

STATE OF LOUISIANA

OFFICE OF STATE INSPECTOR GENERAL



Murphy Painter
Louisiana Office of Alcohol and Tobacco Control

Date Released:

February 17, 2011

File No. CID-11-007

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BOBBY JINDAL
GOVERNOR

STEPHEN B. STREET, JR.
STATE INSPECTOR GENERAL

State of Louisiana
Office of the Governor
Office of State Inspector General

February 17, 2011

Honorable Bobby Jindal
Governor of the State of Louisiana
P.O. Box 94004
Baton Rouge, LA 70804-9004

Re: Case No. CID-11-007

Dear Governor Jindal:

This report details our investigation into Murphy Painter's misuse of confidential law enforcement databases while serving as Commissioner of the State Office of Alcohol and Tobacco Control.

The report includes four recommendations that we believe, if implemented, will address the findings detailed in this report and serve to prevent further abuses of the State and Federal records systems.

We provided drafts of the report to the following:

- Murphy Painter
- The Louisiana Department of Revenue
- The Louisiana Office of Alcohol and Tobacco Control

The responses we received are included as Appendix A.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen B. Street, Jr.", written over the typed name.

Stephen B. Street, Jr.
State Inspector General

SBS/cse
Enclosure

Executive Summary

The Louisiana Office of State Inspector General (OIG) received credible information that Murphy Painter, the former Commissioner of the Louisiana Office of Alcohol and Tobacco Control (ATC), illegally accessed Federal Bureau of Investigation (FBI) criminal records, State of Louisiana criminal records and Louisiana Office of Motor Vehicles records for no known public purpose. (As an aid to the reader, this report includes a glossary of acronyms at the end.)

Mr. Painter illegally accessed information about private citizens as well as persons employed at all levels of state government and in some cases, their family members. Mr. Painter conducted inquiries on a state representative, state district judges, staff members of the Louisiana Legislature and Governor's Office, and the wife of a United States Senator. This investigation determined that most of the citizens about whom Mr. Painter obtained personal information were females. It was found that even though Mr. Painter's office has statewide jurisdiction, his searches were disproportionately concentrated in the greater Baton Rouge, New Orleans, and Gonzales areas.

The inquiries that Mr. Painter conducted that are unrelated to official ATC business appear to violate the following criminal and civil laws:

- Louisiana Revised Statutes 14:73.7 B. (1) (Titled Computer tampering)
- 18 U.S.C. §1030 (a) (2) (Titled Fraud and related activity in connection to computers)
- 18 U.S.C. §§2721-2725 (Titled Prohibition on release and use of certain personal information from State motor vehicle records) - This law provides for criminal fines and significant civil damages for improperly obtaining or using certain personal information from state motor vehicle records systems, including actual and punitive damages to the person to whom the information pertains. 18 U.S.C. §2725(4) defines a person's photograph and social security number as "highly restricted personal information." 18 U.S.C. §2725(3) defines a person's driver identification number, name, and address as "personal information." This is exactly the information Mr. Painter accessed in the inquiries he conducted.

Mr. Painter improperly used a computerized system called Voyager to access the Louisiana Law Enforcement Telecommunications System (LLETS). LLETS provides authorized users access to Louisiana Office of Motor Vehicles records (LA OMV), the Louisiana Computerized Criminal History System (LACCH), National Crime Information Center (NCIC) and Interstate Identification Index (III) records.

Our investigation determined that Mr. Painter's abuse of LLETS via the Voyager system spanned the period of February 25, 2005 through August 13, 2010. Mr. Painter made more than 1,150 inquiries to obtain restricted information about citizens who do not hold ATC vendor permits and do not appear in the ATC database. Mr. Painter performed 314 full NCIC searches, with 146 of those searches done to access information about individuals who are not permitted or regulated by ATC.

Mr. Painter continued this activity even after the Louisiana State Police (LSP) admonished ATC for the improper use of the system after audits in 2001 and 2008. Mr. Painter formally responded to both audits with plans to correct the problems but remained defiant, telling his staff, "F**k the State Police. We have not been audited for eight years. I'll be gone from here [ATC] before they [State Police] ever come back again."

