to mean that all physical records concerning the report must be destroyed. For computer records, the OCFS regulations at 18 NYCRR 466.5(c) require that the electronic data concerning the report must be either eliminated from the electronic system or the electronic data required to access the information must be eliminated.”

Although OCFS is correct that the Social Services law does not contain a definition of “expunge,” at least one New York court has held that the term as it relates to § 422 of the Social

Services Law “does indeed have a plain and ordinary meaning.” As found by the court, this commonly understood meaning includes “physically destroying information including criminal records - in files, computers, or other depositories.”³ Additionally, courts across the country have applied this legal understanding of the meaning of “expungement” in other analogous contexts as encompassing information in any form.⁴

OCFS, may, in its discretion, expunge a record of the SCR prior to the expiration of the 10-year period. Social Services Law § 422(5)(c) dictates that the “absence of credible evidence,” which is the standard to designate a report as unfounded, is not sufficient to warrant early expungement. Rather, early expungement may be granted if the source who initially alleged the abuse or maltreatment is convicted of intentionally filing a false report pursuant to New York State Penal Law § 240.50(4), or if the subject of the report can prove by clear and convincing evidence⁵ that no abuse or maltreatment occurred. In cases of expungement prior to the expiration of the 10-year period, the materials associated with the expungement request are also shredded, as they contain evidence that the accused person was a subject of report of child abuse or maltreatment. Early expungement is an administrative process, and, in practice, the decision rests with the OCFS Office of Counsel. However, an applicant may seek review OCFS’s decision in court.

³ K v K, 126 Misc.2d 624 (Sup.Ct.N.Y.Co.1984).

⁴ See, i.e., Dorothy D. v. New York City Probation Department, 49 N.Y.2d 212 (1980); US v Matthews, 205 F.3d 544 (2d Cir.2000); Ann L. v. X Corporation, 133 F.R.D. 433 (W.D.N.Y. 1990).

⁵ “[A] party who must establish [his, her] case by clear and convincing evidence must satisfy [the trier of fact] that the evidence makes it highly probable that what (he, she) claims is what actually happened” (N.Y. PJI 1:64; see Colorado v. New Mexico, 467 U.S. 310, 316, 104 S.Ct. 2433, 81 L.Ed.2d 247).” In re Poldrugovaz, 50 A.D.3d 117, 128 (2d Dept. 2008).

Confidentiality of SCR Records

Pursuant to Social Services Law § 422(12), unauthorized disclosure of data or information contained in the SCR is a misdemeanor. The records of the SCR are available only to limited individuals and agencies as set forth in Social Services Law § 422(4). The list of those authorized to access information in the SCR includes investigating agencies, law enforcement, social services agencies, and day care providers.

Information regarding the identity of callers to the SCR is even further limited under § 422(4)(A). Only a brief list of law enforcement entities and investigating agencies, including courts and grand juries, are granted access to information regarding those who have reported abuse or maltreatment to the SCR. The rationale supporting the protection of the confidentiality of callers to the SCR is the compelling public interest in protecting abused children and the fear of deterring potential reporters. The courts have held that this public interest is so strong that even where an individual is alleged in a civil matter to have intentionally filed a false report with the SCR, the name of the caller cannot be divulged.⁶

Similarly, while an exception to the confidentiality rules allows a subject of a report and other persons named in the report at any time to receive a copy of all information contained in the

⁶ “No exception is made in [Social Services Law] sections 419 or 422 . . . for the disclosure of the name of the person reporting the suspected abuse where there is an allegation that such person acted with willful misconduct or gross negligence, and we decline to read an implied exception into the statute. We recognize that this result may make it difficult for plaintiffs to pursue their . . . but our holding is consistent with the intent of Social Services Law Section 422 to protect the confidentiality of the names of the persons reporting suspected child abuse. ‘Disclosure of sources of information could have a chilling effect, thus hampering agency efforts in providing services to distressed families’ (New York News v Grinker, 142 Misc 2d 325, 328 [1989]). If a party alleging defamation, such as plaintiffs here, could obtain the names of the reporters by simply commencing a defamation action, any such exception would swallow the rule of reporter confidentiality.” Selapack v Iroquois Central School District, 17 AD3d 1169 (2005).

SCR about their matter, the Commissioner of OCFS is authorized to prohibit the release of data to comply with confidential requirements protecting the source of the report.⁷

In spite of the protections offered to callers to the SCR, OCFS does not expunge telephone records of the SCR hotline when it expunges other records associated with a case. OCFS Assistant Deputy Counsel Charles Carson explained that the telephone records are not specifically associated with a case and therefore, although they are records of the SCR and confidential, OCFS is not required to delete call information associated with an expunged case.

