



Barry L. Kluger
Inspector General

Office of the Inspector General

Metropolitan Transportation Authority

Two Penn Plaza, 5th Floor

New York, New York 10121

212-878-0000

February 7, 2018

Mr. Andrew Byford
President
MTA New York City Transit
2 Broadway, 30th Floor
New York, NY 10004

**Re: Improper Disclosure of Cost
Estimates by NYC Transit Employee
MTA/OIG #2018-02**

Dear Mr. Byford:

In August 2017, the Office of the Inspector General (OIG) completed its investigation regarding the improper transmittal of confidential MTA New York City Transit (NYC Transit) construction cost estimates by Chengad Shridhar (Shridhar), an estimating consultant employed by AECOM. Our investigation found that Shridhar had improperly sent cost estimates that he had prepared to both his AECOM email account and his personal Gmail account, and to other parties who were not authorized to receive the estimates. In response to OIG's findings, NYC Transit dismissed Shridhar, and reassigned the estimates that he had mishandled to other Capital Program Management (CPM) employees for re-estimation.

Our finding of improper disclosure of confidential cost estimates by Shridhar raised concerns regarding the integrity of NYC Transit cost estimates. Thus, we initiated a review of NYC Transit's policies and practices with respect to the confidentiality of the agency's estimates.

While our review is ongoing, we have identified a NYC Transit employee, Nemesio Aguila (Aguila) (NYC Transit Pass #M39964; BSC ID #1234868), who transmitted cost estimates pertaining to three separate NYC Transit capital construction projects and an Additional Work Order (AWO) from his NYC Transit email account to the personal email account of his friend, who is not authorized to receive such correspondence. Aguila told OIG that he knowingly transmitted confidential information to his friend in order to help the latter improve his understanding of estimating, and ultimately, to help him acquire a position as a cost estimator. By transmitting confidential material OIG concludes that Aguila violated the New York State Public Officers Law (Public Officers Law) and the MTA All-Agency Code of Ethics (Code of Ethics).

Aguila has worked in NYC Transit Capital Program Management's (CPM) Cost Estimating Unit (Estimating), a subdivision of CPM Program Controls, since January 2013. From January 2013

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to November 2013, Aguila was assigned to work for Estimating as a consultant estimator pursuant to a contract between NYC Transit and the Kohl Group. Aguila resigned his position at the Kohl Group, and was hired by NYC Transit on November 11, 2013. He told OIG that he is responsible for producing cost estimates for capital construction projects.

Confidentiality of Cost Estimates

Section 74.3.c. of the Public Officers Law states:

No officer or employee of a state agency... should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.

The MTA Code of Ethics defines Confidential Information to mean

Information, whether or not set forth in writing, that is available to an Employee only because of such Employee's position within an MTA Agency and which is treated by such MTA Agency as being confidential or which the Employee has reason to believe is confidential. Information does not have to be formally labeled "confidential" to be confidential.

Further, Code of Ethics, Section 4.03 Confidential Information, states that

Employees shall not disclose Confidential Information without permission of the General Counsel of the MTA Agency at which such individual is employed for any purpose, or use such information to further their personal interests.

According to the Senior Director for Estimating, cost estimates for capital construction projects are confidential documents. Each page of a cost estimate is to be marked "Confidential," and is to be strictly controlled with respect to dissemination. Estimators must not share cost estimates with any personnel not on an approved standard distribution, which is limited to the project's Construction Manager and Design Manager, the Senior Director of Cost Estimating, Deputy Vice President of Project Controls, the estimator's Manager, and the Director of NYC Transit Capital Planning and Budget. All personnel on the distribution list are NYC Transit employees. Further, estimators should not transmit estimates to or from a personal email address.

Aguila Transmitted Cost Estimates to a Personal Friend

Aguila transmitted the following NYC Transit cost estimates, all clearly marked “Confidential,” and other documents, as noted below, from his NYC Transit email account to the personal email of Laurente De Guzman (De Guzman):¹

1. On February 21, 2017, Aguila transmitted the following confidential cost estimates to De Guzman. In addition, Aguila also copied his personal email.² It should be noted that every page of the two cost estimates transmitted on this date were marked “Confidential.”
 - a. C-34925 Overcoat Painting and Steel Repair at Myrtle Avenue de-Sales Pl. Jamaica Line Preliminary Engineering Estimate.
 - b. C-34768 Structural Rehabilitation of Elevated Structure from Hammel’s Wye to Far Rockaway and Rockaway Park and Overcoat of Six Bridges AWO #13.
2. On February 24, 2017, Aguila transmitted Planning No. ST01-7933 Additional Street Entrance at Myrtle and Broadway Station Master Plan Estimate to De Guzman. Every page of the cost estimate was marked “Confidential.” In addition to the cost estimate, other attachments to the email were the 12 page Master Plan document for the project, and a project-related drawing.
3. On June 26, 2017 Aguila transmitted B-62028 Storage Tank Replacement East New York and Gun Hill Bus Depot Final Engineering Estimate to De Guzman. The “Project Summary” page of the document was marked “Confidential.”

Aguila was interviewed by OIG staff on January 18, 2018. Aguila told OIG that when he began work as a consultant cost estimator with NYC Transit in 2013, he was aware of NYC Transit’s expectations regarding the confidentiality of cost estimates. Aguila stated that NYC Transit prohibits the sharing of costs estimates with contractors, and does not allow estimates to be transmitted to or from any personal email accounts. Aguila also told OIG that Estimating Managers and the Senior Director of Estimating reinforce the confidentiality guidelines with Estimating staff. He stated that “they [CPM Estimating Managers and the Senior Director] always tell us not to send to consultants or personal emails.”