Mr. Painter may have improperly shared information obtained through the Voyager / LLETS interface with persons outside the ATC in violation of state and federal law and his own written policy. He conducted two criminal history inquiries and one LA OMV records search on Jonathan Babb after Mr. Babb's arrest in the Shreveport area on August 3, 2010. Mr. Painter then contacted a federal law enforcement agent and asked her to provide information on Mr. Babb's arrest because, according to what Mr. Painter told the agent, "a neighbor had contacted me [Painter] wanting to know what was going on." In contradiction to Mr. Painter's originally expressed purpose for the inquiry, the federal agent stated that Mr. Painter later represented the need for the information as being for a legitimate law enforcement purpose. That federal agent conducted research based on Mr. Painter's request and provided her findings to Mr. Painter.

Mr. Painter may have sexually harassed Kelli Suire, a former employee who worked for him at ATC. Her statement to the OIG indicated that Mr. Painter subjected Ms. Suire to repeated, uninvited visits to her home. During her employment as his Administrative Assistant, Mr. Painter repeatedly asked her to lunch and invited her to spend the night with him. She stated that he became angrier over time as she ignored his romantic requests and comments.

Mr. Painter used his access to State of Louisiana and FBI databases to obtain personal information about Ms. Suire, her family members, Jill Craft (Ms. Suire's attorney), and another female attorney on Ms. Craft's staff. The search of Ms. Craft's information was followed by Mr. Painter's obtaining a map to her residence. After Mr. Painter accessed confidential information about Ms. Craft on September 13, 2008, he apparently went to the area of her residence. He conducted at least a cursory surveillance where he obtained the license plate number on a vehicle belonging to Joyce McIntire, Ms. Craft's next door neighbor. On September 17, 2008, Mr. Painter conducted a vehicle registration search on Ms. McIntire's license plate and then an inquiry on Ms. McIntire herself.

Ms. Suire left her job at ATC in November 2009. Mr. Painter again searched her personal information on August 9, 2010 in an apparent attempt to locate her new residence. Ms. Suire filed suit to obtain a restraining order against Mr. Painter to end his attempts to contact her.

Mr. Painter also accessed confidential law enforcement databases on August 9, 2010 in an attempt to identify the author of an email that was sent to two Baton Rouge media outlets. The email had criticized Mr. Painter's actions as ATC Commissioner. It appears that he incorrectly identified a completely

uninvolved female LSU student as the source of the email. Mr. Painter apparently went to that female student's residence, as it was found that he contemporaneously ran vehicle license plate inquiries on two cars parked at her residence, followed by searches on the two individuals that own those cars.

The Louisiana Department of Revenue (LDR) received two separate complaints about Mr. Painter's activities. The first complaint, which was investigated by an outside consultant, was dismissed because Ms. Suire alleged that Mr. Painter sexually discriminated against her but did not allege that he sexually harassed her. The second complaint, which included allegations of improper use of law enforcement databases, was dismissed because LDR did not want to investigate an appointed official when it had no means to suspend him in order to conduct a thorough investigation.

We found no evidence that anyone from LDR informed the Governor's Office of the need to suspend Mr. Painter so the complaints against him could be fully investigated. Further, once briefed by the Inspector General concerning Mr. Painter's illegal use of law enforcement databases, the Governor's Office requested and received Mr. Painter's resignation that same afternoon.

Background

Governor Mike Foster appointed Mr. Painter as ATC Commissioner in 1996. Mr. Painter remained in that position until his resignation on August 13, 2010. The ATC currently has approved positions for 78 total personnel, including 43 law enforcement officers and criminal investigators.

In the spring of 2000, Mr. Painter began the process of applying for access to the State of Louisiana's and the Federal Bureau of Investigation's criminal databases on behalf of the ATC. Mr. Painter made this application based on La. R.S. 26:800, which provides, "The commissioner and duly commissioned officers or agents of the office of alcohol and tobacco control are authorized to have direct access by means of computer interfacing to criminal history records maintained by the office of state police for the purpose of granting, denying, or any other action on an application for a permit or for revocation, suspension, or other action on a permit previously issued."

