



VULNERABILITIES OF MTA NEW YORK CITY TRANSIT CAR INSPECTOR EXAM 8080

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INTRODUCTION

The Office of the MTA Inspector General (OIG) investigated bribery allegations against two former NYC Transit employees: Ronica Ganesh, Staff Analyst, Personnel Testing and Selection Unit, Employee Services, Division of Human Resources, and Jerry Zachariah, Car Inspector. According to the allegations, these employees accepted payments from candidates for Car Inspector Exam 8080, a practical examination that requires candidates to perform a series of job related tasks, to ensure that those candidates could pass that test. At OIG's invitation, the New York County District Attorney's Office (DANY) joined the investigation. Thereafter, OIG and DANY found that Ganesh and Zachariah had indeed accepted payments from job candidates in return for just such a "guarantee."

Through interviews of complaining candidates and Zachariah, the OIG learned that Zachariah had solicited bribes from individuals who wanted help getting jobs as car inspectors with NYC Transit. Zachariah admitted telling people that he had an unnamed friend who worked in Human Resources (Ganesh) who could ensure that they would pass the test. Zachariah provided OIG with bank deposit receipts and the bank account numbers for two accounts into which he deposited over \$75,000 for Ganesh. OIG subpoenaed the bank records and confirmed that the bank accounts were those of Ganesh and her sister.¹ OIG also obtained from NYC Transit certain e-mail exchanges between Ganesh and Zachariah on the NYC Transit email server.

After reviewing the applications and exam rating guides of the individuals identified in the e-mails, we found no evidence that Ganesh had secured passing grades for those candidates. However, Ganesh admitted to OIG and DANY investigators that she had improperly provided Zachariah with a resume detailing experience sufficient for an applicant to be interviewed for a "provisional" position as a car inspector.² She also admitted that Zachariah then sent her four resumes that were exact duplicates of the sample that she had provided, with only the names of the candidates changed.³ Further, Ganesh admitted that she helped individuals determined to be unqualified to take the civil service exam for car inspector submit appeals using false

¹ Ganesh told investigators that she began using her sister's bank account in an effort to hide assets from her creditors. Her NYC Transit paycheck was deposited electronically into this account.

² Applicants can be hired provisionally when there is "no appropriate eligible list available for filling a vacancy in a competitive class." N.Y.S. Civil Service Law §65(1). However, provisional employees must pass the next offered exam and be ranked high enough on the list to be hired permanently.

³ None of the four candidates were hired.

information to challenge their disqualification.⁴ In the end, though, based on our analysis of emails and other evidence, we conclude that no one who paid a bribe got a job.

As a result of the foregoing joint investigation, Ganesh pleaded guilty to one count of Bribe Receiving in the Third Degree and Zachariah pleaded guilty to one count of Bribery in the Third Degree, both Class D felonies. Ganesh was sentenced to a five-year period of probation and ordered to forfeit \$20,000; Zachariah was sentenced to imprisonment for six months as a condition of and concurrent with a five-year period of probation and ordered to forfeit \$20,000. NYC Transit fired both Ganesh and Zachariah

Beyond the specific criminal conduct we discovered, our investigation also revealed systemic vulnerabilities that could have facilitated tampering with grades by others involved in the testing process. These vulnerabilities involved test preparation and security, as well as exam administration, scoring and post-exam procedures. Indeed, OIG investigators found that practical exam performance scoring sheets (called “rating guides”) had been changed, but because controls were so weak it was impossible to be certain who made each of the changes, at what point in the process the changes were made, the reason for each change, and whether and to what extent each change was appropriate.

OIG discussed these vulnerabilities with NYC Transit and made recommendations to ameliorate them, all of which NYC Transit accepted. We explain these vulnerabilities in more detail below, together with the agency’s response to mitigate if not eliminate them.⁵

⁴ The practical examination process is bifurcated, a feature that Ganesh and Zachariah exploited. Before an individual will be placed on a civil service list, such individual must (1) apply and qualify to take the exam by submitting a summary of his or her education and experience, and then (2) score high enough on the examination to pass it

⁵ During the course of our current review, we discussed similar vulnerabilities that OIG had identified and reported to NYC Transit years ago, and have included the recommendations we made at that time as an Attachment to this report. Suffice it to say, at this point in time it is our view that NYC Transit has substantially complied with these earlier recommendations.

