



Matthew D. Sansverie
Inspector General

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Metropolitan Transportation Authority
111 West 40th Street, 5th Floor
New York, New York 10018
212-878-0000



March 3, 2005

Mr. Lawrence G. Reuter
President
MTA New York City Transit
370 Jay Street, 13th Floor
New York, NY 11201-3814

**Re: MTA/OIG #2004-2L, #2003-34L,
and #2003-28L**

Dear Mr. Reuter:

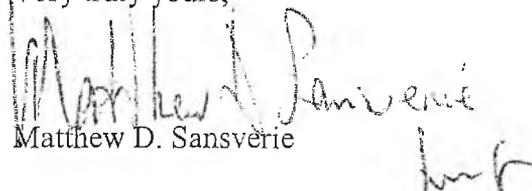
Thank you for your responses dated March 1, 2004 and July 23, 2004, to our preliminary and final draft reports referenced above regarding our investigation of employment practices at the MTA New York City Transit (NYC Transit).

You note in your responses that you have made a number of improvements as a result of the reports we released to your office, however, you do not intend to take additional steps to verify the work experience of employees hired to fill certain civil service positions. Our attached "Capping Report (#2004-2L)" notes your objections, reiterates or views on these important safety issues and notifies you of our intention to pursue this matter further in the future.

In view of the full and fair opportunity already afforded for comments, and due to the extended time taken to address all of these issues, I am issuing the two remaining reports in final form along with their cover letter. Copies of all three letter reports are attached for your ready reference.

I invite you to contact me or Perry Harden, Deputy Inspector General for Planning and Coordination (212) 878-0086, if you have any questions. As always, thank you for your continued courtesy and cooperation.

Very truly yours,


Matthew D. Sansverie

Attachment



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March 3, 2005

Mr. Lawrence G. Reuter
President
New York City Transit
370 Jay Street
Brooklyn, NY 11201-3814

**Re: Capping Report on Examination
and Hiring Practices
MTA/OIG #2004-2L**

Dear Mr. Reuter:

Last year, we issued three investigative reports finding improprieties or irregularities in the New York City Transit (NYC Transit)/Civil Service examination and hiring process. Common themes and concerns that arose during those investigations were pursued in subsequent interviews and conversations we had with NYC Transit, New York City Department of Citywide Administrative Services (DCAS) and other officials. Our further inquiry identified specific integrity problems within the current testing and hiring procedures. We have gathered our findings into this capping report which discusses issues relating to the oversight of the testing and hiring process, including verification of education and experience of new hires, the processing of fingerprints in conducting background investigations, and security over the preparation of exam questions. While we recognize the complexities of operating under a Civil Service system, this capping report includes recommended changes needed to shore up the weaknesses we identified.

BACKGROUND

Responsibility for Testing and Hiring Process

Section 1210 of the Public Authorities Law confers Civil Service status on employees of NYC Transit and places NYC Transit under the aegis of state Civil Service law and the rules of the municipal civil service commission of New York City. DCAS is the New York City department responsible for ensuring that the appointment, promotion and employment of NYC Transit employees comply with Civil Service law. DCAS' authority over NYC Transit is delineated in the Personnel Rules and Regulations of the City of New York. Section V of those rules states that they are applicable to positions at NYC Transit. Further, Rule IX gives the Commissioner of DCAS the responsibility to audit the personnel management functions of NYC Transit and grants the Commissioner the authority "...to make investigations concerning all matters touching the enforcement and effect of the provisions of civil service law...."

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In accord with DCAS' oversight responsibility of NYC Transit, it entered into an agreement with NYC Transit to perform specific tasks in preparing and administering civil service examinations, conducting background investigations and performing various other personnel related functions.

NYC Transit's workforce is an amalgam of five broad categories of employees, four of which are covered by the Civil Service law.¹ There are "Exempt Class" positions for which examinations are impractical. This category is small, consisting of 19 high level titles. There is the "Non-Competitive Class." These are positions for which competitive exams are not practical, but fitness is determined on the basis of the candidates experience or training. Positions of a professional nature or for which special skills are needed, fall into this category and the employees are hired on the basis of their resumes. There is the "Competitive Class" for which merit and fitness can be determined on the basis of competitive examinations. Most NYC Transit employees fall into this category. These include hourly worker and supervisory positions. And finally, Civil Service law designates a "Labor Class," consisting of unskilled laborers who are not in the competitive or non-competitive classes.

