



Carolyn Pokorny  
Inspector General

## Office of the Inspector General

Metropolitan Transportation Authority  
One Penn Plaza, 11th Floor  
New York, New York 10119  
212-878-0000

June 17, 2019

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

**Re: NYC Transit Policy on  
Non-Employee Access Passes  
MTA/OIG #2019-06**

Dear Mr. Byford:

The Office of the MTA Inspector General (OIG) has completed its investigation into an allegation that a MTA NYC Transit (NYC Transit) Safety Management employee harassed the minority business owner of the prime contractor at an MTA project site. While our investigation did not substantiate the allegation, we found that NYC Transit lacked sufficiently clear guidelines on the handling of Non-Employee Access Passes. We recommend that NYC Transit review and revise its guidelines, specifically Policy/Instruction No. 1.13.0: Non-Employee Access Passes (Policy No. 1.13.0) to clarify the definition of restricted areas, designate personnel authorized to confiscate or request deactivation of Non-Employee Access Passes, and establish the circumstances under which such action can be taken.

Our investigation confirmed that there was a verbal altercation between a NYC Transit Safety Management employee and a minority business owner at a NYC Transit project site located at 123<sup>rd</sup> Street and Lexington Avenue in Manhattan. The altercation occurred in the presence of several NYC Transit employees, including an employee from Capital Program Management (CPM), as well as employees of the business owner. At the time of the incident, the business owner was working on a project overseen by CPM and had a NYC Transit Non-Employee Building Access Pass (Pass) which gave him access to restricted areas. During the incident the Safety Management employee confiscated the business owner's Access Pass and directed him to leave the project site. He also told the business owner that he would not be permitted back on the site until he retrieved the Pass from MTA Headquarters at 2 Broadway, New York, NY. After the business owner left the site, the Safety Management employee tried to turn over the confiscated Pass to the CPM employee. However, the CPM employee refused to accept the pass and stated that he was uncomfortable taking it. The pass was eventually turned in to the CPM employee's supervisor.

During OIG's investigation, staff conducted several interviews. The business owner stated that he believed the confiscation of his pass was atypical and opined that the Safety Management employee did not have the authority to take the pass. Based on their interviews, NYC Transit

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employees did not have a consistent understanding of who was authorized to confiscate a pass or when such action was permissible. The employees also were not certain about which locations require non-NYC Transit employees to have a pass for entrance to the sites. According to a manager of the NYC Transit Security Department, Access Pass Unit, any employee can confiscate or request the deactivation of a pass when there are grounds to do so, such as the existence of a safety issue. However, the manager acknowledged that NYC Transit's policy does not explicitly state this. Notably, according to the manager, the project site in question did not require a pass because passes are only required for NYC Transit locations that are manned by its security agents or contractors hired to conduct security functions, or in locations that require individuals to swipe into a security system to gain entry. The manager acknowledged that this is not clearly stated in the policy.

Policy No. 1.13.0, section V (B) states that a Building Access Pass "[s]hall be issued to . . . consultants/contractors and their foremen/supervisory personnel employees, who require access to office buildings, depots, yards, shops and other NYCT facilities." Section IV (B), defines Restricted Areas as "Areas of NYCT's infrastructure not open to the general public for transportation or passage. Restricted areas include, but are not limited to: buildings (including 370 Jay Street, 130 Livingston Street, and 2 Broadway etc.), storerooms, operational workrooms, shops, depots and yards." Based on this definition, it is unclear whether the NYC Transit project site in the incident described herein was an area that required an Access Pass.

#### RECOMMENDATION

NYC Transit should review and revise Policy/Instruction No. 1.13.0 to:

- A. clarify the definition of restricted areas;
- B. designate personnel authorized to confiscate or request deactivation of Non-Employee Access Passes; and
- C. establish the circumstances under which such action can be taken.

As always, we appreciate your continued courtesy and cooperation. Please advise me within 30 days of any actions you take pursuant to this letter. Should you have any questions, please contact me at (212) 878-0050 or Deputy Inspector General for Legal and Investigations Demetri M. Jones at (212) 878-0279.

Very truly yours,

  
Carolyn Pokorny