



STATE OF NEW YORK  
OFFICE OF THE STATE INSPECTOR GENERAL  
**Final Report**  
**February 12, 2010**

SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General found that New York State Thruway Authority (TA) employee Brian Rusk conducted private business during state time and misused his state-issued telephone to engage in hundreds of telephone calls in furtherance of his personal business ventures. The Inspector General forwarded this report to the TA for disciplinary action. The Inspector General is also forwarding this report to the Erie County District Attorney for review.

On February 11, 2010, the Thruway Authority terminated Rusk's employment.

ALLEGATION

On September 2, 2008, the Inspector General received a complaint alleging that TA employee Brian Rusk operates a public relations business on state time and utilizes a state telephone to do so.

SUMMARY OF INVESTIGATION

**Background**

Brian Rusk has been employed as the Assistant Public Information Officer assigned to the TA's Buffalo Division since 1997. His duties include answering complaint calls, preparing highway advisory radio reports, assisting with a weekly news tracker report and coordinating public and media events for the TA. Public events are conducted in an effort to disseminate information regarding the TA, and include speeches by TA representatives to local community groups, such as the Rotary, Kiwanis and Lions Clubs.

**Rusk's Private Public Relations Business**

In addition to his employment with the TA, Rusk is also engaged in outside employment as a public relations consultant. The TA, however, was aware of and approved Rusk's outside employment. Specifically, by memorandum dated December 12, 1996, the TA approved Rusk's outside work and informed him that he was not

required to obtain “any specific internal approval” for such activity. The memorandum also advised Rusk that he was not required to file a financial disclosure form with the Commission of Public Integrity because he is not designated a “policy maker.” As a result of his obtaining express approval from his supervisors, Rusk’s outside employment is not, in and of itself, improper. Rather, Rusk’s misconduct stems from conducting his personal business during state time and using state resources to further these personal ventures.

When queried by the Inspector General as to what his outside consulting work entailed, Rusk said, “He may do a press release for someone.” That assertion notwithstanding, a review of bank records for the period between January 1, 2008, and July 2009 alone reveal significant check deposits into Rusk’s personal bank account from the following sources:

1.	Advanced Cardiac Surgical Associates, PLLC (Karamanoukian)	\$12,240
2.	Anthone Eye Center (Anthone)	\$8,160
3.	Buffalo Plastic Surgery (Meilman)	\$20,970
4.	Campanella Orthotics & Prosthetics (Campanella)	\$8,840
5.	American Friends of Assaf Harofeh Medical Center	\$5,950
6.	Appaloosa Productions LTD	\$1,350
7.	Batavia Nursing Home, LLC	\$1,750
8.	Branford Castle, Inc.	\$25,000
9.	Fairchild Manor Nursing Home, LLC	\$2,100
10.	Ronald Plewniak	\$1,050
		<b>Total</b>
		<b>\$87,410</b>

Rusk confirmed to the Inspector General that he performed this outside “consulting work” and a number of the aforementioned checks specifically indicate they were payment for public relations work Rusk had provided.<sup>1</sup> Rusk further informed the Inspector General that, although his income from his outside employment varies, he earns thousands of dollars annually. Rusk was then shown copies of the checks, listed above, that were deposited into his personal bank account. Rusk admitted that the payments he received from the physicians were related to some compensated work for a charitable foundation and many of the additional checks related to his personal business ventures.

### **Rusk’s Misuse of a State Telephone**

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<sup>1</sup> In addition, Rusk stated that he has also engaged in compensated consulting work in Florida for John Castle of Branford Castle, Inc., and work for the American Friends of Assaf Harofeh Medical Center, an Israeli hospital. He also explained that Appaloosa Productions, LTD provided him a referral fee for television advertising. In a further written response to the Inspector General, Rusk listed his “primary clients” as Advanced Cardiac, Buffalo Plastic Surgery, Campanella Prosthetics, Assaf Harofeh, Eye Health, Branford Castle, and Source Tech.

The Inspector General reviewed the call usage records for Rusk’s state-assigned telephone for the period of January 2008 to June 2009 and compared such with Rusk’s bank records of payments from private clients. This comparison revealed the following calls between Rusk and clients of his private consulting business:

<u>Client</u>	<u>Calls</u>
Buffalo Plastic Surgery	316
Campanella Orthotics & Prosthetics	264
Anthone Eye Center	130
Appaloosa Productions, LTD	53
Advanced Cardiac Surgical Associates, PLLC	5
Branford Castle, Inc.	24
Fairchild Manor Nursing Home, LLC	87
Batavia Nursing Home, LLC	20
Ronald Plewniak	180

As the aforementioned payments reveal, Rusk’s calls to outside business clients facilitated his receipt of thousands of dollars in personal profit. The telephone records also showed that Rusk made the following additional calls on his state phone:

<u>Client</u>	<u>Calls</u>
Alidi Travel, Inc.	400
Management Company Associated with Assaf Harofeh, Batavia and Fairchild Nursing Homes	135

Rusk informed the Inspector General that Alidi Travel, Inc. is the company he engaged to book travel for humanitarian overseas missions. When the Inspector General followed by asking Rusk whether part of his compensated duties for his work for the charitable foundation included making travel arrangements through Alidi Travel, Rusk speculated that the calls could have related to his personal family vacations. The Inspector General’s review of Alidi Travel’s relevant records indicates that Rusk arranged eight personal trips during the relevant period which fail to account for the 400 calls between Rusk and the travel agency. When the Inspector General asked Rusk if there was any TA business related to Alidi Travel, he confessed, “No.” Rusk further confirmed that his calls to Buffalo Plastic Surgery were to Dr. Jeffrey Meilman and advised that the calls could have been “for a number of different things” such as attending a Rotary, Kiwanis, or Lion’s Club dinner. As indicated above, Buffalo Plastic Surgery paid Rusk over \$20,000 for his consulting services.

**Prohibitions on Using State Resources for Private Business**

It is well-established that state resources may not be utilized to further a state employee's private business. On June 18, 2008, Governor David A. Paterson issued Executive Order Number 7 which mandates, in relevant part:

B. Prohibition Against the Personal Use of State Property

1. State supplies, equipment, computers, personnel and other resources may not be utilized for non-governmental purposes, including for personal purposes or for outside activities of any kind. This prohibition includes but is not limited to the following:

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- c. State telephones may not be used for non-governmental long-distance calls, except for toll-free calls, collect calls, and calls billed to a personal telephone number. State telephones may be used for incidental and necessary personal local calls that are of limited number and duration and do not conflict with the proper exercise of the duties of the State employee.

Governor Paterson's Executive Order further provides that state authorities, such as the TA, should implement policies consistent with his order. The TA has policies consistent with Executive Order Number 7. Particularly, TA Executive Instruction 2001-3, which states in pertinent part:

Telephone Services Use Policy

The Authority/Corporation provides telephone services to employees for official business use.

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Acceptable Use of Telephone Services

Authority/Canal telephone services shall be used for official business. Prudent use of phones for essential local personal calls is permitted. However, such calls must be limited in number and of short duration.

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Prohibited Use of Telephone Services

Authority/Canal telephone services shall not be used for the following purposes... Engaging in personal business or gain....

Rusk admitted to the Inspector General that he was aware of TA's policy regarding personal use of the authority telephone. When the Inspector General attempted to ask questions regarding the nature and purpose of calls to his remaining clients from the list set forth above, Rusk refused to answer questions at the direction of his attorney. Rusk's attorney stated that they would respond in writing regarding those telephone calls.

**Rusk's Outside Employment Activities During State Time**

The Inspector General further found that Rusk conducted his private business during state time. Rusk informed the Inspector General that he generally utilizes his personal cell phone for contacts with his business clients. The Inspector General's examination of call records for Rusk's personal cell phone disclose the following calls between Rusk and his known business clients or related entities during work hours (between 8:30 a.m. and 4:30 p.m., excluding leave dates and holidays) from January 2008 to June 2009:

<u>Clients or Related Entities</u>	<u>Calls</u>
Alidi Travel, Inc	320
Campanella Orthotics & Prosthetics	336
Buffalo Plastic Surgery	685
Anthone Eye Center	156
Batavia Nursing Home, LLC	106
Appaloosa Productions LTD	32
Advanced Cardiac Surgical Associates, PLLC	15
Branford Castle, Inc.	249
Fairchild Manor Nursing Home, LLC	37
Batavia Nursing Home, LLC	107
Ronald Plewniak	17

Combining the results of both Rusk's personal cell phone records and his state telephone demonstrate significant phone contact between Rusk and his business clients during state time. Although, individually most of the calls were relatively short in duration, the cumulative time spent on these calls was significant. The Inspector General specifically examined seven sample dates to determine daily usage. This review showed Rusk spent at least the following time speaking with his private clients utilizing both the state and his personal cell phone:

<u>Date</u>	<u>Time Total</u>
3/31/08	40 minutes
4/1/08	42 minutes
4/7/08	28 minutes
8/28/08	1 hour 3 minutes
10/29/08	38 minutes
4/27/09	51 minutes

Significantly, Rusk's phone conversations with his clients during these representative days are spread throughout the day and are clearly not conducted exclusively during an authorized lunch break.