For most Competitive Class positions, DCAS is involved to varying degrees in the test preparation and administration process, and in the promulgation of eligible lists. For example, there are groups of hourly paid positions, such as Bus Operator or Train Operator, for which DCAS is responsible for administering the exam with input from NYC Transit as to job analysis, skills to be tested for, and the preparation of questions. The exams generally consist of multiple choice questions. However, there are also a number of hourly titles, such as Signal Maintainer or Car Inspector, in which applicants are tested via an oral/practical exam. For these exams, DCAS' involvement is significantly reduced. Thus, DCAS reviews test plans to ensure the exams are appropriate for the job description, determines the proper weighting of questions, prepares the notices of examination, and schedules the exams. NYC Transit personnel actually give the exams. NYC Transit's Examination Unit personnel grade the orals, and operating department supervisors administer and grade the practical exams. The grades are compiled by the Examination Unit and forwarded to DCAS which promulgates the eligible lists.

INVESTIGATION

The focus of this capping report includes selected controls over civil service exams that fall under the oversight jurisdiction of DCAS. Only a small number of those who file for civil service exams are actually hired, as the hiring rate is a function of the number of positions to be filled. There is a lengthy and involved process, from filing to actual hiring, with a system of controls devised by DCAS and NYC Transit ostensibly to ensure that only the most qualified

¹ The fifth category consists of approximately 7,400 MaBSTOA employees. DCAS' responsibilities do not extend to MaBSTOA, as pursuant to Section 1203-a of the Public Authorities Law, officers and employees of MaBSTOA do not acquire civil service status. Nevertheless, MaBSTOA employees are selected on the basis of fitness and NYC Transit's Examination Unit is charged with developing and administering examinations for the hiring and promotion of MaBSTOA employees.

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candidates are ultimately hired. Regardless of the laudable purpose of these policies, we identified areas where system controls either were not functioning or needed improvement.

DCAS Has Reduced Service it Provided in a Critical Area

DCAS' agreement with NYC Transit, which is renewed annually, dates back many years. NYC Transit's payment of \$950,000 has remained constant while DCAS has gradually stopped routinely performing an important task related to confirming the background of new hires, specifically, the verification of the education and experience of new hires. In addition, DCAS does not compare fingerprints taken at the time of the exam with those taken at hiring. NYC Transit, on the other hand, has not assumed the task of verifying education and experience, and it lacks the authority to conduct fingerprint checks. The effect of not performing these tasks is that less qualified or unqualified individuals can be hired or promoted over more qualified ones, or in the case of fingerprint comparisons, the individual hired may not be the one who took the exam. While all internal control choices represent trade-offs between risk and vulnerability, on the one hand, versus the cost of mitigation of that risk, reducing controls in this area clearly diminishes the degree of confidence one may reasonably have in the integrity of the hiring process.

Background Check Procedure

After an exam is given and an eligible list is established, NYC Transit's Employment Center sends canvas letters to qualified candidates. Candidates are required to complete pre-employment forms and undergo drug and alcohol tests as well as full medical exams. The pre-employment forms of candidates who pass these tests are reviewed to determine whether they contain any "derogatory" information, such as termination from prior jobs, long gaps in employment, poor driving record or criminal activity, any of which could eliminate them from consideration. If there is no derogatory information the candidates are sent to NYC Transit's Background Investigations Unit where they are fingerprinted. The fingerprint cards, together with all hiring documents are sent to DCAS' Investigations Division which in turn forwards the fingerprint cards to the New York State Department of Criminal Justice Services (DCJS) to check for criminal history. The fingerprint verification must be done through DCAS because NYC Transit does not have a "Use and Dissemination Agreement" with DCJS which would allow NYC Transit to conduct criminal history checks and identification matches.

In the interim, before the results of DCJS' checks are received, the candidates are sworn in and assigned. If DCJS' fingerprint check returns criminal information on a new hire to DCAS' Investigation Division, DCAS may open an investigation of the employee's background if the crimes are of a serious nature, or may delegate the investigation to NYC Transit's Background Investigation Unit if the crimes are of a petty nature. The Director of NYC Transit's Background Unit advised that the unit receives about 6 to 8 referrals per month from DCAS. For these cases, the confirmation of education and experience is performed by Unit personnel. At the conclusion of an investigation DCAS may disqualify an individual from eligibility for appointment.