VULNERABILITIES IN THE CAR INSPECTOR EXAMINATION PROCESS

When our joint criminal investigation was concluded in late 2011, OIG began its review of the systemic weaknesses that may have led Ganesh and Zachariah to believe that they could carry out their scheme undetected. During the course of that review, OIG staff spoke with NYC Transit Human Resources personnel about specific vulnerabilities and recommended remedial measures to help secure the process. What follows is a description of what OIG found, as well as the remedial measures taken by NYC Transit following OIG's findings and recommendations.

Test Preparation and Security

Section 1210 of the Public Authorities Law confers civil service status on employees of NYC Transit and subjects the agency to state civil service law and the rules of the municipal civil service commission of New York City. The NYC Department of Citywide Administrative Services (DCAS) is thus responsible for ensuring that the appointment, promotion and employment of NYC Transit employees comply with law. For at least eight years, in accord with DCAS' oversight responsibility of NYC Transit, these two agencies entered into an agreement for NYC Transit to perform specific tasks in preparing and administering civil service examinations and performing various other personnel related functions. For its part, DCAS conducts background investigation of appointed employees, including verifying educational and work experience.

As a result, the creation of various exams, including Car Inspector Exam 8080 (or "8080"), is now the responsibility of a NYC Transit employee, the "examiner-in-charge," who oversees this process from beginning to end. As part of this responsibility, the examiner-in-charge must obtain subject matter experts—generally employees who supervise the position—to write the exam. In the case of a practical exam, such as 8080, the examiner-in-charge must also recruit the "special examiners" who observe and grade the candidates' performance on a series of job related tasks.

As indicated above, NYC Transit recruits subject matter experts from employees who are currently supervising the title for which the test is being designed—meaning that the experts may have a relationship with those actually taking the test. Further, during the course of the exam preparation period we investigated, the subject matter experts were allowed unrestricted access to the Personnel and Selection Unit ("the Exam Unit") office area, which was where the exam materials were maintained, and which was normally restricted to Exam Unit employees only.

During the course of our investigation, OIG investigators visited the Exam Unit offices and made the following findings showing that security was unacceptably lax:

- While exam materials were kept in locked filing cabinets, the keys to the filing cabinets were easily accessible. Indeed, the cabinet keys were kept in a safe that was open during business hours and located in an unlocked room.

- The room housing the safe was isolated from the main part of the office and located near the Exam Unit's exterior door, thereby facilitating surreptitious entry and exit.
- Exam materials, including completed exams, were kept in the same safe, along with drafts of tests stored on flash drives.
- All Exam Unit employees knew the combination to the safe, making access to the cabinet keys—and therefore the exam materials and draft tests—effectively unrestricted after hours to those employees.
- Adjacent to the safe where all of the tests were stored was a copy machine that required no access code and did not retain images of anything copied, thereby facilitating surreptitious duplication.

By contrast, as reported by the DCAS deputy commissioner in charge of exam preparation, there are precautions taken by DCAS that if adopted by NYC Transit should enhance the integrity of the NYC Transit exam preparation process. For example, the materials used by the subject matter experts at DCAS to prepare the exams, such as rules and regulations governing the job title being filled, as well as any specialized manuals, are stored in filing cabinets that lock with combination locks; the combinations are changed after each exam is completed; and only the examiner-in-charge and the subject matter experts know the combination to the filing cabinet. DCAS told us that once the tests are administered, the completed exams are kept in a locked safe, within a locked room, and only the DCAS director of Operations and Administration and the DCAS deputy commissioner know the combination to the safe.⁶

Recommendation 1: The Exam Unit must tighten security over all of its materials throughout the examination process and establish responsibility and accountability for security breaches.