Investigation

The Report to the SCR about John Doe's Family

In July 2006 the SCR received a telephone call from an anonymous source alleging that John Doe, a Suffolk County resident, was sexually abusing his 12-year-old daughter. The caller also claimed that Doe's elder daughter, who also allegedly had been abused, was aware of her sister's abuse but did nothing to stop it. The caller did not know the elder daughter's date of birth but estimated that she was born in 1988. SCR child protective services specialists are instructed to enter the first day of January of the estimated year of birth of the alleged victim/subject in the database when the exact birth date is unavailable. Accordingly, the child protective services specialist who answered this call entered the birth date of Doe's elder daughter as January 1, 1988, into the SCR computer database system, CONNECTIONS.

The SCR child protective services specialist reviewed the allegations and forwarded the allegation to the Suffolk County Department of Social Services ("DSS"). In September 2006,

⁷ Social Services Law § 422(7).

after investigation, the Suffolk County DSS concluded that the allegation was unfounded and closed the case. Pursuant to the Social Services Law, the record was sealed and scheduled to be expunged in 2016. During the investigation, the Suffolk County DSS learned that Doe's elder daughter was actually 17 years old at the time of the report, and therefore a minor who should not have been listed as a subject in the SCR, but failed to fully correct the CONNECTIONS electronic record. Consequently, whereas the daughter should have been listed in the database as a minor associated with a non-confirmed allegation of abuse, she was instead listed as one of two subjects of the non-confirmed allegation. In accordance with SCR practice, the allegation was filed under the name of the mother of the allegedly abused child, Doe's wife.

As the Suffolk County DSS determined that the allegations against Doe were unfounded, on September 19, 2006, the SCR automatically issued form letters to Doe, his wife, and his elder daughter stating, "no credible evidence was found to believe that the child(ren) has been abused or maltreated and, therefore, the report has been determined 'unfounded'." The letters also informed the recipients that the records were sealed and were scheduled to be expunged in 10 years.

Request for Early Expungement

On November 3, 2006, Doe submitted a request for early expungement on behalf of himself, his wife, and their elder daughter in accordance with Social Services Law § 422(5). An SCR secretary, who has now retired due to health concerns, was assigned to coordinate requests for early expungement. Upon receiving Doe's request, the secretary logged information related to the request in an Excel spreadsheet she maintains for that purpose, and sent responses to the applicants notifying them that they must present evidence supporting the request within 60 days.

Although Doe's wife had received a form letter from the SCR identifying her as a "non-confirmed subject" of an investigation, the secretary's letter informed her that she was not a non-confirmed subject and that expungement was not necessary or available to her. The secretary then requested and received the field notes from the Suffolk County DSS investigation; combined these notes with evidence provided by Doe and records maintained by SCR; and submitted the complete file to the OCFS Office of Counsel for its review.

On November 3, 2006, the same date Doe submitted his expungement request to OCFS, the Suffolk County DSS, responding to prior communications with Doe, informed him by letter that his eldest daughter "was identified incorrectly as being over 18 years old" in the SCR report. Although the Inspector General verified that the daughter's correct date of birth was entered into CONNECTIONS by Suffolk County DSS, OCFS Assistant Deputy Counsel Carson explained to the Inspector General that Suffolk County DSS failed to take the necessary secondary measure of changing her status from an alleged subject to an alleged abused. Had the daughter's status also been corrected by Suffolk County DSS, she would have been removed automatically from the list of non-confirmed subjects in the SCR.

On January 23, 2007, OCFS Area Manager Barbara Lanham-Howie sent a letter to the Doe family confirming that OCFS was aware the eldest daughter was designated improperly in the SCR computer system. She explained that the case was under review for expungement and that the Doe family would be notified when a decision was reached. The letter was reviewed by Assistant Deputy Counsel Carson, who first testified that expungement was the lone avenue available for removing the minor from the SCR but, in a subsequent interview, modified his testimony by explaining that he knew the matter was going to be expunged and accordingly there

was no reason to amend the report only to later expunge it. Notwithstanding this statement, internal OCFS e-mails dated February 2007, after the letter was sent to the Doe family, indicate that Lanham-Howie was still seeking a means to retroactively change the eldest daughter's birth date to avoid her having to proceed with the expungement process. In one e-mail, Lanham-Howie noted that "there is a possibility that the [Doe family] may not be able to meet all those requirements" associated with the expungement process. As noted above, the investigating agency's failure to find evidence to support the allegation results in sealing of the record which limits access to the information to a select group for enumerated reasons, but not expungement. To obtain early expungement, the applicant must meet an even higher standard of proof: The Doe family was required to establish by "clear and convincing evidence" that there was no abuse.