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Where no exam is administered, NYC Transit's Background Investigations Unit uses Yale Associates to conduct background checks for non-competitive professional, managerial and technical positions, but Yale Associates does not ordinarily verify competitive hourly positions. Yale Associates can perform various levels of background verifications at the request of the Background Unit, including criminal conviction checks. Most, however, are "Level C" verifications, which consist of past employment, education, social security number, professional license, if any, and credit history. No criminal investigation is done at this level, since all fingerprints of new hires are forwarded through DCAS to DCJS for a criminal background check. The fee for a "Level C" verification is \$54. In 2002, Yale Associates only conducted 180 total investigations at the request of the Background Unit.

Verification of Education and Experience

Applicants for a NYC Transit exam must file a DCAS application form. If the position has an education and experience requirement, the notice of examination will indicate that the applicant must complete a DCAS Education and Experience Test Paper. The applicant is required to affirm under penalties for perjury that all statements made in the application are true. Examination Unit staff review the education and experience listed by applicants to determine whether they meet the requirements specified on the notice of examination. Depending on the type of exam and the number of people who file for the exam, the review can either be done before the exam is held, whereby an applicant not meeting the minimum requirements is deemed ineligible to take the exam, or the review can be made after the exam, whereby an applicant not meeting the minimum requirements is deemed ineligible for appointment. The review, however, is limited to a determination of whether the education and experience recorded, on its face, meets the requirements of the Notice of Examination.

According to the DCAS agreement with NYC Transit through 1999, DCAS was to "verify claims of permanent and provisional employees concerning experience, education and license requirements." However, according to DCAS' Director of the Investigations Division, DCAS stopped verifying education and experience of all new hires about 10 years ago. Therefore, in the 1999-2000 agreement, this task was changed to limit DCAS' verifications to "selected employees," whose fingerprint checks revealed criminal activity, or candidates who had "derogatory" information on their employment forms. The cutback on background investigations, according to the Director, was necessitated by significant staff reductions. He indicated that his staff has been cut from 30 investigators to six since 1994. Accordingly, DCAS had returned responsibility for conducting background checks to the hiring agencies. At NYC Transit, the responsible entity for conducting background checks is the Background Investigation Unit, but as indicated earlier, their verification of education and experience is limited to resume hires and special cases.

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Qualifying Education and Experience

Given the infrequency with which the information is verified for the large number of NYC Transit applicants taking civil service examinations with education and experience requirements, there is a significant risk that unqualified individuals may be hired.

A recent OIG investigation confirmed this possibility. In that case, (Report MTA/IG #2002-28L), the Notice of Examination called for experience as an electrician at the journeyman level, installing, maintaining and repairing lighting systems, including series and multiple lighting, conduit work, wiring and fixtures. Our interview of the subject's prior employer revealed that while he had performed some electrical work tasks in the past, his experience fell far short of the criteria of "journeyman level" as defined by Local 3 of the International Brotherhood of Electrical Workers.²

We recognize that even where an attempt is made to verify experience, it is not always conclusive. We have been told by several officials involved in the employment process that employers are not always responsive to requests concerning the specific duties and performance of an ex-employee. Moreover, a large number of applicants for NYC Transit jobs originate from foreign countries and it is difficult to confirm foreign work references: It is for this reason, among others, that NYC Transit is turning more to qualifying education and experience-oral/practical exams for hourly skilled trade positions. Under this modality, even if the candidate's education and experience is exaggerated, it is mitigated by the candidate's need to demonstrate fundamental knowledge and skill in the subject matter. The lack of verification for other hourly positions is mitigated by the need for a candidate to pass a multiple choice exam. NYC Transit also cites the employee's need to pass a probationary period, in effect proving the employees capabilities, as mitigating the lack of verification of education and experience.

