

STATE OF NORTH CAROLINA
Office of the State Auditor

Leslie W. Merritt, Jr., CPA, CFP
State Auditor

2 S. Salisbury Street
20601 Mail Service Center
Raleigh, NC 27699-0601
Telephone: (919) 807-7500
Fax: (919) 807-7647
Internet
<http://www.ncauditor.net>

June 6, 2006

Mr. Harry E. Payne, Jr., Chairman
Employment Security Commission
700 Wade Avenue
Raleigh, North Carolina 27605

Dear Chairman Payne:

We received an allegation through the State Auditor's Hotline concerning a security issue related to confidential employee information at the Employment Security Commission (Commission). Allegedly, a Commission employee with a criminal record for False Pretense and Cheats convictions was granted access to the Office of State Personnel's Personnel Management Information System (PMIS). The following findings and recommendations are based on our investigation of this matter.

Substantiation of Allegation

The Office of State Personnel (OSP) confirmed that the employee identified in the allegation had access to PMIS. The employee is currently serving an active prison sentence and is participating in the Department of Correction's (DOC) work-release program. He is employed as an Office Assistant IV in the Commission's personnel section.

PMIS contains social security numbers, dates of birth, and compensation data for every current and former Commission employee. It is the responsibility of each State agency to prudently grant access to confidential personnel information maintained in PMIS.

As noted in the PMIS General System Information;

"Most of the information housed in PMIS is protected as confidential under State law. All of the information contained in PMIS is intended to be accessed and used only for the purpose of conducting official State business. Employee records should in no way be accessed and used for personal reasons. Improper or unauthorized use of the system shall be considered personal misconduct and may result in disciplinary action, up to and including dismissal."

A Business and Technology Applications Analyst at OSP provided a log showing the Office Assistant's usage of the PMIS system. The log indicated that from May 1, 2005 until January 31, 2006, the Office Assistant performed 1,705 transactions in PMIS. These transactions included searches for names, addresses, payroll deductions, and position histories and appeared to be associated with the Office Assistant's work assignments. Although we did not find evidence of improper use of personnel information, we believe granting PMIS access to this

Mr. Harry E. Payne, Jr., Chairman

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employee, based on his criminal background and DOC work-release status, created an unnecessary risk for the Commission and its employees.

Violation of Employment Security Commission Policy

Our analysis of the computer assigned to the Office Assistant raised another concern related to internet usage. The analysis revealed in excess of 1,300 hits to five separate “singles” dating websites. The magnitude of internet activity suggests that the Office Assistant expended a considerable amount of time “surfing” these websites. In addition, the analysis revealed the presence of a sexually suggestive image apparently received during an *AOL Instant Messenger* session.

Section 2.3 of the Commission’s policies and procedures provides examples of employee misconduct. The policy states that “examples include but are not limited to the following: misuse of the internet.” In our opinion, the Office Assistant’s use of a Commission computer to repeatedly access “singles” dating websites constitutes misuse of the internet, and therefore, employee misconduct, as defined by Commission policy.

The Commission requires each employee to sign a statement indicating they have read and understand the Commission’s policies and procedures. By signing this statement, employees acknowledge they are responsible for compliance with Commission policies and procedures and violations can subject employees to discipline, up to and including termination and criminal prosecution if applicable.

Recommendations

The Commission should take appropriate disciplinary action in response to the Office Assistant’s misconduct in consultation with the Department of Correction. We also recommend the Commission review the process for granting access to confidential employee information maintained in PMIS. The Commission should take steps to ensure that granting access to confidential employee information does not unnecessarily increase the risk of its misuse.

Please provide your written response to these findings and recommendations, including corrective actions taken or planned, by June 20, 2006. In accordance with General Statute § 147-64.6(c)(12), the Governor, the Attorney General, and other appropriate officials, will receive a copy of this management letter. If you have any questions or wish to discuss this matter further, please contact us. We appreciate the cooperation received from the employees of the Employment Security Commission during our review.

Sincerely,



Leslie W. Merritt, Jr., CPA, CFP
State Auditor

Management letter and responses receive the same distribution as audit reports.