Mr. Painter's application was initially denied by the Federal Bureau of Investigation's Access Integrity Unit (FBI AIU), based upon review of Louisiana law pertaining to the ATC. The FBI AIU noted that the approved functions required for ATC to have access to criminal history records, as provided under La. R.S. 26:800, appeared to be primarily civil as opposed to criminal. As such, ATC did not qualify to obtain access to criminal history records. Mr. Painter modified his application several times, continually emphasizing ATC's law enforcement role. The FBI eventually granted the ATC access to LLETS on August 17, 2000.

On August 6, 2004, Mr. Painter signed a Terminal User Agreement with the LSP's parent agency, the Louisiana Department of Public Safety and Corrections (DPS&C) and that agreement provides: "User Agency acknowledges that the use of and access to DPS&C computerized information shall be restricted to criminal justice agencies for official criminal justice purposes." This agreement sets the limits and responsibilities of the user agency for accessing the National Law Enforcement Telecommunications System (NLETS) and NCIC.

LLETS is managed by the LSP and allows authorized criminal justice entities to access and exchange critical criminal justice information. DPS&C also oversees access to NCIC, the Interstate Identification Index (III), and NLETS. These various systems are informally known as the "Law Enforcement Network."

Voyager is a web based computer program that is simply an end user interface for persons with authorized access to LLETS and NLETS. Mr. Painter used Voyager on his public computer at the ATC office.

Scope and Methodology

We conducted our investigation in accordance with Principles and Standards for Offices of Inspector General as promulgated by the Association of Inspectors General.

Our investigation included reviewing:

- Voyager system user logs. Voyager is a web based system which allows the user to access State of Louisiana Office of Motor Vehicles records, State of Louisiana criminal history records, and NCIC records. Voyager requires the user to sign in with a unique login name and password. The Voyager system documents each driver's license search and criminal history search performed by each user. The searches can be reviewed as needed to monitor the activities of the system users.
- Documents recovered from Mr. Painter's office during the execution of a duly authorized Nineteenth Judicial District Court search warrant.
- Interviews we conducted with current ATC and LDR employees, former employees, management, and other individuals as necessary.

Improper Use of Criminal History Databases

Mr. Painter improperly used a computerized system called Voyager to access the Louisiana Law Enforcement Telecommunications System (LLETS) for non law enforcement, personal or curiosity purposes. Mr. Painter's actions may have violated state and federal law:

- La. R.S. 14:73.7 A(1) (Titled Computer tampering)¹
- 18 U.S.C.§1030 (a)(2) (Titled Fraud and related activity in connection to computers).²
- 18 U.S.C.§§2721-2725 (Titled Prohibition on release and use of certain personal information from State motor vehicle records, Additional unlawful acts, Penalties, Civil Action, and Definitions).³

Mr. Painter's abuse of LLETS using the Voyager system spans the period of February 25, 2005 through August 13, 2010. Mr. Painter made more than 1,800 inquiries on citizens and vehicles. He also performed 314 full NCIC inquiries on individuals that included access to criminal histories.

Our investigation has shown that of the 1,884 total inquiries* that Mr. Painter conducted, 1,160 were conducted on persons who are not regulated by ATC. Of the 314 full NCIC searches, 146 were conducted on persons that are not regulated by ATC. Analysis of Mr. Painter's use of the Voyager system has shown that his inquiries were performed on private citizens as well as persons employed at all levels of state government and, in some cases, their family members. Our investigation revealed that Mr. Painter made the majority of his inquiries on women. That fact is shown in more detail in Chart 1, below.