NYC Transit accepted our recommendation. During the course of our review, the agency completely reconfigured the Exam Unit office space to physically separate the two distinct functions of this unit. The Administration Group, which collects applications and money orders, and is responsible for processing and grading the multiple-choice exams through an answer-sheet scanner, now occupies a space monitored by closed circuit television (in addition to pre-existing access cards). Additionally, the ungraded answer sheets are stored in locked cabinets that are only accessible to three members of the Administration Group. The Development Group, which secures subject matter experts to create both practical and written exams, has now

⁶ Although there is no evidence that the following ploy has been utilized regarding written NYC Transit tests, it bears mentioning that a Port Authority Police Department promotional exam was recently compromised when an examiner photographed the exam using the camera on his cellular telephone. The pervasiveness of compact cell phones with cameras creates a real risk that unsecured exams and other written materials could be compromised quickly and surreptitiously. When we raised this issue with Exam Unit managers they told us that while they do not prevent subject matter experts writing questions for tests from retaining their cell phones during test preparation, they do not expect this to create security issues. According to the managers, their rationale is that the tests are finalized by staff other than the subject matter experts and these experts never see the final version of the exam, which is composed of some questions prepared by the experts and others taken from prior tests..

been divided into teams, each of which utilizes a cabinet with its own combination lock to store the materials, the combination being known only by the members of the team to which it is assigned. The safe is no longer used for the storage of application or testing materials. Further, during a recent visit by OIG investigative staff, Exam Unit management expressed agreement with OIG's suggestion to retain recordings from its closed circuit monitor, at least until certification of the current civil service list.

Exam Administration

Besides the special examiners already discussed, the examiner-in-charge must also recruit “senior examiners” from the ranks of those supervising the title for which the test is being given. During our review, the director of the Exam Unit told us that each candidate who took Car Inspector exam 8080 was assigned a test station and his or her performance was rated by a single special examiner. That examiner recorded a grade for each portion of the test and then calculated the candidate’s total score. Thereafter, the special examiner would give the rating guide to the senior examiner, who would review it, primarily as to the accuracy of the special examiner’s calculations, but the senior examiner generally did not review the substance of the comments to explain the deductions made by the special examiner.

Because the substance of the rating guides is primarily reviewed by a single examiner, OIG was concerned about relationships between the examiner and candidate that might impair an examiner’s objectivity. In particular, OIG expressed concern that there was nothing done to prevent a supervisor from rating the exam of a subordinate. Indeed, it is entirely plausible that a candidate working in the title provisionally could have been graded by his or her supervisor. In fact, neither the special examiner nor the senior examiner was required to alert Exam Unit personnel if a candidate taking the exam was his or her subordinate. The Exam Unit director also told OIG that applicable DCAS procedures only obligated examiners to disclose (by affidavit) if someone (s)he is evaluating is “a relative or close friend,”⁷ and NYC Transit has acknowledged that no steps were taken to prevent supervisor’s from evaluating subordinates.

DCAS, on the other hand, has practical tests administered and graded by DCAS employees assigned to its Technical, Engineering, and License Examining Group, which is dedicated to the administration of practical exams. Because the administration of the exam is completely removed from the agency for which the candidates will be hired, there is no opportunity for a supervisor to administer an exam to his or her subordinate. By contrast, NYC Transit draws its special examiners from the very units for which the test is being administered.

⁷ Each special examiner and senior examiner was required to complete an affidavit provided by DCAS that required them to “notify the Staff Examiner immediately, and in writing, at any time during and after the creation of this examination if a relative or close friend becomes a candidate in this examination.” Citing this language, OIG was told by the Exam Unit director that there was no procedure in place to prevent a supervisor from grading an exam merely because the individual taking it was his or her subordinate. Such a procedure is apparently not contemplated by the DCAS affidavit—likely because the DCAS practice of using an independent examiner for practical tests makes such a procedure unnecessary.

Recommendation 2: NYC Transit should implement procedures that prevent provisional employees from being evaluated by their current supervisors while taking practical exams, including utilizing retired supervisors and outside experts.

NYC Transit accepted this recommendation. The agency will now inform all supervisors, and require an affidavit of acknowledgment, that evaluating their own subordinates is strictly prohibited, and that they are obligated to notify the examiner-in-charge if one of their subordinates is a candidate taking the test.