²In this letter report, we recommended that NYC Transit provide a clearer definition of what constitutes "journeyman level" experience in the Notice of Examination (NOE) so that applicants may better determine whether they possess the requisite experience. NYC Transit responded that this recommendation has been implemented and that the NOE for skilled trade titles now includes a "clearer definition of journeyman level experience." A "journeyman" or "journey woman" is defined in the NOE as a "fully-trained, knowledgeable, proficient and competent mechanic." We also recommended that NYC Transit verify information provided by applicants to NYC Transit at whatever stage it deems appropriate if the information is significant in its application process. In response, NYC Transit declined to accept the second recommendation. They stated that although it is already their practice to verify credentials of appointees in managerial, professional and technical positions, it is "usually not cost effective and sometimes not possible to conclusively verify previous work experience for [their] hourly titles." NYC Transit argues that there are already checks and balances in the system with the administration of a hands-on practical civil service test and a training program for those who pass the test and are hired. And although it is not specifically listed as one of our recommendations, NYC Transit stated that they would institute a new policy requiring applicants for "provisional skilled-trade positions" to take and pass a practical test prior to employment processing.

Exams with Education and Experience Requirements

For fiscal year July 1, 2002 to June 30, 2003 of the 36 NYC Transit Civil Service exams scheduled, 14 had a qualifying education and experience requirement to take the exam. These exams were in the open competitive category and more than 22,700 individuals applied to take them. Eight of the 14 exams consisted of competitive multiple choice tests, i.e., the individual's grade and position on the eligible list was based on the score received on the test, and six were competitive practical exams. At the time of this writing, eligible lists had not been promulgated for these exams. Thus the number of hires from these lists, and the potential cost of verifying their education and experience, can not be readily determined. However, to the extent that the hiring activity from the prior year's open competitive examinations is any indication, the number of hires relative to filers is relatively small. In the examination schedule for the preceding fiscal year ending June 30, 2002 there were eight open competitive exams in which there were qualifying education and experience requirements. A total of 7,917 individuals filed for these exams. For two of the exams, involving 2,149 filers, the lists are still pending as of June 2003. For the six other exams, involving 5,768 filers, 1,248 passed the exams – a pass rate of only 22 percent. And of those that passed, only 84 individuals have been appointed as of June 2003. Given these ratios, the number of employees ultimately hired from the 2002/2003 exam schedule whose education and experience would warrant verification may only total in the hundreds or low thousands.

The remaining exams scheduled for the fiscal year ending June 30, 2003 consisted of 20 promotional exams with testing modalities involving seniority plus competitive multiple choice tests, competitive practical tests and essay tests. In addition, there were three exams in which the score and the candidate's position on the eligible list were based solely on a grading of the individual's education and experience. This latter exam category can be problematic if there is no confirmation of the claimed education and experience.

Education and Experience as a Factor in the Grade

The failure to verify education and experience can have meaningful consequences in testing modalities in which education and experience is not simply qualifying but where they are a factor in the grade, i.e., points are added for more education and experience. For the three exams in this category in the 2002/2003 examination schedule (two of the exams were open competitive and one promotional), 574 individuals applied. For one exam, 78 individuals applied and 31 were found to be eligible for appointment. For the other two, eligibility lists have not yet been established. To the extent a candidate exaggerates his/her experience on any of these exams, that candidate is likely to have a higher score and better likelihood of appointment, to the detriment of a candidate who reports accurately, and the overall integrity of the hiring process.

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In fact, the Notice of Examination specifies the basis for assigning experience. For example, for one exam, the Notice of Examination specifies the minimum education and experience requirements to qualify for the position. An individual who meets the minimum starts with a grade of 70. A candidate with one to three years of additional experience receives an 80; three to five years receives a 90; and, five or more years receives 100. A structure such as this places a perverse incentive on lack of candor, notwithstanding the affirmation of truthfulness. In a time when resume fraud in the white collar world is rampant which, in our opinion, there is no reason to believe that resume fraud is not present in this setting when few or no checks are actually made on education and experience level veracity. Accordingly, where a grade is based solely on education and experience we believe that it is imperative that educational and experience claims be regularly tested.

Practices at Other Agencies

According to a New York State Civil Service Department official, the current arrangement between NYC Transit and DCAS is similar to the one between the New York State Department of Civil Service and State agencies. Specifically, the verification of education and experience is left to the hiring agency. If the agency finds a misrepresentation, it is referred back to Civil Services' Investigations Unit.