During the course of the investigation, OCFS staff provided the Inspector General conflicting information regarding the agency's ability to correct the electronic record absent expungement. The Inspector General was initially told that the Suffolk County DSS could have corrected the record following Doe's request, but later was told that Suffolk County DSS could not make such a change to the record of a closed case. In addition, the OCFS Director of Information Technology and Assistant Deputy Counsel Carson each told the Inspector General that OCFS was unable to correct the record absent expungement. Carson later told the Inspector General that the record, in fact, could have been corrected. In its written response to the Inspector General's findings, OCFS clarified that the original report to the SCR cannot be altered, but that the investigating agency can amend the SCR record to correct certain information, which in this case the Suffolk County DSS did not do adequately. OCFS further explained that the SCR can only make subsequent corrections to the record through a "labor intensive" data fix.

On April 11, 2007, over five months after Doe's written request and three months after Lanham-Howie's letter to the Doe family, OCFS notified Doe by letter that his case would be expunged. Two weeks later, Doe's elder daughter was notified by letter that her case would be expunged. Carson testified that he usually takes approximately 20 minutes to review the case file and render a decision, but there is no mandatory time within which the review must be performed. According to Carson, the Doe family's case "sat for a while on my desk waiting until I had time to look at it." Carson speculated that the two-week delay in the daughter's letter was due to an administrative error.

As required by statute, OCFS notified Suffolk County DSS of the expungement and ordered the agency to destroy all of the records in its possession associated with the Doe case. The SCR secretary ensured that any paper documents in the possession of OCFS or the SCR were destroyed and any information in CONNECTIONS was deleted. The Inspector General verified that the electronic records related to the Doe family had been deleted from the CONNECTIONS database. Although the secretary properly ensured that information regarding the Doe family was deleted from CONNECTIONS, she did not delete the entries regarding the Doe family from her Excel spreadsheet. In violation of Social Services Law provisions requiring that all records related to an expunged case be destroyed, the secretary revised her spreadsheet to reflect that the matter had been expunged. Notably, the Inspector General's investigation revealed that the spreadsheet was not created or maintained in an official effort to circumvent the expungement provisions of the Social Services Law. The secretary explained that she created the spreadsheet, on her own initiative, to help her track expungement requests. The spreadsheet was stored on the hard drive of her assigned office computer and was not generally accessible to other SCR or OCFS employees.

Doe reported to the Inspector General that, based upon a rumor, he suspected OCFS did not destroy all records related to expunged cases. Doe suspected that OCFS illicitly sought to maintain a list of all individuals who were alleged to have committed child abuse. In attempting to prove his theory, in February 2008, Doe contacted the SCR secretary ostensibly to ensure that his records had been expunged. In an effort to assist Doe, the secretary checked her spreadsheet and confirmed for him that his records were expunged. With the secretary's confirmation, Doe learned that the SCR did have a record indicating that Doe had been the subject of a child abuse allegation.

As a non-confirmed subject of a report to the SCR, Doe was entitled to obtain information about his case pursuant to Social Services Law § 422(5)(A)(iv). However, OCFS requires that the subject submit a written request for this information. Although the secretary did not reveal any information to Doe to which he was not entitled, she nonetheless should not have revealed any information to him over the telephone. Although Doe may have had a legal right to information about his case, revealing the information over the telephone presents a substantial risk that a person may falsely identify himself or be given more information than permitted by law.

Other OCFS Computer Records Related to the Doe Family's Case

After learning of the SCR secretary's spreadsheet, the Inspector General proactively sought to determine whether OCFS inappropriately retained expunged records in other locations. The Inspector General determined that OCFS operated a database, entitled Advanced Integrated Management System (AIMS), that also retained information regarding expunged cases in violation of the Social Services Law.

AIMS, which was implemented in October 2006, is a separate internal computer database that is distinct from CONNECTIONS, but also contains SCR records, among other agency information. Unlike CONNECTIONS, which links the SCR to local child services agencies that investigate allegations, AIMS is available only to approximately 270 SCR employees. The SCR uses AIMS to perform database checks to comply with requests for information it is legally obligated or permitted to release, such as background checks for New York State or day care providers. It performs approximately 217,000 checks annually. AIMS is also used to track correspondence associated with SCR cases. AIMS is ostensibly designed to contain only information regarding founded reports. However, the Inspector General determined that certain records related to expunged cases are unintentionally maintained in AIMS.

In performing its correspondence tracking function, AIMS maintains records of individuals who exchange correspondence with the SCR about expunging records. Persons seeking expungement are identified in the system as subjects, with no notation indicating that that their cases were expunged or unfounded. Doe was among those whose correspondence was tracked in the AIMS system, and the system identified Doe and his elder daughter as the subjects of an abuse or maltreatment investigation. The Inspector General's investigation revealed that AIMS was not appropriately configured to interface with the CONNECTIONS regarding expunged reports; records legally expunged from the SCR are not automatically deleted from AIMS. As a result, the SCR unlawfully possessed a database that contained information regarding expunged reports including the names of subjects of those reports.