Exam Integrity

Scoring

The special examiners score the exam by deducting points on the rating guide for incorrect answers, and those deductions must be supported by the special examiner's comments on that guide. However, the Exam Unit director informed OIG that special examiners had been instructed to complete the rating guides in pencil. OIG investigators questioned that approach, given that unauthorized and inappropriate erasures and other changes to rating guides could be made without being obvious, thereby increasing the opportunity for wrongdoing. The director acknowledged our concerns but explained that this was the way it had always been done. He also said that special examiners were not required to explain why they may change a rating guide and that there were no formal procedures for making grade changes or otherwise addressing any "mistakes" a rating guide might contain. Based on our preliminary findings and recommendations, NYC Transit now requires that these guides be completed in non-erasable ink. NYC Transit has also begun drafting procedures to standardize ratings and document changes in the rating process.

The Exam Unit director also told OIG that (at least in theory) the senior examiner and the examiner-in-charge had to review each rating guide and agree on the score; in practice, though, this agreement on score is essentially limited to the accuracy of the arithmetic. Their agreement is signified and confirmed by both of them initialing the front cover of the rating guide. The director also said that ordinarily grading should be completed at the test site and no corrections should be made after both examiners initial the cover sheet.

Grade Reporting

According to the Exam Unit director, the completed and graded rating guides were kept in a locked cabinet at the Exam Unit testing site in Manhattan pending transfer on a weekly basis to the Exam Unit office in Brooklyn. Once back in Brooklyn the rating guides were kept in the safe as discussed above.

According to the director's description of the process, the rating guides should not be changed once they leave the test site. Nevertheless, we were told by two Exam Unit employees that the examiner-in-charge for Car Inspector Exam 8080 changed the exam rating guides after they were transferred to Brooklyn. Further, our review of the rating guides showed that special examiner

comments were erased without any annotation or explanation. Indeed, while OIG found that on seven rating guides the grades on the front were covered with a correction fluid and changed from a failing grade to a passing grade, there was nothing recorded in the rating guides to identify any of the “mistakes” or explain the reason for these changes.

Confronted with these alterations to the rating guides, the examiner-in-charge acknowledged having made them and that he did not initial his changes.⁸ He explained that while he could no longer be certain exactly why he did so given the absence of explanatory notes, his practice was to confine his changes to arithmetic mistakes or deductions that were unsupported by the special examiner’s notes. Nevertheless, when asked by OIG if he would have confidence in the integrity of the exam process if he were a candidate and he were shown these exams, the examiner conceded that he would not.

After OIG showed the exam rating guides to the Exam Unit director, he agreed with us that the grading process must be more transparent. He advised OIG investigators that all notes on the rating guides must now be written in pen. He also advised that after OIG brought the weakness in this procedure to his attention, he instructed his staff to provide a written explanation on the rating guides for any and all changes made. The director observed that while in his view grade changes based on faulty calculations do not require an explanation, his practice when he was an examiner was to make notes on the rating guide. He also expressed his belief that only the special examiner had the authority to erase comments on the guide, and that the examiner-in-charge should not unilaterally change scores except for mathematical errors or insufficient justification for deducting points. The director concluded that the examiner-in-charge had not followed “procedures” and characterized that individual’s actions here as “sloppy.” As indicated above, though, the Exam Unit director admitted that there were no formal procedures for addressing grade changes or “mistakes.”⁹

The examiner-in-charge supervisor did not review his work and told investigators that she thought that it was common sense that an examiner-in-charge would not erase the examiner’s notes. Notably, there was no training for any examiners—including the examiner-in-charge—regarding how to handle exam materials, and no requirements governing when revision of the rating guide is appropriate and how it should be done. To address these concerns, in the event of any changes to a rating guide, NYC Transit has now drafted procedures requiring completion of a “Corrected Rating or Adjustment Post-Test (CRAPT)” form. The form must be “signed by the Examiner assigned to the test on the day that the error or omission was made, the Examiner assigned to the test, the Manager of the Examiner assigned to the test and initialed by the director.”

⁸ As part of and consistent with the OIG and DANY finding of insufficient evidence that Ganesh had any role in these changes, we determined that none of these seven candidates were mentioned in the emails between her and Zachariah regarding payment for results.