However, in our inquiries with two State agencies, the Department of Transportation (DOT) and the Thruway Authority,³ we found differing procedures. At DOT, we were told, all applicants must submit copies of their degrees, where one is required as an educational component, prior to the exam. Each degree is reviewed as a condition precedent before taking the exam. In the event a candidate has a degree from a foreign institution, DOT requires the applicant to contract a recognized firm that evaluates foreign degrees and courses for comparability. It is the applicant's responsibility to submit the documents to one of these firms and instruct the firm to send its report directly to DOT. As part of DCAS' testing process it similarly provides a Foreign Education Fact Sheet in which candidates with foreign educations are instructed to submit their educational documents for evaluation to one of 15 firms recognized by DCAS. The evaluations are forwarded directly to DCAS. At DOT, experience is confirmed at hiring. DOT personnel call the candidate's employer to confirm the period employed, the nature of the work performed and the candidate's performance.

On the other hand, at the Thruway Authority, educational requirements are not routinely confirmed. However, in all cases where there is an experience requirement, the references are checked. Thruway personnel call former employers to confirm the period of employment, the nature of the work performed and, when possible they attempt to solicit an evaluation of the candidate's performance.

³ Which falls under Civil Service Law.

Remedial Actions

To mitigate the effects of inadequate verification of education and experience, NYC Transit should do the following:

- Continue using practical exams wherever appropriate.
- Verify education and experience in all cases where the exam score is based on the candidate's education and experience. (In responding to this recommendation, NYC Transit advised: "We have eliminated the use of education and experience as the sole or primary determining factor in testing and selection.")
- Conduct background verifications to cover applications for hourly positions on at least a random sampling basis.

In responding to the second and third recommendations listed above, NYC Transit stressed that in competitive titles the combination of a competitive examination, training program, and a probationary period is more effective in determining an employee's ability to do the job than verifying the experience of new hires. NYC Transit reiterated the difficulty it faces in the verification of experience citing among the problems "...the itinerate nature of employment in skilled trades; the difficulty of locating and corresponding with previous employers, especially those in foreign countries (from which come a large number of new Transit skilled-trade employees); the inability or refusal of employers, foreign and domestic, to provide useful information about former employees; et cetera."

To bolster its contention, NYC Transit, in line with our recommendation, undertook a small, unscientific study with Yale Associates to verify work experience of new employees in two titles. According to NYC Transit, for 40 percent of the employees in the study they were unable to verify any aspect of claimed experience and for 100 percent of the employees they were unable to verify the level or nature of the employees' work.

We recognize the difficulty confronting NYC Transit in verifying work experience of new hires, especially those from foreign countries; however, to abdicate this responsibility entirely, in our view, invites resume fraud on the part of individuals who are subsequently hired after filing applications for examinations containing experience requirements.

The focus of our recommendation is that the integrity of the hiring process needs to be maintained. Verification and enforcement procedures send a message to applicants that honesty is mandatory, when they apply for civil service positions with NYC Transit.

Since we have not reviewed the methodology employed in the "unscientific" study undertaken by NYC Transit and Yale associates, we cannot comment further regarding its veracity, other than to state that, it appears that, Yale was able to verify 60% of some aspect of the subject group's experience. A 60% rate does not equal failure. Notwithstanding that fact and given the

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security implications inherent in NYC Transit's findings, we believe that the experience verification issue warrants further review.

Fingerprinting and Other Identity Controls

Precautions are taken at the time of an exam to ensure that applicants are properly admitted to the exam. For example, an admission card is mailed to the applicant which must be presented for admission. The candidate must also present photo identification at admission. Finally, all candidates for an exam, whether administered by DCAS or by NYC Transit, are fingerprinted prior to taking the exam. The fingerprinting consists of a "four finger drop" on a card that remains with the candidate's records.⁴

Any candidate who passes the exam, and is considered for appointment, is called to complete the pre-employment forms. A full set, or "ten finger roll," of fingerprints is taken and sent to DCAS, which forwards it to Department of Criminal Justice Services (DCJS) for a criminal history check. We have been told by DCAS and NYC Transit officials that the fingerprints taken at the time of the exam are not compared with the fingerprints taken at hiring unless an investigation is later commenced.

Thus, despite going to the lengths of taking two sets of fingerprints, and submitting a set for a criminal history check, under ordinary circumstances neither DCAS nor NYC Transit checks the fingerprints against each other to be sure that the individual who is being hired is the same person that took the exam. There is not even a verification sampling process in place to cull out a small number of fingerprint sets for comparison. It is hard to believe that a cost-benefit analysis comes out against this incremental, additional step in mitigation with prints already on file.

