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January 24, 2013

Mayor Noam Bramson
Members of the City Council
City of New Rochelle
515 North Avenue
New Rochelle, New York 10801

Report Number: S9-12-11

Dear Mayor Bramson and Members of the City Council:

A top priority of the Office of the State Comptroller is to help officials manage their resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and City Council governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard assets.

In accordance with these goals, we conducted an audit of eight units comprising four cities and four towns throughout New York State. The objective of our audit was to determine if these units have conducted background checks for individuals involved in the municipalities' youth programs. We included the City of New Rochelle (City) in this audit. Within the scope of this audit, we examined the policies and procedures of the City. We also examined various records including employment records, youth program documentation, and third party contracts for the period January 1, 2010 to April 13, 2012.

This report of examination letter contains our findings and recommendations specific to the City of New Rochelle. We discussed the findings and recommendations with City officials and considered their comments, which appear in Appendix A, in preparing this report. City officials agreed with our findings and recommendations and indicated they planned to initiate corrective action. At the completion of our audit of the eight units, we prepared a global report that summarizes the significant issues we identified at all the units audited.

Summary of Findings

The City has not adopted a policy or developed written procedures for background screening of individuals providing services to City youth programs, except for those hired for summer children's camps and the therapeutic¹ programs. In accordance with Public Health Law Article 13-B, the City submits the names of the individuals hired to work at the children's summer day camps to the Division of Criminal Justice Services (DCJS) for checking against the New York State Sex Offender Registry prior to the individual's first day of work and annually thereafter. The therapeutic programs adhere to the regulations of the Office for People With Developmental Disabilities (OPWDD) in which all individuals working in therapeutic programs are required to have a criminal background check performed prior to having unsupervised physical contact with the children.

However, the City does not otherwise have a background check process or an entity-wide monitoring system to ensure that the checks are completed for individuals involved in any City youth programs other than the children's summer day camps and the therapeutic programs. We found that nine names of individuals hired for children's summer day camps were omitted from a list of 119 names that the City submitted to DCJS for checking against the Sex Offender Registry. All individuals hired in the past year, 2011, for the therapeutic programs had determination letters documenting that criminal background checks were performed except for one. We also tested 137 names of individuals providing services to programs to determine if there was any public record documenting either a sex offense or criminal history. The service providers included full- and part-time City employees and independent contractors. Our tests of the names disclosed no findings.

Even though the law does not mandate that municipalities perform background checks on all individuals who provide services for youth programs, such screenings – whether for sex offenses, criminal history, or both – are essential to safeguard the participants in those programs, and can help reduce the municipality's potential liability in the event of legal action.

Background and Methodology

The City of New Rochelle is located in Westchester County, with a population of approximately 77,000 people. The City provides youth program services to its residents. The City's 2010 actual expenditures for youth programs were approximately \$517,000. Budgeted youth program expenditures for 2011 and 2012 were approximately \$508,000 and \$370,000 respectively.

The City is governed by a Council-Manager form of government. The City Council (Council) is comprised of seven elected members: the Mayor and six council members. The Council is responsible for the general management and oversight of the City's financial and operational affairs. These responsibilities include setting policies and establishing effective controls over operations. The Mayor is the presiding officer of the City Council. The City Council has appointed a City Manager to assist in the daily administration and operation of the City. The City offers a multitude of youth programs through the Parks and Recreation Department and the Youth Bureau. The Parks and Recreation Department and the Youth Bureau merged two years ago and currently work together to provide services to the youth in the community. The

¹ Therapeutic programs were described by the City as programs specifically offered for people with developmental disabilities.

Commissioner of Parks and Recreation oversees this combined department. The Deputy Commissioner of Parks and Recreation, who is also the Executive Director of the Youth Bureau, is responsible for organizing the programs offered to the community, which includes screening prospective staff and contracted individuals needed for specialty services. There were approximately 2,000 participants enrolled in 87 City youth programs over our scope period.

Youth programs, which are often offered as a response to community interest, encompass a wide variety of activities. These include “middle school drop in” programs, tutoring, leadership programs, ice skating, summer camps, therapeutic programs, skateboard lessons, a playground program, swimming lessons, seasonal or holiday special events, and sports. With these youth programs, parents are entrusting their children’s learning experience and safety to the adults (full- or part-time employees, and independent contractors) that the City engages to administer the programs. A municipality can help create a safe environment for community youth through background checks in the hiring and screening of all individuals associated with the municipality’s youth programs. During the employee hiring process, two types of background checks can be conducted and documented: a criminal history background check, which is done with the consent of the individual, and a search of the State’s Sex Offender Registry, which is public information.