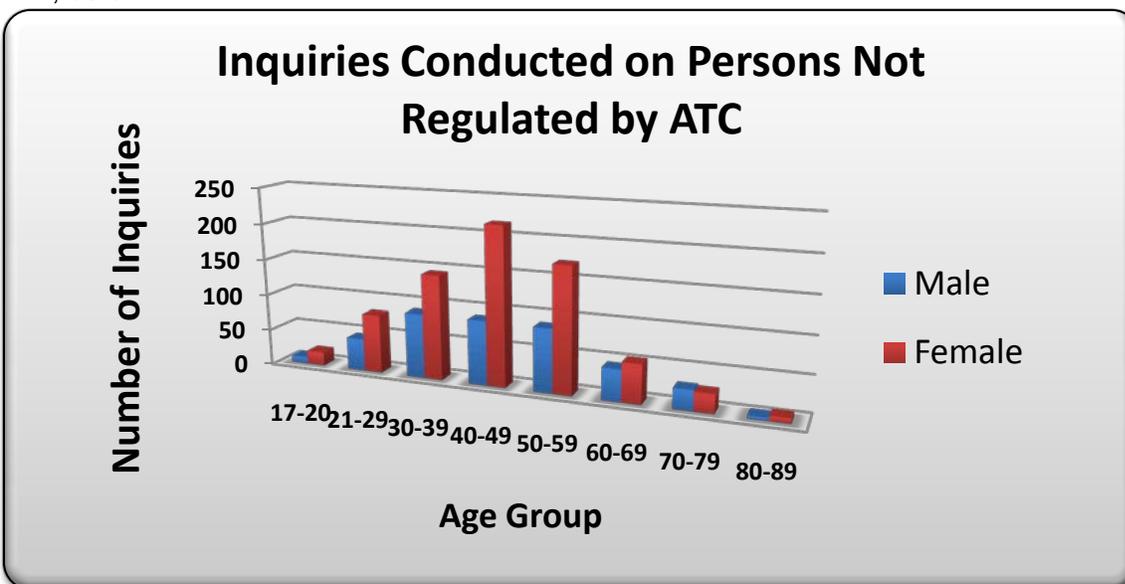


Chart 1

* The affidavit in support of the search warrant served in this case mentioned 2,223 total searches. That number included all attempted searches. The 1,884 search count included here includes only completed searches.

Our investigation found that despite Mr. Painter's position as commissioner of a statewide office, a disproportionate share of his searches on individuals not regulated by ATC was concentrated in the greater Baton Rouge, Gonzales, and New Orleans areas. Mr. Painter resides in the Gonzales area. Chart 2, below, shows a geographical breakdown of those searches.