We recently concluded an investigation (Report MTA/OIG #2002-34L) involving two brothers who took the train operator exam. The brother who scored higher than the other had a criminal record. When the man with the criminal record appeared for processing and learned that he would be fingerprinted for a criminal background check, he left and sent his brother to be processed in his place, including full fingerprinting and photographing for an employee pass. The higher scoring man with the criminal record, however, showed up for work and was employed until an investigation caused a comparison of fingerprints taken at the exam with those taken at hiring. Only then was it discovered that the system was beaten so easily and brazenly.

⁴ NYC Transit has an added control, but not DCAS, when it administers oral/practical exams. Candidates who appear for the exam are photographed. The photographs are stored on disc and forwarded to Human Resources for storage. They are not, however, ordinarily compared to the photo taken at hiring but kept in the event they are needed for an investigation.

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This fraud could have been caught more timely if only routine comparisons of fingerprints taken at the exam were made against those taken at hiring. DCAS' ability to do so should be sufficiently enhanced after September 2003 when it converts to a computerized, ink-free fingerprinting system. The computerized system stores digital images of fingerprints scanned through a glass plate on a DCAS file server. A scanner will be placed in NYC Transit's employment center so that when processing a new hire, the new employee's fingerprints can be taken by NYC Transit and entered into the DCAS file server. DCAS will have the ability to electronically transmit the prints to DCJS and the FBI for a search of their databases. The turn around time is estimated to be a couple of days rather than the weeks it now takes to get results from DCJS. In addition, the data available for query is much greater.

We have been advised that while DCAS now has the above-described equipment, NYC Transit has not yet received the equipment it needs and does not know when it will be forthcoming. Until NYC Transit receives its equipment, we were told it will continue to take ink fingerprints and, starting in September 2003, DCAS will scan NYC Transit's ink and roll prints taken at hiring and transmit them to DCJS electronically. This should help speed the processing time considerably, until such time as NYC Transit starts using the new equipment. However, while this will afford a more efficient matching of prints taken at hiring with criminal records, it still will not match the hiring prints with testing prints.

NYC Transit officials advised that the technology to match its hiring fingerprints with the test fingerprints is available. NYC Transit can scan an inked thumb print or any fingerprint, or for that matter scan a line on a card and request DCAS to have it compared to the electronically scanned prints. We were also told, however, that DCAS is not ready to undertake this comparison in the initial stages of this program. Instead, DCAS will defer this comparison to some time in the future. Until then NYC Transit and DCAS will not be absolutely certain that the person hired is the same who took the exam.

Remedial Actions

- NYC Transit should work closely with DCAS to be able to match fingerprints taken at hiring with those taken at the exam as soon as possible.

In response to our preliminary draft report (MTA/OIG #2003-34L), NYC Transit advised that it will continue to pursue the development and implementation of a fingerprint matching system with DCAS. NYC Transit also advised that consideration is being given to establishing an MTA "Use and Dissemination Agreement" with DCJS. This would enable NYC Transit to deal directly with DCJS in conducting criminal history check and in matching test fingerprints with hiring fingerprints. This is an encouraging development and we would like to be kept apprised as to the status of this initiative. In response to a draft of this report, NYC Transit advised that as of June 2004 they electronically collect fingerprints during the employment process and transmit and receive data from DCAS and DCJS as well as search FBI databases. This has reduced the waiting time from fingerprinting to receipt of criminal record information to a matter of days. In

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addition, all employees and candidates for employment are screened through a program developed by Homeland Security and the Social Security Administration. This has led to a number of employees being terminated and prospective employees being rejected.

Security Over the Preparation of Exam Questions

NYC Transit's Examination Unit solicits nominees from the applicable operating departments as subject matter experts, or item writers, to prepare questions. The departments generally assign two or three supervisors to this task for each examination. The subject matter experts are assigned for about 15 days, and provide the content and cite the source of the information questions. Examination Unit staff edit the questions and put them in a test question format. Once the editing is completed, the subject matter experts' supervisors are shown the questions and asked to confirm that they are appropriate for the positions for which the test is offered. The questions are then forwarded to DCAS for final preparation.