The Inspector General presented preliminary findings regarding the SCR secretary's spreadsheet and the structural defects in the AIMS system to officials with the SCR and OCFS.

These officials denied any prior knowledge of the problem with AIMS or the SCR secretary's records of expunged cases. There is no evidence to suggest that AIMS was created intentionally to retain expunged data.

The Grand Jury Subpoena

In April 2007, Doe complained to the Suffolk County Police Department and the Suffolk County District Attorney that he had been the subject of a false report, a crime pursuant to § 240.50 of the Penal Law. The Suffolk County District Attorney's Office issued a Grand Jury subpoena on April 23, 2007 to OCFS requesting record relating to Doe's case. OCFS Senior Attorney Emily Bray received the subpoena at OCFS headquarters and told the Inspector General that she faxed the subpoena directly to Saviero "Sam" Bizzaro at the SCR for processing.

According to the Suffolk County Police Department and District Attorney's Office, at some point Bray phoned an assistant district attorney in Suffolk County and explained that requests for information need to include the date and time of the call so that a response can be provided. She also requested more time to answer the subpoena provided the additional information was forthcoming. The Suffolk County Police Department provided Bray with the date and time of the alleged false report. Having obtained the required information, Bray informed law enforcement that she could not fulfill the request, as the records relating to the Doe family were expunged and that telephone records covering the date in question were not in the possession of OCFS or the SCR.

According to Saviero Bizzarro at the SCR, copies of subpoenas requesting telephone records of the SCR are to be forwarded to him, while the original remains in Bray's binder. (The SCR is located in a separate building from OCFS.) Bizzarro showed the Inspector General his

records, which included the subpoenas he received, as well as copies of his responses. The Suffolk County subpoena was not present in his files, and there are no records indicating that Bray faxed the subpoena to Bizzarro.

Bizzarro's primary duty is answering calls to the SCR, but he is also responsible for responding to subpoenas regarding the SCR's telephone records. To fulfill this duty, Bizzarro keeps electronic records of calls to the SCR hotline, which he obtains in electronic form from the telephone company's Web site. In addition to Bizzarro's electronic records, the OCFS Finance Department receives a paper copy of the bill. After removing the payment slip, the Finance Department forwards the call records to the SCR via courier.

Assistant Deputy Counsel Carson informed the Inspector General that the OCFS record retention policy applicable to the SCR's paper telephone records instructs that the records be retained for three years. However, according to SCR personnel, the length of time the paper records actually are maintained is based, not upon this policy, but upon the capacity of the file cabinet drawer in which they are maintained. Contrary to policy, the oldest bills are removed and shredded when the drawer is filled, usually after about 18 months.

The Inspector General's investigation revealed that both electronic and paper telephone records from July 2006, the month of the anonymous report regarding John Doe, were missing from the SCR's files. The Inspector General's examination of the SCR's file drawer dedicated to telephone bills revealed that multiple telephone bills, including the July 2006 bill, were missing from the SCR's records. Bizzarro explained that he, too, was missing the July 2006 records that he was supposed to have obtained in electronic form. According to Bizzarro, the SCR switched telephone carriers from MCI to Verizon in July 2006, and he was unable to access the Verizon

records at first. Bizzarro stated that he had informed his supervisor about the problem with obtaining records but the matter was not resolved for three months. Had he received the subpoena regarding Doe, Bizzarro said that he would have responded with a letter explaining that a computer error prevented him from providing answerable materials, as he had for other requests covering the three-month period of missing records.

Doe's Attempts to Identify the Anonymous Caller

Doe claimed to the Inspector General that the allegation against him to the SCR was a false report. As noted, Doe complained to the Suffolk County Police and the Suffolk County District Attorney in an attempt to identify and bring charges against the individual responsible. Doe also made multiple attempts to obtain the name of the caller from the Suffolk County DSS and OCFS.

Prior to the case's expungement, Doe obtained redacted records regarding his case from Suffolk County DSS and OCFS, in which the caller was not identified. However, Doe was convinced the caller was known to state and local officials who were refusing to prosecute the caller for reporting a false incident. Doe's belief apparently was fueled by a boilerplate statement appearing on one page in the county-provided records stating, "Reporting Party's Name removed from case record due to NYS Law," in combination with another document from Suffolk County indicating that the caller was contacted by county workers as part of the investigation.

In his persistent attempt to learn the caller's identity, Doe has contacted the SCR, OCFS, Suffolk County DSS, the New York State Inspector General, the Suffolk County Police Department, the Suffolk County District Attorney, the New York State Commission on Investigations, the Federal Bureau of Investigation, and the United States Health and Human

Services Inspector General. Because he believed the anonymous caller was contacted by Suffolk County DSS, Doe requested that Suffolk County provide him with records of its outgoing calls.

