

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

In re: MARCELLUS BAILEY

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OEIG Case # 10-00342

OEIG FINAL REPORT (REDACTED)

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Commission to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report’s factual allegations or legal conclusions before the Commission.

The Executive Ethics Commission (“Commission”) received a final report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Governor’s Executive Inspector General and to Marcellus Bailey at his last known address.

These recipients were given fifteen days to offer suggestions for redaction or provide a response to be made public with the report. Certain information contained in the proposed public response may have been redacted in accordance with the Commission’s determination that it should not be made public. The Commission, having reviewed all suggestions received, makes this document available pursuant to 5 ILCS 430/20-52.

FINAL REPORT

**I. Allegation**

The OEIG received a complaint alleging that Illinois Department of Human Services (DHS) Oak Park caseworker Marcellus Bailey was processing lists of Social Security Numbers (SSNs) between May and June 2010, without authorization. The OEIG concludes that the allegation is **FOUNDED**.

## II. Background

### a. Marcellus Bailey's Employment History

Marcellus Bailey (Bailey) has been a State employee for 25 years. For the last 12 years, he has been a caseworker in the DHS Medical Fields Operation. Bailey's normal business hours are 8:30 a.m. to 5:00 p.m. Bailey primarily works with nursing homes, gathering information on residents, and tracking resident income changes, admissions, and discharges. Bailey's responsibilities include checking clients' quarterly wages so that benefit levels can be determined or adjusted, as necessary. Bailey services between 40 to 500 DHS clients at seven nursing homes.

### b. Interview of [redacted]

[Redacted name and identifying information]. [Redacted] stated that Bailey's duties include wage verification of facility residents. [Redacted] stated that it is necessary to check facility residents' wages through the State Automated Wage Verification System (AWVS) in order to determine State benefits.

[Redacted] told OEIG investigators that Bailey has a second job, with Primerica Financial. However, Bailey does not have a secondary employment request on file with DHS.

[Redacted] confirmed staff observations that:

- On or about March 20, 2010, Bailey was using the AWVS system while in possession of a non-DHS document containing a list of names. When a DHS employee approached Bailey, he turned the papers over and closed the computer screen.
- On or about April 20, 2010, a DHS employee overheard Bailey talking on his office telephone saying, "\$4,800 a quarter." However, as an employee approached Bailey's computer, he minimized the browser screen. [Redacted] told the OEIG that Bailey's statement appeared to refer to AWVS data.
- On or about April 21 or 22, 2010, an employee reported seeing Bailey using the AWVS system to check wage information in the name of "Carter." An employee also overheard a telephone call during which Bailey appeared to be reading aloud from a document containing AWVS information.<sup>1</sup>
- On June 7, 2010, [another employee] discovered a fax left on a DHS machine. The document reflected a business telephone listing for Crescent Home Health Care, Inc. (Crescent), 6160 N. Cicero Ave., Chicago, IL 60646, 773-427-1220. The fax contained the notation: "Contacted (called) on 06/07/10." [Redacted] said she called that telephone number and spoke to a woman who refused to identify herself or

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<sup>1</sup> The OEIG determined that no calls were made from Bailey's desk on April 21, 2010, but that three calls were made on April 22, 2010.

answer questions. [Redacted] told the OEIG that the names in the document left on the DHS fax machine included the names of long-term care clients.

- On July 12, 2010, Bailey was seen entering SSNs in AWVS. [Redacted] said that staff saw Bailey slipping under his keyboard a list that appeared to contain names and SSNs.

An OEIG analysis of the document [another employee] discovered on a DHS fax machine on June 7, 2010, revealed that the SSNs associated with the names appearing in the document were entered the AWVS on June 7, 2010, under Bailey's DHS computer pass code. [Redacted] stated that Crescent is not a DHS provider. [Redacted] also said that she compared the June 7, 2010 list of SSNs contained in the faxed document to an official list of SSNs processed by her office during the period and noted that the two lists were completely different. Finally, [redacted] stated that Bailey seldom had reason to check clients' quarterly wages, because her office receives most of that information through nursing homes or from the U.S. Social Security Administration databases.

The OEIG's analysis of Bailey's office telephone records from January 1, 2010 through April 30, 2010, revealed that Bailey repeatedly called a telephone number associated with United Exchange, Inc. (United), located at 6160 N. Cicero Ave., Suite 212, Chicago, IL 60646. United and Crescent maintain offices in the same multi-office building.

OEIG's investigation also revealed that United advertises itself as a research agency conducting searches, skip-tracing, and other services for finance companies, attorneys, and, insurance companies. United's owner, Michael Musick, is an Illinois licensed private detective.