Aguila told OIG that De Guzman is a personal friend, known to him for approximately 15 years. He went on that De Guzman had lived in the Philippines, had a background in cost estimating and wanted to find a job in the United States in the cost estimating field. When asked whether he

¹ De Guzman’s personal email address is lorryidge@aol.com.

² Aguila’s personal email address is naguila1@verizon.net.

had ever transmitted confidential estimates to De Guzman or to anyone, Aguila stated that he transmitted only “take-off sheets”³ to De Guzman with figures that he claimed were unrelated to any NYC Transit capital construction project. Aguila claimed that he had contacted DeGuzman so that his friend could familiarize himself with the format that he (Aguila) uses when preparing cost estimates for NYC Transit.

February 21, 2017 Email

When shown the email dated February 21, 2017 that he had sent to De Guzman, Aguila confirmed that he had transmitted the correspondence from his NYC Transit email to De Guzman’s personal email account. Aguila confirmed that he had also sent the email to his personal email account. The email contained a message written by Aguila in Tagalog, which he translated as “review the attached samples for format.” It should be noted that Google translates the message as “Well, sample estimates. You can review and analyze the format.”⁴ Aguila claimed that he had intended to transmit only the format that he uses for preparing estimates, not the full estimate. However, when OIG confronted Aguila with copies of the estimate, he acknowledged that the documents that he had attached to the email were in fact cost estimates that he had prepared for NYC Transit projects. He also acknowledged that the documents were marked “Confidential,” and admitted that he should not have transmitted the confidential estimates to his personal friend, but claimed that this was the only time that he had transmitted confidential NYC Transit estimates to De Guzman.

February 24, 2017 Email

OIG showed Aguila the email dated February 24, 2017, plus attachments which included among other documents, the Estimate for Planning No. ST01-7933 *Additional Street Entrance at Myrtle and Broadway Station Master Plan*, and actual take-off sheets developed for the project. The email was sent from Aguila’s NYC Transit account to De Guzman’s personal email account. Aguila confirmed that he had sent the email to De Guzman. The email contained a message written by Aguila in Tagalog, which he translated as “review the information for the format. You can have ideas”.⁵ When confronted with the email and copies of the estimate, Aguila acknowledged that the documents attached to the email were cost estimates that he had prepared

³ Take-off sheet are used by construction cost estimators to simplify the work and improve accuracy. Take-off sheets typically include all the requirements for construction, including types and quantities of materials, labor hours, the number of expected work days and the sequence of work.

⁴ Aguila wrote the following message in his February 21, 2017 email to De Guzman, “Pare, samples na mga estimates. Puwede mong reviewhin at pag aralan ang format”. OIG used Google Translate to translate the message.

⁵ Aguila wrote the following message in his February 24, 2017 email to De Guzman, “Pare, review hin mo din ito. Maliit lang pero puwede kang magka idea. Thanks.” Google translates the message as “Well, do not hesitate to review it. It’s a little bit but you can have ideas. Thanks.”

for a NYC Transit project. He agreed that he should not have transmitted the confidential estimates to his personal friend, but claimed that we would not find any other occurrences.

June 26, 2017 Email

OIG showed Aguila an email dated June 26, 2017 that was transmitted from Aguila's NYC Transit email account to De Guzman's email account. Attached to the email were cost estimates for NYC Transit project B-62028 Storage Tank Replacement East New York and Gun Hill Bus Depot. Aguila acknowledged that the documents attached to the email were cost estimates that he had prepared for a NYC Transit project, and confirmed that he had transmitted the email.

The June 26, 2017 email prompted several exchanges between Aguila and De Guzman written by the parties in Tagalog. In one exchange Aguila claimed that he had told De Guzman that he had been informed by the Senior Director for Estimating that De Guzman would soon receive an assignment as a consultant cost estimator assigned to CPM Estimating once "funding for the position came through."

The Senior Director, Estimating, told OIG that he had interviewed De Guzman in May 2017 for a position as a consultant cost estimator pursuant to a contract between NYC Transit and Ellana, Inc. The Senior Director said that he had planned to hire De Guzman, but that funding for the position did not materialize. He told OIG that he did not know that Aguila had sent confidential estimates to De Guzman, and certainly did not authorize Aguila to do so.

Aguila told us that he believed that De Guzman would be assigned to Estimating, and his June 26, 2017 email to De Guzman was prompted by his desire to show him how "things are done at the MTA" so that he would be knowledgeable of the estimating process.

FINDINGS

1. Aguila transmitted confidential cost estimates to a personal friend on three separate dates in 2017 in violation of Section 74 of the Public Officer's Law and Section 4.03 of the MTA Code of Ethics, which prohibits unauthorized transmittals of confidential information. According to Senior Director, Estimating, Aguila was not authorized to transmit the estimates to a personal friend, and Aguila himself acknowledged that his actions were a breach of confidentiality.
2. Aguila was uncooperative during his OIG interview, in that he repeatedly tried to minimize the frequency and the severity of his disclosure of confidential information until OIG confronted him evidence of the breach of confidentiality.

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RECOMMENDATION

We recommend that NYC Transit impose discipline against Mr. Aguila, up to and including termination.

We appreciate your courtesy and cooperation. Please advise me within 15 days of your receipt of this letter of any actions that you decided to take with regard to the foregoing. Should you have any questions, or need additional information, please contact Executive Deputy Inspector General Elizabeth Keating at (212) 878-0022.

Very truly yours,



Barry L. Kluger