New Federal legislation that has been introduced but not yet enacted, the Child Protection Improvements Act of 2011,² focuses on several aspects of criminal history investigations for child service organizations. However, while on the State level the Education Department has requirements³ for school districts for background checks on individuals dealing with students, there is no one law or regulation that provides overall guidance for youth programs found in municipalities. Instead, depending on the type of program offered, specific legislation guides the level of background check screening required. For instance, Article 13-B of Public Health Law requires children’s camp⁴ operators to determine whether an employee or volunteer is listed on the NYS Sex Offender Registry. This check, which DCJS conducts on names submitted by the City, must be completed prior to the day the individual starts work at the camp and annually thereafter. In addition, the City must also comply with the OPWDD regulations requiring all individuals working in the therapeutic programs have a criminal background check. A provider of services may temporarily approve a subject party for employment or a volunteer opportunity on a provisional basis while the results of the criminal history record check are pending, so long as such party does not have unsupervised physical contact with persons receiving services. Additionally, national youth sports groups recognize the need to provide general guidance for youth program administration, including a criminal history background check for all volunteers.

² The Child Protection Improvements Act of 2011 would amend the National Child Protection Act of 1993 to direct the Attorney General to: (1) establish policies and procedures for a program for national criminal history background checks for child-serving organizations, (2) assist such organizations in obtaining access to nationwide background checks, (3) establish procedures for ensuring the accuracy of criminal history records, (4) identify individuals convicted of serious misdemeanors or felonies involving children, and (5) collect demographic data relating to individuals and organizations covered by this Act and make reports to Congress on such data. The 2011 proposed legislation limits the liability of a child-serving organization for failure to conduct criminal background checks or to take adverse action against employees with a criminal history; imposes limitations on the disclosure or use of criminal history records; and amends the PROTECT Act [of 2004] to extend the Child Safety Pilot Program.

³ Part 87 of the Regulations of the Commissioner of Education and the Safe Schools Against Violence in Education (SAVE) legislation (Chapter 180 of the Laws of 2001)

⁴ The law applies to all children’s camps (day, traveling day, and overnight) and to all prospective employees and volunteers at the camp regardless of their job title/responsibility or employment status.

To complete our objective, we interviewed City officials and staff, and reviewed policies and procedures to identify the controls established. We reviewed supporting documentation of the hiring process to determine if background checks were completed prior to hiring. We also tested individual names against public records to determine if the safety of the youth participating in programs was jeopardized.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit is included in Appendix B of this report.

Audit Results

The City has not adopted a policy or developed written procedures to provide guidance for background screening processes for youth programs, but does have unwritten procedures. The City's employment application contains a statement that all criminal history responses are subject to verification and includes a consent to allow the City to do so. City officials told us that the background checks for individuals in the youth programs (full- or part-time employees or contractual providers/independent instructors, whether year-round or seasonal) are not required for employment or participation, with the exception of the children's summer day camp personnel as required by law, and therapeutic program personnel, as required by OPWDD guidance. The names of these individuals providing services to the camps are submitted to DCJS for checking against the New York State Sex Offender Registry prior to the individual's first day of work at the camp and annually thereafter. Additionally, the City's therapeutic programs must comply with OPWDD guidance, which requires all individuals who wish to be employed, volunteer and/or independently contracted with to complete a criminal background check prior to having unsupervised physical contact with the children.

The Parks and Recreation Department has merged with, and now includes, the Youth Bureau. Some programs like summer camps and therapeutic programs are under the direction of the Parks and Recreation Department, while other programs, like leadership programs tutoring, and an afterschool program, are under the direction of the Youth Bureau. However, the Parks and Recreation Department has oversight over all youth programs. The Parks and Recreation Department and Youth Bureau hires part-time, year-round and seasonal help after the completion of an application, interview, reference check and drug testing. The City bases its hiring, in part, on being familiar with individuals whom the City employs from year to year, referrals from known community residents, knowledge of individuals with school district affiliations, and interviews.

Independent contractors generally administer the youth programs including basketball, ice skating, tutoring, and the "middle school drop-in" program. The City does not use a background check process on these independent contractors, and therefore has no process to monitor these checks. Additionally, the Parks and Recreation Department does not have a monitoring process to ensure that all children's summer day camp staff names are sent to the DCJS to have the names checked against the Sex Offender Registry prior to the first day of employment and annually thereafter. We tested 33 names submitted to the DCJS in 2010 and found that the City omitted three names, while in 2011, 35 names were submitted with six names being omitted from the list. City officials told us that these omissions occurred because five were simply overlooked and the others would have had a background check due to their full-time employment; three were working in school districts and one was a firefighter who acted as an

Emergency Medical Technician at the camp. There was no documentation available from the City that showed the exclusions were acceptable according to the requirements.