Doe spoke to individuals at OCFS and the SCR on numerous occasions. Doe was told by all but one employee that under New York State Law they could not release the name of the caller, or that the name of the caller was unknown. However, in violation of confidentiality laws, and by all other accounts incorrectly, one local OCFS manager, Barbara Lanham-Howie, admitted to the Inspector General that she informed Doe that she recalled that the individual reporting the alleged abuse was “partially anonymous” and gave Doe a first name.

OCFS Assistant Deputy Counsel John Stupp was among the individuals from whom Doe requested the name of the caller. Doe had spoken with Stupp previously when Stupp informed Doe that the records associated with his case would be expunged. However, when Doe called Stupp to request the name of the person who made the accusation against him, Stupp explained that he did not know the source of the report, and that even if he knew the caller’s identity, he could not provide it to Doe.

In his complaint to the Inspector General, Doe specifically alleged that Stupp wrongfully refused to provide Doe with the caller’s identity. However, as noted earlier in this report, state laws protect the confidentiality of callers to the SCR, and their identifying information can be provided only to limited agencies and in limited circumstance. Even if Stupp had known the identity of the caller who made the complaint against Doe, Stupp was correct in not providing the caller’s identity to Doe.

Doe Obtains the SCR Telephone Records

Although Doe's persistent attempts to learn the caller's identity from state and local officials were unsuccessful, Doe succeeded in obtaining the SCR's telephone records directly from the telephone company. On September 10, 2007, Doe spoke with Nadine Bachman, a contract employee working for Verizon Business at a call center in Colorado. Verizon's records indicate that Bachman accessed the SCR hotline's telephone records that day and immediately e-mailed a detailed list of more than 200 confidential hotline calls received on July 30, 2006 to Doe's e-mail account hosted by AOL. SCR records obtained by Doe indicated that the allegation against him was received by the SCR on July 30, 2006 at 10:52 am. The Verizon records showed that a call was placed to the SCR at around that time from a pay phone near Doe's house. Verizon provided a copy of Bachman's correspondence with Doe to the Inspector General. The list of telephone numbers Doe received contained the call regarding Doe, as well as every call to the SCR placed on the same day.

Bachman testified under oath on December 5, 2007, to the Inspector General that Doe contacted her, identified himself as a New York State employee, and provided the account number he wished to access. Bachman explained that she believed that any New York State employee working for the New York State Office of General Services, New York State Office for Technology, New York State Office and Children and Family Services, or the New York Statewide Central Register of Child Abuse and Maltreatment who provides the correct account number should be granted access to Verizon's records for that account. She further testified that she sent the information to Doe's AOL account because Doe claimed that his New York State official e-mail account was broken. The Inspector General obtained notes written by Bachman in relation to her conversation with Doe. Bachman recorded Doe's e-mail address, the SCR hotline

telephone number, and the date and time that the anonymous call regarding Doe was placed to the SCR.

In contrast to Bachman's account, Doe claimed to the Inspector General that he gave Bachman the hotline's 800 number and explained that he was a "pro se litigant" and a father looking to help his family. He told Bachman that there was a "criminal at large" who falsely reported that he was molesting his children and that he was the only one working to clear his family. Doe also claimed that he was working in cooperation with a State Senator's office on this matter. (Doe had been in touch with Senator Caesar Trunzo, who authored several letters to then-SCR Director David Peters on behalf of Doe's request for expungement.)⁸ Doe claimed that Bachman agreed to e-mail him the records based on this information, and denied having claimed that he was a New York State employee or law enforcement official. Doe also denied having provided Bachman with the hotline's account number. However, on October 30, 2008, Doe telephoned Verizon and asked to speak to Bachman. Bachman's manager testified to the Inspector General that he accepted the call, and that Doe apologized for "misrepresenting himself" to obtain the records from Bachman.

Doe's actions likely violate a provision of New York's Penal Law prohibiting a person from obtaining, or attempting to unlawfully obtain, records of communications from an employee of the telephone company without the appropriate authorization.⁹ In addition, as noted above, New York State law protects the confidentiality of callers to the SCR, and prohibits the SCR from releasing this data to unauthorized sources. OCFS Assistant Deputy Counsel Carson

⁸ Doe alleged to the Inspector General that Peters had never responded to Senator Trunzo, but the Inspector General determined that Peters did reply to Senator Trunzo on February 22, 2007, informing the senator that confidentiality laws prevented him from releasing any information to him about the Doe case.

⁹ Penal Law § 250.30.

informed the Inspector General that OCFS considers the records of telephone calls to the SCR to be confidential records as protected by Social Services Law § 422, since those records can be used to help identify callers or witnesses. However, Carson noted that the confidentiality restrictions in § 422 may not apply to an outside vendor such as Verizon.