Affirmations of Subject Matter Experts

DCAS policy leaves no room for doubt as to the obligation of the subject matter experts to maintain the confidentiality and security of this process. NYC Transit must submit a "Nomination of Special Examiner" form to DCAS indicating the name, title, description of current assignment and qualifications of the individual proposed as a subject matter expert. The form, which contains the notarized signature of a NYC Transit official, contains an affirmation that the nominee's disciplinary history has been checked, and that the nominee can be trusted to maintain the confidentiality of the examination process. The nominee is required to sign a DCAS "Affidavit for Special Examiner" form which lists 14 affirmations regarding confidentiality, security over the question preparation process and the rating process. The nominee must sign and notarize: that he has read the form; the statements are true and correct; and he understands the affirmations and will abide by them. A DCAS Examiner must also sign that the provisions of the affidavit have been discussed with the Examiner.

The subject matter expert is required to sign a sternly worded Department of Investigation (DOI) letter acknowledging the confidentiality policy and the consequences of any breach. The letter states, in pertinent part: "if you are found to have revealed confidential information about an examination to anyone, including a person taking that examination, you could risk termination from your employment, as well as possible arrest and prosecution." This letter makes several references to City employees and Executive Order # 16 which requires City employees to report information concerning corruption, criminality or conflicts of interest to DOI.⁵

⁵ Since NYC Transit employees are not "City" employees, it is unclear whether DOI has jurisdiction to take action in the case of a breach by a NYC Transit subject matter expert.

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Despite these daunting admonitions, however, we recently investigated a complaint that a promotional examination for Maintenance Supervisor was compromised because questions on the exam had been disseminated prior to the exam. We confirmed the allegation and we recommended that the exam results be cancelled and disciplinary action be taken against one of the subject matter experts. We were subsequently advised that the exam was nullified and the subject matter expert was disciplined.

In this investigation (Report MTA/OIG #2003-6L), we found that two subject matter experts, a Supervisor Level II and a Superintendent, brought reference material with them to the Examination Unit to prepare questions. The Supervisor borrowed the reference material (a guide book), from a subordinate who was a candidate for the exam. The Supervisor's act was contrary to an affirmation he made on the Affidavit for Special Examiner which barred any disclosure that the subject matter expert was helping prepare the exam. Furthermore, the Superintendent returned the guide book to the subordinate prior to the exam, in further contravention of affirmations he made as to maintaining security over source material. We learned that two pages from this guide book were found on a copy machine at a NYC Transit facility before the exam was given, and upon review, found that the two pages contained information relating to four of the examination questions.

In connection with this investigation, a candidate for the exam who had subsequently retired, notified this Office that he had been given information about the contents of the exam by the Superintendent. When questioned under oath, the Superintendent admitted to providing notes to that candidate prior to the exam. We observe in this context how easily this wrongdoing was perpetrated and the relative ease with which the primary control, a sworn statement, was overcome.

Need to Verify Qualifications of Subject Matter Experts

The need for the judicious selection of subject matter experts is further demonstrated by an incident that occurred in 2002.

To prepare for an oral/practical exam for light maintainer, the Examination Unit requested an official of the Maintenance of Way Department to nominate subject matter experts. On the list of names provided by the official were two individuals who were holding provisional Light Maintainer positions who were also candidates for the exam. The two individuals were briefed by the Examination Unit and signed the Affidavit for Special Examiner and Department of Investigation forms.

Although the responsibility of these two individuals was to help set up the workbenches for the practical exam and taking apart assemblies required of examinees, the two individuals were exposed to the contents of the oral and practical exams. In fact, one of the individuals participated in a test run of the exam. On the first day of the exam their true status at the test site

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was detected and they were removed from the test area. The matter was referred to DCAS by the Examination Unit and DCAS disqualified them from the exam.

Apparently, in this instance, the Maintenance of Way official compiled a list of subject matter experts without awareness of fundamental information about the nominees. Errors and omissions of such a fundamental magnitude are indicative of poor or non-existent supervisory effort and little or no accountability. On the other hand, in many other contexts fundamental "errors" like this create opportunities for corruption. Clearly, there is a need – at the minimum – to reinstruct operating department management in the importance of confirming the eligibility of nominees to serve as subject matter experts. Human Resources should also routinely verify the job status of nominees to ensure they are not potential candidates for the exam.