DHS's records reflect that, between January 8, 2010 and April 29, 2010, Bailey called United 22 times, but the phone records could not be reconciled against Bailey's access to AWVS system. An OEIG review of AWVS records from May 18, 2010 through June 16, 2010, disclosed that 6,627 SSNs had been entered into the AWVS database under Bailey's DHS pass code. The number of SSNs entered per session ranged from seven to 663.

### ***First Interview of Marcellus Bailey***

On October 6, 2010, OEIG investigators interviewed Marcellus Bailey. At the interview, per his request, a union representative accompanied him.

Prior to the start of the interview, the OEIG investigators provided Bailey with an Administrative Rights form. The form states, in relevant part, that:

[the subject] understand[s] that all OEIG interviews are strictly confidential and that at no time may [the subject] disclose any details of th[e] interview to anyone other than [the subject's] attorney or representative.

OEIG investigators asked Bailey if he understood his rights, which he confirmed he did. OEIG investigators reminded Bailey that he was prohibited from discussing the contents of his

OEIG interview with anyone other than his counsel or representative. In response, Bailey confirmed that he understood his obligation to maintain the confidentiality of the interview and signed the Administrative Rights form.

OEIG investigators asked Bailey how many SSNs he processes through AWVS per day, but he was unable to provide a figure. Bailey stated that he uses the Social Security Sol-Q system, which only provides Social Security earnings, when required to verify Social Security wages.

OEIG investigators asked Bailey if he ever gave anyone his agency computer pass code to access approximately 6,627 SSNs through the AWVS database. Bailey denied allowing anyone to use his pass code and denied using the AWVS wage information inappropriately. OEIG investigators then showed Bailey copies of AWVS records obtained during this investigation. Bailey then requested his union representative to leave the room.

Bailey continued with his interview without the union representative and informed OEIG investigators that:

- He had received a DHS Employee Handbook, but did not know whether he signed the certification page.
- He had participated in secondary employment with United and with Primerica Financial, but was not aware he had to notify DHS of his secondary employment. That Primerica is a multi-level marketing company where Bailey worked as a part-time District Leader selling insurance for 8 to 10 hours per week.
- He processed SSNs without authorization for an “associate” named [redacted].
- He processed SSNs without DHS authorization for Michael Musick, owner of United. Musick provided SSNs to Bailey so he could obtain wage information.
- He has provided SSNs to Musick for approximately 7 to 10 years.
- He accepted calls from Musick at his (Bailey’s) DHS office.
- He accepted cash from Musick/United for his services at the rate of \$5.00 per page, each typically containing 33 SSNs.
- He said that over time he “got caught up” in running more and more SSNs.
- During the years he worked for Musick/United, he earned an estimated \$10,000 for processing SSNs through the AWVS system.
- On June 7, 2010, he received a list faxed by Michael Musick’s secretary to his DHS office. The document contained 66 SSNs Musick wanted Bailey to process through AWVS.

- He would call United if he had questions about the information Musick sent to him.
- He used his lunch hour to meet Musick outside the DHS office to deliver information to Musick.
- He knew that accessing and/or releasing financial data belonging to private citizens was a violation of DHS policy.
- He last processed SSNs unrelated to his DHS duties shortly before his October 6, 2010 interview with the OEIG. Bailey said he processed 350 SSNs for wage information he later delivered to Musick/United.

Bailey said that [redacted] (redacted) first asked him to process SSNs in the AWVS system for United. Bailey described [redacted] as having a high-ranking position in a State agency, which was eventually “phased out.”<sup>2</sup> He said he could not recall the specific agency where [redacted] worked. Bailey stated that [redacted] has since died. According to Bailey, [redacted] once told him other State employees were also processing SSNs for United. Bailey said he thought some employees might still be doing so, but he did not recall the names of specific individuals.

At the end of the interview, OEIG investigators reminded Bailey that the interview was confidential and that he was prohibited from disclosing information derived from the interview to anyone other than his attorney or representative.

***c. Interview of [redacted]***

[Redacted name and identifying information], stated that AWVS access logs under Bailey’s pass code reflected numerous SSNs were entered manually within seconds of each other.

***d. Second Interview of Marcellus Bailey***

On March 10, 2011, OEIG investigators interviewed Bailey for the second time. Prior to asking him questions, OEIG investigators provided Bailey with the same Administrative Rights form presented to him at his October 6, 2010 interview. The form states, in relevant part, that:

[the subject] understand[s] that all OEIG interviews are strictly confidential and that at no time may [the subject] disclose any details of th[e] interview to anyone other than [the subject’s] attorney or representative.