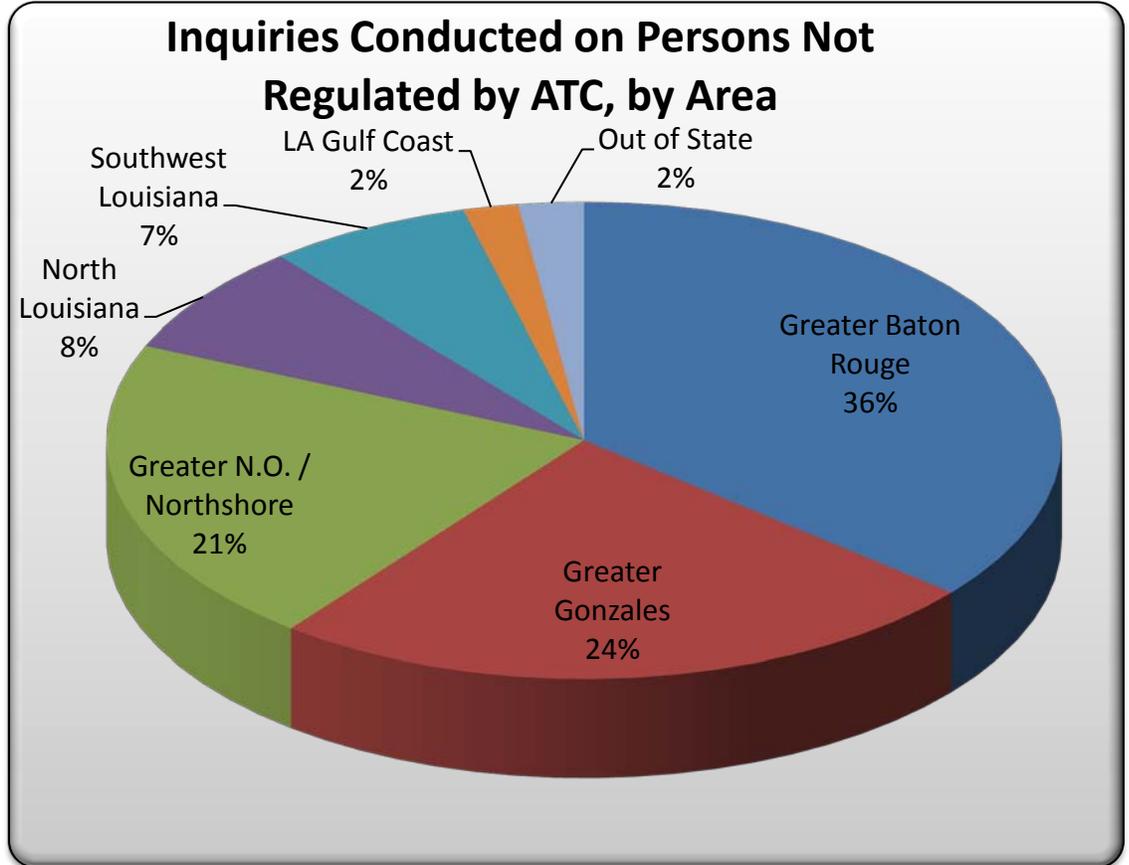


Chart 2

Further, approximately 63% of the individuals whose restricted information Mr. Painter accessed were not ATC permit holders, as shown in Chart 3, below.

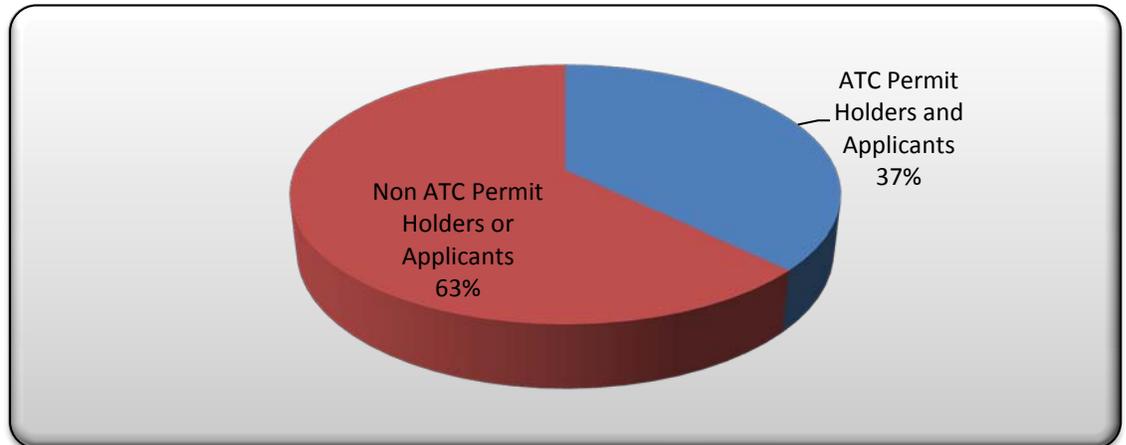


Chart 3

LSP Audits of ATC's Criminal History Inquiries

In a September 25, 2001 letter addressed to Mr. Painter, the LSP cited the ATC for a violation revealed by a LLETTS audit. The audit found that Mr. Painter and ATC had no "written standards for discipline of NCIC policy violators." As a result of this violation, Mr. Painter drafted "NCIC Use and Disciplinary Policies" for the ATC. He signed this document on September 29, 2001, establishing the following rules for his office:

- "Under no circumstances can any information acquired through NCIC, LLETTS, and/or Louisiana Computerized Criminal History System (LACCH) be released to any member of the public or any persons outside of the Louisiana Office of Alcohol and Tobacco Control."
- "All records obtained through NCIC, LLETTS, and/or LACCH must be destroyed by shredding or tearing, not merely thrown away, in a timely manner to prevent unauthorized use."
- "Under no circumstances may inquiries be requested or processed for curiosity purposes or personal reasons."