Remedial Actions

In order to enhance the integrity of the testing process with regard to disclosure of exam questions or source material prior to the administering of an exam, the Human Resources Department should take the following steps:

- Improve security in the Examination Unit location where item writers prepare questions. In our initial interviews, we were told that Examination Unit personnel did not check what the subject matter experts brought with them or what they removed from the cubicles or conference rooms in which they worked during the question writing process. Examination Unit personnel did not check the source material used by the item writers to ensure areas had not been highlighted or specific questions recorded. Furthermore, subject matter experts were sometimes given access to computers for preparing questions. Under these conditions, it is possible for subject matter experts to remove critical exam material.

We note in this regard that the State Civil Service process appears to have stronger controls. It advises subject matter experts to bring copies of the source material they plan on using to the exam scoping sessions, as this material will be retained by the examiner in charge in the event there is an appeal to the exam. To improve the monitoring of this activity, Examination Unit staff may want to examine and retain material brought into the question preparation area. (We have been advised by a Human Resources Department official that they recently adopted a policy barring removal of source material until after the exam. In addition, subsequent to our initial interviews, the Examination Unit has been relocated to a new facility. We trust that measures have been put into place in the new facility to improve the monitoring and security over this critical function.)

- Create a library of reference material in the Examination Unit to minimize the need for subject matter experts to bring their own source material. We were advised by an official of the State Department of Civil Service that they maintain an extensive library of reference material in the room where exam questions are prepared with this objective in

mind. The Examination Unit can solicit the various department heads to identify technical manuals, books and other publications to be acquired that would provide sufficient material for the development of questions for the job titles under their supervision.

- The Examination Unit should regularly create and store questions in a bank and draw from there as needed for tests, rather than drafting a limited number of questions solely for use in the next scheduled exam. This would limit the ability of a subject matter expert to inappropriately convey with accuracy the subject matter or questions of any specific upcoming exam to a subordinate. Both DCAS and State Civil Service maintain a bank of questions for certain exams. Exams can consist of a mix of newly written questions and existing questions in the bank.

(We have been advised by the Director of the Examination Unit that a step in this direction is being taken, in that the questions for the Maintenance Supervisor-Track Equipment exam will be banked. While this is a positive development, the Examination Unit should endeavor to standardize the banking of questions for all titles.)

- Subject matter experts should be further removed from the applicants for the exams. There is less likelihood of subject matter experts who have no familiarity with candidates for exams to convey exam material, than supervisors who prepare questions for their subordinates who they know and may work with. Ideally, subject matter experts should only come from department personnel who are several levels higher than the candidates and who have little or no direct, regular contact with them. For exams in which staffing constraints do not permit this detachment, then Human Resources needs to increase its oversight of subject matter experts the closer they are to candidates for the exam.
- Instruct and reinstruct operating department management in the need to confirm the eligibility of nominees to serve as subject matter experts. As an added control, Human Resources should routinely verify the job status of nominees to serve as subject matter experts to ensure they are not potential candidates for the exam.
- Human Resources should also consider engaging subject matter experts from other transportation agencies, including retirees. DCAS, we were told, hire "Special Examiners" to prepare questions. These are individuals with expertise in the field who are hired on a project by project basis and are paid on an hourly basis. One factor to be considered by NYC Transit in taking this avenue, aside from the security issue, is the cost associated with diverting a supervisor from his/her regular duties for a period of about 15 days. That cost may be greater than the hourly cost of a Special Examiner.

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- Request the Department of Investigation to broaden the language of their letter to include applicability to employees of State agencies and other entities as well as possible termination or referral for prosecution by State agencies or other entities for breaches of confidentiality. Alternatively, develop a NYC Transit letter setting forth possible sanctions for breaches of confidentiality.

CONCLUSION

We have attempted with this capping report to put into a broader context the findings we made in three recent, separate NYC Transit – civil service hiring matters. Our report should not be taken by anyone to suggest that there is general chaos in the hiring of NYC Transit employees. The observations we make here are based on the exceptions we have observed. Nevertheless, the exceptions plainly suggest the need to explore remedial action to mitigate the risks posed. We have flagged these issues for your attention and offer some remedial actions.

Please advise me within 30 days of your receipt of this letter of any actions that you decide to take with regard to the foregoing. As always, thank you for your continued courtesy and cooperation. If you have any questions or need additional information, please let me know.

Very truly yours,



Matthew D. Sanšverie

cc: P. Kalikow
K. Lapp
C. Rinaldi
L. Kearse
M. Schnabel
P. Spinelli