Auditor's Note

The following response to our management letter dated June 6, 2006 was received from the Employment Security Commission on June 29, 2006. The response does not address the primary finding of providing a Department of Correction work-release employee with False Pretense and Cheats convictions access to over 2000 employee personnel records.

Our auditors possess detailed and conclusive information that confirms both findings in the management letter that we have offered to share with the Employment Security Commission.



Employment Security Commission of North Carolina

Post Office Box 25903, Raleigh, North Carolina 27611 (919) 733-7546

Michael F. Easley
Governor

June 29, 2006

Harry E. Payne, Jr.
Chairman

Leslie W. Merritt, Jr., CPA, CFP
State Auditor
Office of the State Auditor
2 S. Salisbury Street
20601 Mail Service Center
Raleigh, North Carolina 27699-0601

Dear Mr. Merritt:

On June 6 the Employment Security Commission received your draft management letter for response. We were pleased that our trust in our employee had been validated by your effort and that the concern of whoever contacted you regarding misuse of identifying information had been unfounded.

Beyond that initial concern you reported that the state employee had repeatedly accessed about four "dating sites" on the internet. In preparing our response that employee's supervisor was re-interviewed involving the new allegation of misuse of the computer. That supervisor was surprised as the allegation seemed to fly in the face of her observation of his work performance, dedication to growing in the job and personal outlook. Co-workers in his office were also questioned regarding the new allegation and expressed the same "we didn't see anything" and "that's not him." We directly confronted the state employee with your concerns and he has flatly denied them. In the ESC Chairman's conversation with the state employee, he has restated over and over that he would not do anything to jeopardize his job or the chance to help raise his daughter.

You will recall that when your auditors first questioned him as they removed the hard drive from his computer that he was concerned that his draft of a letter to obtain his school transcript might not have been "proper" and he apologized for this. Lacking clarity or proof as to the new issue, we sent your office a letter asking for the evidence which formed a basis for your concern. Legal due process and the fairness that we hope to offer every state employee would require that we gather the evidence that you described and confront him with it. Then he would have a chance to respond.

The most critical information to the case is when access to dating sites occurred. This is because the state employee was not given access to a computer until after many months of employment. Prior to that time the computer had been used by one or more persons. Therefore, we needed the



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time/date stamp information for him to respond to. It could be that the misuse of that computer in the way you described happened before he ever had the machine

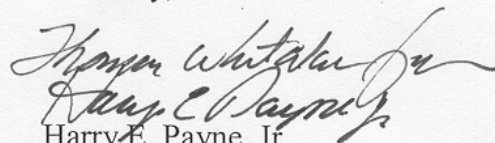
Your office was prompt to respond by telephone that the request could be accommodated but that the person who could do so was out of the office and would not be available until the following week. The Chairman said that was not a problem and it was agreed that your office would contact ESC at the beginning of the following week. As an additional matter, the Chairman asked that the time deadline stated in the Auditor's letter be extended to accommodate our review of the evidence. That was agreed to.

Arrangements were made at the Chairman's office to receive the call on the following Monday. Staff were apprised of the situation and Tom Whitaker, Chief Counsel, was to receive the call and arrange the time when he and our computer experts could review the evidence. That contact was made and your office informed our Chief Counsel that he was expected to review the evidence and have an immediate response. Mr. Whitaker expressed concern that this did not allow for the rights given a state employee.

The meeting occurred and Mr. Whitaker was given a letter informing him there must be a response by the end of this day. No "evidence" of wrongdoing by the state employee was presented. Mr. Whitaker was presented a summary of websites without reference to time/date for duration of the website visit. We were not permitted to copy this list, just look at it. A summary of websites is not considered evidence in the disciplinary review and is not a fair or adequate basis for confronting the employee. The meeting and information that was offered brought no closure to the matter. Yet we were expected to have an immediate response.

We respect and appreciate the role of the State Auditor and are anxious to bring this matter to a close. We want to thank your staff for not only doing their job but also offering as much as can be done in trying to respect the dignity and the image of the state employee in question. In how they did their work they seemed to understand the situation where the individual has tried to prove himself worthy of our trust for more than one year.

Sincerely,


Harry E. Payne, Jr.