During the execution of a duly authorized search warrant at Mr. Painter's office on August 17, 2010, printed copies of criminal history inquiries were found lying loosely in and around Mr. Painter's desk. Some of the inquiries had been conducted as long ago as 2004. Retention in such a manner is clearly a violation of rules Mr. Painter implemented for the ATC on September 29, 2001. Section 3.5 of the LLETTS Reference Guide states that records that have been received by the agency via LLETTS and later determined to not be needed should be destroyed by tearing or shredding into several parts to prevent unauthorized access.

In a September 16, 2008 letter addressed to Mr. Painter, the LSP cited the ATC for two violations as a result of another LLETTS audit. Mr. Painter responded in a letter to the LSP in which he wrote: "This agency has never and will not tolerate the misuse of the valuable law enforcement tool that CJIS has made available to this agency. All the agents will be retrained and again be exposed to the rules regarding the use of CJIS. We will also institute our own audit process so that we can further make sure of our voluntary compliance with this system."

Interviews with ATC employees indicate that after the September 2008 LSP reprimand, Mr. Painter held a meeting where he stated, "F**k the State Police. We have not been audited for eight years. I'll be gone from here (ATC) before they (State Police) ever come back again."

Examples of Mr. Painter's Unauthorized Inquiries

Mr. Painter may have improperly shared information obtained through the Voyager / LLETS interface with persons outside the ATC in violation of state and federal law and his own written policy. He conducted two criminal history inquiries and one LA OMV records search on Jonathan Babb after Mr. Babb's Shreveport area arrest on August 3, 2010. Mr. Painter contacted a federal law enforcement agent and asked her to provide information on Mr. Babb's arrest because, according to the federal agent, "a neighbor had contacted me (Painter) wanting to know what was going on." The federal agent stated that Mr. Painter represented the need for the information as a legitimate law enforcement matter. That federal agent conducted research to satisfy Mr. Painter's request and provided it to him.

In addition to his accessing the restricted information of private citizens, Mr. Painter conducted inquiries on numerous government officials and in some cases, their family members. Our analysis of Mr. Painter's usage history on the Voyager system has shown that he accessed the private, restricted information of a state representative, several state district judges, staff members of the Louisiana Legislature and Governor's Office, Secretary of State employees, and the wife of a United States Senator.

We contacted some of the persons whose restricted information Mr. Painter accessed but who are not listed in the ATC computer systems as ATC permit holders. These individuals granted permission for their names to be used in this public report. The names of the other citizens whose restricted information Mr. Painter accessed were not included in this report to prevent any further invasion of their privacy.

- Jill Craft is a Baton Rouge attorney. She has represented several former ATC employees in lawsuits against Mr. Painter and the ATC on employment related issues. Mr. Painter accessed Ms. Craft's restricted information on three separate dates (5/16/2006, 3/17/2008, and 9/13/2008). He also conducted an inquiry on a female attorney employed by Ms. Craft on March 26, 2008. His access to Ms. Craft's restricted information was followed by his printing a MapQuest map to Ms. Craft's residence on September 13, 2008. This map was found in Mr. Painter's office during the execution of a duly authorized search warrant. Mr. Painter apparently used the map to travel to her residence. He obtained the license plate number on a vehicle belonging to Joyce McIntire, Ms. Craft's next door neighbor. On September 17, 2008, Mr. Painter conducted a vehicle registration search on Ms. McIntire's car's license plate and then an inquiry on Ms. McIntire personally.
- Therese Nagem is a Baton Rouge attorney. Mr. Painter accessed her restricted information, including her driver's license number, social security number, home address, and photograph on August 10, 2007, January 1, 2008 and again on July 1, 2009. Ms. Nagem said that

while she has met Mr. Painter, she does not know why he accessed her private information and viewed her driver's license photograph.