Regardless of the applicability of the Social Service Law, the SCR's telephone records are protected by the Federal Communications Act, which assigns telecommunication carriers such as Verizon "the duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier."¹⁰ Violation of this federally required confidentiality may subject the carrier to sanctions imposed by the Federal Communications Commission ("FCC"). Verizon Associate General Counsel for Litigation Mary Coyne informed the Inspector General that all Verizon employees and contractors receive training on the confidentiality rules. However, the contract between Verizon and New York State includes no additional provisions to protect the confidentiality of the SCR, or any other sensitive New York State telephone records. Although Bachman testified that she had not received any training in the federal rules of confidentiality, Verizon provided the Inspector General with records of Bachman's training indicating that on several occasions Bachman attended in-person training or completed on-line training covering the importance of protecting account information by verifying the customer's identity.

The prospect that, despite general federal protections regarding confidentiality of telephone customers, records of calls to the SCR were obtained directly from the telephone

¹⁰ 47 U.S.C. § 222.

company by a member of the public is troubling. Moreover, the Inspector General learned during the course of this investigation that both the New York State Office of Technology and the New York State Office of General Services have access to the electronic copies of the SCR's telephone records. Only while attempting to discover how Doe had obtained the SCR's telephone records did OCFS learn that other state agencies or organizations have access to the electronic telephone records of the SCR.

Doe's Alleged Extortion

On September 11, 2007, John Doe contacted Suffolk County DSS Commissioner Janet DiMarzo and provided her with one-page of the SCR hotline records. DiMarzo provided the records to David Peters at the SCR. Peters did not report Doe's possession of the SCR hotline records to his superiors at OCFS. Around the same time, Doe contacted Senior Attorney Bray and claimed that he had possession of the SCR hotline records and that the New York State Attorney General was investigating Assistant Deputy Counsel Carson. Bray explained to the Inspector General that she did not believe any of Doe's statements and disregarded his claim of possessing the SCR hotline records. Two weeks later, Doe called OCFS Assistant Deputy Counsel John Stupp and tauntingly asked, "Guess what I have?" When informed by Doe that he had gained possession of hotline records, Stupp immediately recognized the serious breach of confidentiality and attempted to persuade Doe to return the records. Stupp testified that Doe threatened to inform the press that he had obtained the telephone records, thereby showing that the SCR was not sufficiently protecting its records.

Doe offered to drive to Albany and place the records on Stupp's desk, but only if he and his family were financially compensated. Later, Doe claimed to the Inspector General that he

requested compensation for the mental anguish he and his family suffered because of the intrusion into his family's privacy. Stupp informed Assistant Deputy Counsel Carson of Doe's call.

On September 27, 2007, Stupp sent Doe and his wife a letter advising them not to disclose the information in the hotline records and requested that they destroy the records or "send any copies you have to either OCFS or to Suffolk County law enforcement officials." Doe did not comply with this request and is still in possession of the records he obtained from Verizon. Doe provided copies to the Inspector General, Suffolk County law enforcement, and other agencies. However, the electronic records he obtained from Verizon are still in his possession.

On October 3, 2007, OCFS attorney Stupp again spoke with Doe. During this conversation, Doe refused to return the records to OCFS or any other agency absent monetary payment. While Doe would not provide a specific dollar amount sought for return of the documents, he demanded that OCFS contact its insurance office and make an offer to compensate each member of his family. Stupp explained that OCFS would not make an offer of payment except as a settlement for pending litigation.¹¹ Doe responded by angrily advising OCFS that he had lodged a complaint against OCFS with the Inspector General. The following day, Carson asked the OCFS internal investigation unit to determine how Doe obtained the telephone records and advised that OCFS was being extorted. OCFS internal investigations immediately notified the Inspector General.

¹¹ Investigation revealed that Doe had previously filed a Notice of Claim in the State Court of Claims against Suffolk County, but not the State of New York. Doe did not reference his suit directly during the conversation with Stupp.

During the pendency of this investigation, Doe has repeated his “offer” to return hotline information in exchange for money to several state officials including members of the Governor’s office.

Findings and Recommendations

The Inspector General identified two separate instances of expunged records being retained improperly at OCFS, one of which was discovered by Doe himself. The investigation also revealed lapses in the maintenance of the SCR’s telephone records. The SCR was unable to provide the telephone records requested in a Suffolk County Grand Jury subpoena due to poor recordkeeping. In addition, the Inspector General determined that Doe’s daughter was improperly identified as an adult subject of a child abuse allegation in the SCR. OCFS failed to take timely action to correct the matter upon learning of the mistake and instead required Doe to await the agency’s determination of his request for expungement.

In addition, the investigation revealed a lack of security with regard to the telephone records of the SCR. The records are not only in the possession of the telephone company, with no added protections over those given to other telephone accounts, they are also accessible to two state agencies other than the SCR and OCFS, a fact previously unknown to OCFS.