OEIG investigators also informed Bailey of his responsibilities to keep confidential the matters discussed during his interview and the OEIG investigation. Bailey confirmed that he

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<sup>2</sup> CMS records failed to show an employment history for a “[redacted]” or “[redacted].”

understood his rights and signed the form. Bailey then confirmed the information he had provided OEIG investigators during his first interview was true.

Bailey was then asked if he was still processing SSNs for Musick. Bailey responded that he stopped processing SSNs after his October 6, 2010 interview with the OEIG. Bailey then said that he had met with Musick about a week after his October 6, 2010 interview and informed him that he would no longer process SSNs for Musick. When Musick asked why, Bailey told Musick that he was “done” because he was “under investigation.” OEIG investigators then asked Bailey why he told Musick about the investigation when he was prohibited from doing so. Bailey stated that he believed that the confidentiality provisions only prohibited him from discussing the matter with other State employees. However, Bailey confirmed that he had signed the OEIG Administrative Rights form, which he acknowledged prohibited him from disclosing information derived from his interview to anyone other than his attorney or representative. Bailey stated that Musick contacted him as recently as January 2011 and asked whether Bailey knew of anyone who would process SSNs for him.

Finally, OEIG investigators asking Bailey if he was aware of any other State employees who were processing SSNs for anyone outside of DHS. Bailey said, “No.”

### **III. Analysis**

#### ***a. Marcellus Bailey Violated DHS Rules, Directives and Regulations***

On May 29, 2009, DHS employee Marcellus Bailey signed a certified receipt for the DHS Employee Handbook. By executing the receipt, Bailey expressly agreed he had been asked to read, understand, and remain current with DHS rules, directives, and regulations. Bailey also agreed that any violation, of the rules, directives, and regulations could result in disciplinary action up to, and including, discharge.

By accepting money from Michael Musick and United Exchange, Inc., in exchange for using DHS equipment and time to obtain and then inappropriately disclose confidential State data through the AWVS for non-agency purposes, Bailey in effect participated in bribery. Bailey used his position with the State to inappropriately access private information and then sell that information. Bailey’s conduct violated DHS’s prohibition of participating in, or condoning, fraud, dishonesty, or misrepresentation in the performance of their duties.<sup>3</sup> Bailey’s actions were dishonest and undermined the confidence of the people of Illinois in their government. The OEIG therefore finds as **FOUNDED** the allegation that Bailey violated DHS rules.

#### ***b. Marcellus Bailey Violated DHS Rules on the Personal Use of State Computers***

Bailey’s conduct also violated DHS rules prohibiting the personal use of State computers for non-State business or for personal gain.<sup>4</sup> Bailey violated this DHS rule by accessing agency computers without authority to obtain confidential wage information for Musick. Bailey’s reason for doing so was for personal gain, as Musick paid Bailey for the information. Bailey admitted

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<sup>3</sup> DHS Employee Handbook, Section V-1(1).

<sup>4</sup> DHS Employee Handbook, Section V-1(12); Handbook Section V-10, *Use Of Computers*.

that Musick paid him a total of \$10,000 for confidential information relating to what amounts to 66,000 people (\$10,000 divided by \$5 per page, multiplied by 33 names per page is 66,000). The OEIG therefore finds as **FOUNDED** the allegation that Bailey used State computers for non-State business and for personal gain.

*c. Marcellus Bailey Violated DHS Rules, Directives and Regulations*

Bailey also violated DHS rules regarding secondary employment. A DHS employee is permitted by rule to hold secondary employment outside normal work hours if: (1) his supervisor is notified; (2) the employment does not create a conflict of interest; (3) the employment does not use agency resources; and (4) is approved.<sup>5</sup> Bailey did not notify anyone regarding his outside employment for Primerica Financial. The OEIG finds, therefore, that the allegation that Bailey violated DHS rules by engaging in secondary employment is **FOUNDED**.

*d. Marcellus Bailey Violated State Law*

Information contained in the AWVS database is confidential pursuant to the Illinois Unemployment Insurance Act, which prohibits any State employee from disclosing the data without authorization.<sup>6</sup> Bailey did not have authorization to disclose wage information to Musick. The OEIG therefore finds that Bailey violated the restrictions of the Illinois Unemployment Insurance Act as **FOUNDED**.