Further, the City has one therapeutic program that is a children's day camp and is required to submit names to DCJS as described previously. Of the 24 names submitted to DCJS in 2010 and the 27 names submitted in 2011, no staff names were omitted. In addition, OPWDD provides criminal background check guidance for newly hired individuals working in therapeutic programs. A determination letter, provided by OPWDD, indicates that a criminal background check was conducted and a determination of the results was communicated. We reviewed the determination letters provided by the City for all individuals who were new hires in 2011⁵ who worked in the therapeutic programs, except for one. Only partial paperwork was provided by the City for this one individual; no determination letter was available, only a consent form from the individual allowing a criminal background check to be conducted.

We also tested 137 names of individuals providing service to the youth programs to determine if there was a public record⁶ documenting either a sex offense or a criminal history. These individuals included full- and part-time City employees, and independent contractors. Our tests of the names disclosed no findings. Nonetheless, background checks of all individuals who provide services to the City's youth programs are not only in the City's best interest in protecting its children against unsafe individuals, but can also help protect the City against liability from possible legal action.

Recommendations

1. The Council, Mayor and City officials should develop and implement written policies and procedures for a background check of all individuals who are providing, or are expected to provide, services for youth programs.
2. City officials should institute a monitoring process to ensure background checks are performed for all individuals that provide services for youth programs. As part of this process, City officials should ensure all summer playground camp staff names are sent to the DCJS to have the names checked against the Sex Offender Registry prior to the first day of employment, and annually thereafter.

The Council has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Council to make this plan available for public review in the Clerk's office.

⁵ OPWDD guidance requires that documentation older than one year be destroyed; therefore, we did not look at 2010.

⁶ Public information available for New York State includes the Sex Offender Registry from the DCJS and state prison records from the Department of Corrections.

Our office is available to assist you upon request. If you have any further questions, please contact Ann Singer, Chief of Statewide Audits, at (607) 721-8306.

Sincerely,

Steven J. Hancox
Deputy Comptroller
Office of the State Comptroller
Division of Local Government
and School Accountability

APPENDIX A

RESPONSE FROM CITY OFFICIALS

The City officials' response to this audit can be found on the following page.



William V. Zimmermann
Commissioner

City of New Rochelle
New York

July 17, 2012

Ms. Ann Singer, Chief Examiner
Office of the State Comptroller
State Office Building, Room 1702
44 Hawley Street
Binghamton, New York 13901

Re: Responding to OSC Audit report #S90-12-11

Dear Chief Examiner Ann Singer;

In accordance with your recent audit and findings related to the City of New Rochelle's policies and procedures for a background check of all individuals who will provide or are expected to provide services to youth programs, please see the following formal response:

It is our intent, working closely with our local City Officials, Mayor and City Council to develop Administrative Regulations that create a written set of procedures to strengthen and insure a comprehensive background check and monitoring policy be implemented annually for all individuals to be employed full-time, part-time, seasonal and on a contractual basis who will provide direct service to youth. Ultimately, our intent is to ensure that names of individuals who provide or are expected to provide service to youth are sent to DCJS to have these names checked against the SEX OFFENDER REGISTRY prior to first day of employment.

We plan to recommend the following written procedures be adopted as part of a new Administrative Regulation and are included in the 2013 local budget cycle discussions:

1. All youth related employment hires (full/part-time, seasonal and/or contracted) must include background/reference check, local drug testing, finger printing, and DCJS Sex Registry Clearance. Formal check list developed and completed by each Program Director.
2. Monitoring Process will be instituted to verify the above procedures have been conducted by applicable staff. Signature of the Commissioner of Parks and Recreation and/or designee required to ensure background check policy have been performed.
3. All job applications will include an applicant waiver acknowledging agreement to submit to background checks for both sex offender and criminal offenses.

The above response will require further analysis to determine potential budgetary or legal impacts as we move forward.

Sincerely,

William V. Zimmermann
Commissioner

CC: Hon. Noam Bramson, Mayor
Charles B. Strome, City Manager
Howard Rattner, Commissioner of Finance
Kelly Johnson, Deputy Commissioner/Youth Bureau Director

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

We reviewed the City's policies and procedures to gain an understanding of the controls in place for the screening process of individuals involved in youth programs and to determine if the background checks are part of the process. Youth program records, background investigation reports, and employee records were reviewed to identify names for testing.

We reviewed available records that identified youth programs offered, the types of individuals providing services for each program, and personnel file documents for City employees, looking for background check documentation. We listed all individuals by youth program, if the individuals could be identified. We then compiled the individual names into a list of those that did not have a completed background check documented. We then tested all identified names using software⁷ that accesses public records to determine if the individual has either a criminal history or a registered sex offense.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁷ The software accesses public records only if the records are reported in electronic format.