Finally, the Inspector General determined that John Doe may have violated Penal Law prohibitions against unlawfully obtaining records of telephone communications when he obtained confidential SCR telephone records from the telephone company by deceit. Once in unlawful possession of the records, Doe may have further violated Penal Law prohibitions

against coercion and larceny by withholding those records and repeatedly demanding payment from the state in exchange for the records' return.

Findings Regarding OCFS

Minor Included in SCR Databases

The Inspector General found that OCFS improperly maintained the record of a minor in the SCR as a person who allegedly committed or condoned child abuse. Under New York State law, a minor can never be the subject of a report in the SCR unless she was the parent of the allegedly abused child. Even if OFCS had determined that Doe's eldest daughter was responsible for some abuse or maltreatment of the younger daughter it would still not have been permitted to identify her as a subject in its records.

Once learning of the error, OCFS required that Doe apply for expungement of his daughter's record rather than attempting to correct the error. OCFS wrongly claimed to Doe that his only remedy was expungement, when OCFS, as the administrator of the CONNECTIONS system, should be capable of correcting its records. During the investigation, OCFS officials provided the Inspector General with conflicting statements about whether and how the record could be corrected in the computer system. At a minimum, OCFS should have immediately expunged the record rather than wait months to complete its administrative review to determine if the Doe family presented "clear and convincing evidence" that the abuse did not occur.

In its response to the Inspector General's preliminary report, OCFS clarified that the SCR's records can be modified through a computer "data fix," except that the record of the initial report cannot be altered, only expunged. OCFS claimed that it does have policies and procedures

to correct errors, but did not supply any such policy to the Inspector General. Further, these policies and procedures were never discussed in internal e-mails prompted by one OCFS employee's concerns that Doe might not meet the high standard for expungement.

Improper Retention of Legally Expunged Records

After a lag of five months, OCFS granted Doe's request to expunge the records related to the allegation regarding John Doe's family. On numerous occasions, several different officials at the SCR assured the Inspector General that it did not maintain expunged records. Assistant Deputy Counsel Carson agreed that it would be improper for OCFS to retain an expunged subject's name. Prior to the Inspector General discovering the two lapses, Carson testified that, to his knowledge, all information on expunged cases was destroyed. During his testimony, Carson affirmed that he had no doubt that the computer system was "cleaned out." However, the Inspector General identified two significant lapses in the agency's expungement practices, although these lapses appear to be unintentional, and not the result of an illicit intent to retain the names associated with unfounded reports as alleged by Doe.

As noted in this report, OCFS's AIMS computer system improperly retained records of correspondence related to expungement requests. The computer records revealed that individuals whose records had been expunged had been subjects of child abuse allegations. OCFS is not permitted to maintain such records, and has informed the Inspector General that it has deleted the records improperly retained in AIMS. On October 3, 2008, OCFS informed the Inspector General that it performed 67 data fixes to delete improper records relating to Doe and other expunged cases. OCFS further informed the Inspector General that "information identifying persons whose records have been expunged will no longer be tracked in any such database."

The second lapse with regard to expungement was the spreadsheet maintained by an SCR secretary to track requests for expungement. Although the secretary's intention was to keep a record of her own work, she violated Social Services Law § 422 by maintaining a searchable list of the names of individuals whose records had been expunged, which improperly revealed that these individuals had been accused of child abuse. The secretary's list included the names of over 300 individuals whose records were officially expunged. The records were maintained on the hard drive of the secretary's assigned state computer, and were not generally accessible to other employees. However, Doe's ability to obtain information about his case from the secretary over the telephone demonstrates the danger in maintaining such records. After being informed of the Inspector General's preliminary findings, Assistant Deputy Counsel Carson confirmed to the Inspector General that the spreadsheet was deleted. OCFS has also informed the Inspector General that it will take no disciplinary against the SCR secretary, as she has now retired due to poor health.

A further confidentiality lapse identified in this investigation occurred when an OCFS employee informed Doe over the phone that she recalled the complaint against him was "partially anonymous" and provided a first name. Regardless of the veracity of this information, it is improper for any OCFS employee to give information regarding a confidential complainant to the subject of the allegation, particularly over the telephone.

Although SCR employees receive eight weeks of training, the Inspector General recommends that employees receive additional or refresher training as needed regarding protection of confidential information of the SCR. OCFS should ensure that its policies appropriately limit the provision of confidential information over the telephone. OCFS has

informed the Inspector General that the agency is developing a new confidentiality policy that will require all inquiries or responses regarding specific cases to be conducted in writing.