*e. Marcellus Bailey Violated the Ethics Act Non-Cooperation Provisions*

The OEIG investigation also reveals that Bailey violated the Ethics Act. The Ethics Act requires every employee under the jurisdiction of the OEIG to cooperate in any OEIG investigation.<sup>7</sup>

In accordance with this provision, all subjects of OEIG investigations are asked to sign Administrative Rights forms, which supplement the investigative cooperation requirements of the law. The form states, in relevant part, that “[the subject] understand[s] that all OEIG interviews are strictly confidential and that at no time may [the subject] disclose any details of th[e] interview to anyone other than [the subject’s] attorney or representative.” Compliance is important as it ensures that the OEIG is able to secure untainted and accurate evidence. This information is critical to the OEIG’s ability to conduct objective and accurate investigations and issue reports in a timely manner.

Bailey violated the Ethics Act by disclosing to Musick that he was under investigation. During his October 6, 2010 interview, Bailey signed an OEIG Administrative Rights form, which indicated that he understood that the contents of his interview were confidential. Bailey acknowledged to OEIG investigators that he understood his obligation to keep confidential information he learned in the interview. At the conclusion of the interview, Bailey was again instructed to keep the details of his discussion with OEIG investigators confidential.

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<sup>5</sup> DHS Employee Handbook, Section V-7, *Conflicts Of Interest* – Secondary Employment.

<sup>6</sup> 820 ILCS 405/100A.

<sup>7</sup> 5 ILCS 430/20-70.

Nonetheless, Bailey admitted that within days of his interview he informed Musick that he was under investigation. The OEIG does not find credible Bailey's statement that he thought the confidentially provisions only prohibited him from disclosing information to State employees. Bailey is asking the OEIG to believe it was reasonable for him to conclude he was prohibited from discussing his interview with another employee, but free to discuss the investigation with the person bribing him to commit what he admits were knowing violations of DHS policies. It is obvious to the OEIG that Bailey discussed the investigation with his co-conspirator to warn him. By so doing, Bailey potentially compromised the OEIG's investigation, as well as any subsequent criminal or civil investigation.

The OEIG also does not find credible Bailey's statements that (a) he was first asked to violate DHS policy by a high-ranking State official named "[redacted]" and (b) [redacted] told him other employees were processing information for United. CMS records do not reveal any employment history for a person with that name, or a similar name. Consequently, the OEIG does not find credible Bailey's statement that he does not know the names of other State employees he "thought" were processing confidential information for United.

Because Bailey admitted to having disclosed to Musick that he was under investigation, and in light of the fact that he refuses to disclose the names of other employees who may be engaged in disclosing confidential information, the OEIG finds that Bailey's conduct amounts to "failure to cooperate" within the meaning of Section 20-70 of the Ethics Act.

#### **IV. Conclusion and Recommendation**

Following due investigation, the OEIG issues these findings:

- **FOUNDED** – Marcellus Bailey engaged in misconduct when he intentionally violated State regulations and laws to acquire and provide confidential State information to an unauthorized person(s) over a period of 7 to 10 years.
- **FOUNDED** – Marcellus Bailey violated DHS rules prohibiting the personal use of State computers for non-State business or for personal gain.
- **FOUNDED** – Marcellus Bailey violated DHS rules by engaging in secondary employment with Primerica Financial.
- **FOUNDED** – Marcellus Bailey violated the Illinois Unemployment Insurance Act.
- **FOUNDED** – By disclosing that he was the subject of an OEIG investigation and by failing to cooperate, Marcellus Bailey violated the Ethics Act.

The OEIG investigation leaves no doubt that Bailey is unsuitable for continued state employment. Any separation agreement reached with Bailey must state that he agrees never to seek, nor to accept, employment with the State of Illinois.

Bailey's inappropriate access State software should be terminated without notice or warning upon receipt of this recommendation.

The OEIG also requests that DHS comply with its obligations under the Illinois Personal Information Protection Act (PIPA), 815 ILCS 530/12. The PIPA provides that "[a]ny State agency that collects personal information concerning an Illinois resident shall notify the resident at no charge that there has been a breach of the security of the system data or written material following discovery or notification of the breach." *Id.* § 12(a).

Furthermore, given that SSNs and information associated with them are protected by State and federal criminal laws,<sup>8</sup> the OEIG will deliver its administrative findings and disciplinary recommendations to the appropriate officials for criminal investigation of Marcellus Bailey, Michael Musick, and United.

In addition, the OEIG will report the conduct of Michael Musick, a licensed Illinois private detective, to the Illinois Department of Professional Regulation.

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<sup>8</sup> See 42 U.S.C. § 408 (a)(8) (2010), *Unlawful Use of Social Security Number*, 18 U.S.C. § 1028 (7) (2010), *Fraud In Connection With Identification Documents*; 720 ILCS 5/16G-16, *Identity Theft*; 720 ILCS 5/16G-20, *Aggravated Identity Theft*; 720 ILCS 5/16D-3, *Computer Tampering*; 720 ILCS 5/33-3, *Official Misconduct*.