⁹ Six of the seven employees with changed grades were laid off immediately after the civil service list was certified because their “passing” test scores did not place them high enough on the list to retain their positions. All six were reappointed as car inspectors from that list when their respective spots were eventually reached. The seventh received a passing grade on a previously administered and apparently unaltered test (Exam 7029)]. He later took exam 8080, but his eventual appointment in May 2010 as a car inspector was based on the results of his prior exam.

Recommendation 3: NYC Transit must create written rules and guidelines for the handling of test materials, including specification of when, by whom, under which circumstances, and for what reason, a rating guide may be altered as to test score or otherwise. Moreover, all examiners and supervisors must be properly instructed and trained regarding these new procedures.

NYC Transit accepted this recommendation and expects to implement its newly drafted guidelines in March 2013. Using a step-by-step approach, the new guidelines appear to address all aspects of the exam process, beginning with the timeline for creating and administering the test through the scoring, grade recording, review, and correction, of the exam rating guides. The guidelines include very specific instructions about how to document deductions, the need to complete the rating guides in pen, and, should any item be “crossed out,” the reason for that change. As to OIG’s recommendation that all examiners and supervisors be properly instructed about new procedures, NYC Transit stated that it will keep all Exam Unit employees current on all new procedures through meetings and training sessions.

Recommendation 4:

Following development of the recommended guidelines, NYC Transit should enforce rules through greater oversight and appropriate discipline.

NYC Transit accepted this recommendation and is developing a Request for Proposal to retain the services of an external testing consultant to conduct periodic reviews, as appropriate, of the Exam Unit procedures and testing practices. The consultant will be required to identify any deviations from standard testing practices, opportunities for improvement and recommend changes to the existing examination process.

Delayed Grade Transmission

Compounding the deficiencies explained above, the rating guides for 8080 were held at NYC Transit’s Exam Office for nearly six months after the last test was administered before transmittal to DCAS in July 2010, thereby delaying the process and creating a risk that the grades could be altered. According to DCAS, grades and rating guides should be transmitted as soon as possible, and the length of this delay was unusual. The Exam Unit director told OIG investigators that submission of practical test exams to DCAS can “take from three to five months.” He said that “factors affecting the processing time [by the examiner-in-charge] include the size of the candidate population of the particular exam and the work load and priorities of the unit at that time.” He also told OIG that the examiner-in-charge must check the math on each sheet of paper in each rating guide and make sure the candidate’s final score has been correctly recorded on the “candidate score sheet.”¹⁰

During the course of this review, NYC Transit and DCAS entered into a new Memorandum of Understanding, in accord with which NYC Transit now retains all of the testing materials, but

¹⁰ The candidate score sheet is a list of all of the candidates, grouped by test date, containing their name and social security number, with each candidate’s score written beside his or her name.

still transmits the grades to DCAS, which retains responsibility for certifying and publishing the Civil Service lists.

Recommendation 5: NYC Transit must expeditiously transmit candidates' grades to DCAS.

NYC Transit accepted this recommendation. The agency has set a goal of one month from the latest current practical exam in which to review test materials and enter verified test results. The agency has also set a goal of one month from verification to transmit the scores to DCAS. In the event that other exam priorities or lack of resources impede these time frames, NYC Transit now requires that examination managers develop an action plan and timeline to ensure that the scores are transmitted at the earliest possible date.

ATTACHMENT

PREVIOUS OIG REPORT ON TESTING VULNERABILITIES

Some years ago, the Office of the MTA Inspector General made similar findings of “improprieties or irregularities” in a series of reports on the examination and hiring process NYC Transit performed in conjunction with DCAS, and also made the following recommendations:

- Improve security in the Examination Unit location where item writers prepare questions.
- 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.
- 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. In further support of this earlier recommendation, we note that in the context of practical exams the risk of a biased examiner is even greater where a supervisor administers the test to a candidate whom he or she directly supervises.
- Human Resources should also consider engaging subject matter experts from other transportation agencies, including retirees.¹¹

As noted within the body of the attached report, it is our view that NYC Transit has substantially complied with these earlier recommendations.

¹¹ In this regard, the report made an important observation regarding cost savings that is still relevant: “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.”