With regard to the delay in granting Doe's request for expungement, the Inspector General recommends that OCFS establish a reasonable time period for review and response to expungement requests. OCFS has responded that while it is "certainly desirable" that the reports are addressed within a reasonable timeframe, the agency noted that there was no such statutory requirement, and stated that it does "not consider it feasible" to do so. OCFS continued that "the only practical consequence of an unfounded report remaining in the SCR is that the report is available to the investigating agency in the event of a subsequent report to the SCR involving the same subject, child, or a sibling of the child." As a result the agency chooses to give priority to statutory due process rights of subjects of substantiated reports.

Failure to Obtain or Secure SCR Telephone Records

The Inspector General found that neither OCFS nor the SCR has exclusive control over who can electronically access the hotline telephone records, as other state agencies also have access to the records. In investigating Doe's acquisition of the SCR records, OCFS learned that two other state agencies had electronic access to SCR telephone records. OCFS was unable to advise the Inspector General whether any other state agencies had access to the records. The Inspector General recommends that OCFS review the security measures associated with the SCR telephone records. OCFS agreed to implement this recommendation.

In addition, the Inspector General found that OCFS and the SCR failed to properly maintain and secure paper copies of the SCR telephone records. In violation of OCFS's record

retention policy, the SCR maintained paper telephone records for as long as they fit in a designated drawer, not for the three years required. The fact that several months of telephone records are missing from the SCR's files also is of concern. OCFS should attempt to locate these records, and ensure that new phone records are properly filed and secured. In response to this recommendation, OCFS argued that the missing paper records were never received by the SCR, and therefore the SCR was not in violation of the agency's record retention policy. While OCFS is accurate that records never received cannot be subject to a record retention policy, in this case the SCR's failure to receive the paper records appears to be either the fault of OCFS failing to forward the records to the SCR, or the SCR misplacing them. OCFS's successful remittance to the telephone provider indicates that the bill, including the accompanying call records, was received by the agency. Although the Inspector General acknowledges that OCFS is not legally required to keep telephone records, where it does determine to do so, it is obligated to follow its own policies regarding retention of those records. OCFS has responded that it will no longer maintain paper SCR telephone records within the agency.

Because of the missing records, OCFS Senior Attorney Bray apparently informed law enforcement that OCFS could not provide responsive materials to a subpoena from the Suffolk County District Attorney. In addition, the original copy of the subpoena was misplaced, and copies were not filed in the designated locations.

Findings Regarding John Doe

John Doe made several calls to various state officials requesting compensation from the state in exchange for the ordeal he and his family faced after he was accused of child abuse. On some of these occasions, Doe offered to return the hotline telephone records in exchange for

compensation. OCFS attorney Stupp properly informed Doe that compensation from the state would not be offered outside the context of a suit filed in state court and refused to aid Doe in his quest to identify the individual who reported Doe to the SCR. While New York courts have long held that a person who is wronged may in good faith attempt to settle a matter prior to filing suit,¹² Doe was attempting to gain payment in exchange for return of illegally-obtained records, not in exchange for a perceived wrong against him or his family. Therefore, Doe's use of the hotline records to coerce a payment from the state may violate the state's laws against coercion or larceny.

Although Verizon employee Nadine Bachman should not have released records to Doe, Doe also acted improperly, and possibly criminally, by misrepresenting himself to obtain the SCR's telephone records from Verizon. Doe's awareness that he was not entitled to the records is evident in the fact that he is withholding those records to attempt to secure compensation from the state. In addition, Doe initially refused to provide Bachman's name to the Inspector General, further evidence that he knew that Bachman should not have released the records to him.

At a minimum, Doe's actions, including his threats to state officials, are inexcusable, even if he was the subject of a false allegation of child abuse. Accordingly, the Inspector General has provided a copy of this report to the Suffolk County District Attorney.

Findings Regarding Protections of Confidential State Telephone Records

The Inspector General found that Verizon contract employee Nadine Bachman improperly released private information to John Doe. The Inspector General will provide a copy of these findings to the Federal Communication Commission for its review. The investigation

¹² See, People v Wightman, 104 NY 598, 601 (1887).

determined that others at Verizon were unaware of Bachman’s conduct, and Verizon was cooperative in the investigation. Nonetheless, the Inspector General recommends that OCFS enter into a memorandum of understanding with its telephone vendor to ensure that hotline telephone records are flagged as highly confidential and that employees accessing these records have additional training. OCFS responded that it could not enter into such an agreement with Verizon, as the state Office of General Services (OGS) is the client of record for OCFS and other state agency contracts with the telephone provider. OCFS stated that it would “contact OGS” to develop stronger protections for sensitive information.

Regardless of whether civil or criminal charges can be brought against Doe, the Inspector General has determined that there may be insufficient safeguards to protect telephone records of the SCR while they are in the possession of Verizon or other state agencies. As disclosure of the telephone numbers of those who report incidents to the SCR by the telephone company could substantially undermine New York’s efforts to protect this information, measures should be taken under state law to explicitly include this information within the confidentiality and criminal provisions of Social Services Law § 422.