Pat Quinn, *Governor*

Michelle R.B. Saddler, *Secretary*

100 South Grand Avenue, East • Springfield, Illinois 62762  
401 South Clinton Street • Chicago, Illinois 60607

April 7, 2011

Mr. Ricardo Meza  
Executive Inspector General  
Office of the Executive Inspector General  
For the Agencies of the Illinois Governor  
32 West Randolph Street, Suite 1900  
Chicago, Illinois 60601

RE: OEIG Complaint No: 10-00342

Dear Inspector General Meza:

This is in response to the OEIG investigation regarding Marcellus Bailey's misconduct and misuse of the State's computer system. Based on the findings and recommendations submitted by the OEIG, Mr. Bailey's access to the State's computer system was terminated without notice and he was placed on Administrative leave effective March 23, 2011. A Pre-Disciplinary meeting for suspension pending discharge was held on April 4, 2011. The union requested 5 days to complete their written rebuttal. Upon receipt of the union rebuttal a written request for discipline will be submitted to Labor Relations. Therefore, we will need additional time to completely resolve this situation and to act upon all of your office's recommendations.

Sincerely,

Michelle R.B. Saddler  
Secretary



Pat Quinn, Governor

Michelle R.B. Saddler, Secretary

100 South Grand Avenue, East • Springfield, Illinois 62762  
401 South Clinton Street • Chicago, Illinois 60607

June 1, 2011

Mr. Ricardo Meza  
Executive Inspector General  
Office of the Executive Inspector General  
For the Agencies of the Illinois Governor  
32 West Randolph Street, Suite 1900  
Chicago, Illinois 60601

RE: OEIG Complaint No: 10-00342 (UPDATE)

Dear Inspector General Meza:

In response to the above OEIG complaint regarding Marcellus Bailey's misconduct and misuse of the State's computer system, DHS is submitting an updated response.

[Redacted] consulted with William Benz, Supervising Assistant Inspector General. The OEIG report indicated that Mr. Bailey "processed" social security numbers, but did not fully indicate the meaning of the term "processed." Assistant Inspector General Benz and [redacted] discussed the issue of whether or not the data disclosed by Marcellus Bailey would trigger the reporting requirements of the Illinois Personal Information Act/PIPA (815 ILCS 530, et. sec.). PIPA defines personal information as an individual's first name or initial and last name combined with one or more of the following: social security number, driver's license, state identification number, account number, credit/debit card number or an account number in combination with any required security code, access code or password that would permit access to an individual's financial account.

After careful review of Mr. Bailey's interviews and interviews with [redacted] and [redacted] we determined the following:

- Michael Musick provided social security numbers (SSNs) to Mr. Bailey, who entered them into the Automated Wage Verification System (AWVS) system.
- Mr. Bailey entered the SSNs into the AWVS to obtain quarterly wage information, printed that information and delivered it to Michael Musick.
- Mr. Bailey did not provide or disclose DHS customer SSNs, or anyone else's SSN to Mr. Musick.

Therefore, "processed" meant taking SSNs obtained from Michael Musick, entering the SSNs into the AWVS system, and reporting the results to Michael Musick. Since, Mr. Bailey did not provide SSNs to Michael Musick nor did he provide any other information defined in the PIPA statute as personal

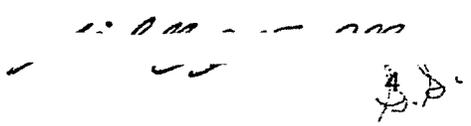
information, there was no data breach and the reporting requirements of the PIPA statute were not met.

Based on these findings, the following actions have been taken:

- March 23, 2011: Mr. Bailey's access to the state software was terminated without notice and Mr. Bailey was placed on Administrative leave.
- April 4, 2011: A pre-disciplinary meeting was held for suspension, pending discharge.
- April 8, 2011: An AFSCME representative submitted Mr. Bailey's written rebuttal to the charges listed at the pre-disciplinary meeting.
- April 11, 2011: A recommendation that Mr. Bailey be suspended pending discharge was submitted by the Local Office Administrator.
- April 13, 2011: A statement of charges and request for approval for discharge submitted by Labor Relations.
- April 15, 2011: Mr. Bailey and AFSCME were notified of his suspension pending discharge.

Mr. Bailey was discharged for cause effective May 15, 2011. Therefore, DHS considers this matter resolved and respectfully requests that your office close this case.

Sincerely,

  
Michelle R.B. Saddler  
Secretary