### **Rusk's Supplemental Responses to the Inspector General**

Subsequent to his interview with the Inspector General, Rusk's attorney submitted two letters with attachments in an effort to excuse Rusk's conduct. The majority of Rusk's defenses contained in these letters do not warrant a detailed response. For example, despite his earlier admissions and the unambiguous language of TA policy, Rusk contends that he did not receive training or sufficient guidance as to the TA policies regarding phone usage and that his phone usage was justified. In addition to the clear language of TA policy and the Governor's Executive Order which require no elaboration, Thomas E. Pericak, the Director of the TA's Buffalo Division and Rusk's direct supervisor, advised the Inspector General that TA employees are regularly reminded of authority policy and that these written policies are disseminated annually and also available on the TA internal Web site. In addition, Pericak informed the Inspector General that he discusses these policies at staff meetings which Rusk attends.

Rusk also claims that his telephone usage is "limited in number" and "incidental." In support of this position, Rusk, via counsel, posits that any single entity that received less than 100 phone calls is, in his view, "incidental." Neither TA policy, Executive Order Number 7, nor common sense suggests, in any way, that usage should be calculated per entity called, much less an arbitrary and self-serving 100-call definition of "incidental use." Rusk's justification and expansive definition of "incidental use" ignores clear state and TA policy and only serves to confirm his excessive use of state resources to further his personal ends.

Rusk also asserts that a significant portion of the examined calls relate to charitable and humanitarian activities and asks the Inspector General to "[a]ssum[e] that 33% of the calls to the entities are calls associated with [these] non-compensated activities." In addition to failing to justify the other 67% of his calls in furtherance of his private business, Rusk lacks authority to perform charitable activities not sponsored and approved by the TA during TA work hours using authority resources.

Additionally, Rusk's efforts to tie his personal phone usage to charitable purposes are belied by the evidence. For example, Rusk claims to have placed some of the calls in furtherance of collecting funds for the State Employees Federated Appeal (SEFA), a charitable solicitation of New York state employees conducted under the authority of the State Finance Law. The Inspector General interviewed Margaret Slocum, the SEFA Management Liaison for the TA who oversees SEFA activities in the TA. Slocum stated that Rusk is the Campaign Manager for the TA's Western New York divisions whose

duties as such include distributing and collecting pledge cards and distributing informational materials regarding the SEFA campaign to TA employees. Once collected, the cards are then forwarded to the United Way who in return sends the appropriate part of the cards to the agency's Payroll Department for deduction(s). Notably, when the Inspector General asked Slocum if a campaign manager such as Rusk would call charitable organizations directly in his SEFA capacity, she answered, "No way...definitely not." When inquired as to whether a campaign manager would call doctor's offices who work with charitable organizations for any reason, she answered, "No...I can't think of any reason that I would be doing that," as charities are already listed in the SEFA booklets.<sup>2</sup> Slocum also advised the Inspector General that since 2008, employees who work on the SEFA campaign are required to report hours spent. SEFA regulations state that the campaign shall be conducted from September through December (9 NYCRR 335.2). The Inspector General obtained the reports submitted by Rusk. The Inspector General's review of these reports confirmed that activity with regard to the campaign is limited to those months. Rusk specifically reported the following hours worked:

October 2008	15 hours
November 2008	11
December 2008	8
October 2009	11
November 2009 (up to Nov.11)	8

Most importantly, only one of the seven sample dates selected by the Inspector General falls within this time period, October 29, 2008. On that day Rusk reported that he worked zero hours on the campaign. Therefore, it is clear that the activities on those sample days do not include any related to SEFA.

Finally, Rusk also contends that his work with TA requires him to interact with his business clients to the benefit of the TA and that a significant portion of his contacts with his private business clients is to establish community contacts that benefit the TA. Rusk's self-serving response that his use of public resources in direct violation of state guidelines to enhance his private lucrative business interests ultimately benefits the state is unavailing.

## FINDINGS AND RECOMMENDATIONS

The Inspector General found that TA employee Brian Rusk operates a public relations consulting business in addition to his employment with the authority and that Rusk used his state-issued telephone in furtherance of this outside employment in violation of TA Executive Instruction 2001-3 and Executive Order Number 7. In

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<sup>2</sup> Rusk also serves as that Chairman of the Western New York SEFA campaign. Although, the duties of that position are not as clear as those of campaign manager, the Inspector General found no meaningful connection between Rusk's SEFA duties and his personal clients.

addition, the Inspector General found that Rusk conducted his private business during state time.

The Inspector General, therefore, recommended that TA take appropriate disciplinary action against Rusk. The Inspector General is also forwarding a copy of this report to the Erie County District Attorney for review regarding potential criminal charges.

### **Response of the Thruway Authority**

By letter dated February 11, 2010, the Thruway Authority advised the Inspector General that Rusk was terminated from his employment effective that date.