- Joseph Brantley is a Baton Rouge attorney. On December 14, 2008, Mr. Painter conducted an inquiry on Mr. Brantley, accessing his restricted information, including his driver's license number, social security number, home address, and photograph. Mr. Brantley represented a client applying for a liquor permit with ATC. He said that the only reason that he could think of for Mr. Painter to access his private information was because of a meeting they had during late 2008. Mr. Brantley noted that his assistant at the time, Toby Edwards, was also present at the meeting.
- As just noted, Toby Edwards was an assistant to Joseph Brantley. On December 14, 2008, Mr. Painter conducted an inquiry on Ms. Edwards. Mr. Painter accessed Ms. Edwards's restricted information, including her driver's license number, social security number, home address, and photograph. She was assisting Mr. Brantley on a case for a client who was attempting to secure a liquor permit. Ms. Edwards stated that the firm's efforts to help their client obtain an ATC permit had proved difficult until Mr. Painter finally granted her and Mr. Brantley a meeting. Mr. Painter actually admitted to her during the meeting that he ran her driver's license and viewed her photograph. He told her the only reason he granted the meeting was because of what he saw when he viewed her driver's license photograph. According to Ms. Edwards, Mr. Painter's statement and demeanor made her very uncomfortable and she was glad that Mr. Brantley was present. She also said that she found it unusual that although the permit had been repeatedly turned down, it was immediately approved once she personally met with Mr. Painter. Ms. Edwards stated that Mr. Painter had no official purpose for accessing her private information and driver's license photograph.
- Cecil Blache is a Baton Rouge attorney. Mr. Painter accessed Mr. Blache's restricted information, including his driver's license number, social security number, home address and photograph two separate times on April 14, 2008. Mr. Blache stated that Mr. Painter actually told him that he obtained this restricted information about him to get Mr. Blache's home address to mail him a sympathy card. Mr. Painter also told Mr. Blache about another issue related to his LA OMV records that should be addressed as soon as possible. Mr. Blache stated that Mr. Painter had no official reason to access his driver's license information.
- Fabian Blache, Jr. is a former East Baton Rouge Sheriff's Chief Criminal Deputy and currently the Executive Director of the Louisiana Association of Chiefs of Police. Mr. Painter accessed Mr. Blache's restricted information, including his driver's license number, social security number, home address, and photograph two separate times

on April 14, 2008. Mr. Blache stated that Mr. Painter had no official reason to access his driver's license or other private information.

- Kermit Smith is a Baton Rouge area businessman and retired Louisiana State Police Trooper. Mr. Painter accessed Mr. Smith's restricted information, including his driver's license number, social security number, home address, and photograph on August 19, 2008. Mr. Smith stated that he made a public records request to ATC during that time period. He also stated that he has known Mr. Painter for many years, but does not know why Mr. Painter accessed his private information and viewed his driver's license photograph.
- Peggy Guidry is a Zachary, LA police officer. She contacted the ATC to refer information regarding a bar in Zachary that was allegedly selling alcohol to underage persons. Contemporaneously, Mr. Painter accessed Ms. Guidry's restricted information, including her driver's license number, social security number, home address, and photograph on March 9, 2010. Ms. Guidry said that she does not know why he accessed her private information and viewed her driver's license photograph.
- Keitha Nelson is a reporter for WAFB television news in Baton Rouge. Mr. Painter accessed Ms. Nelson's restricted information, including her driver's license number, social security number, home address, and photograph on June 11, 2007. Ms. Nelson stated that she does not know why he accessed her private information and viewed her driver's license photograph.
- Thomas Hodson is a former LSU quarterback who resides in Baton Rouge. Mr. Painter accessed Mr. Hodson's restricted information, including his driver's license number, social security number, home address, and photograph on June 7, 2007. Mr. Hodson stated that he had no official business with ATC, does not know Mr. Painter, and does not know why Mr. Painter accessed his private information and viewed his driver's license photograph.
- Wendy Vitter is the wife of United States Senator David Vitter. Mr. Painter accessed Mrs. Vitter's restricted information, including her driver's license number, social security number, home address, and photograph on July 18, 2007. Mrs. Vitter stated that she had no official business with ATC, does not know Mr. Painter, and does not know why Mr. Painter accessed her private information and viewed her driver's license photograph.
- Mindy Spurrier is a former employee of a Baton Rouge law firm. Mr. Painter accessed Ms. Spurrier's restricted information on February 6, 2007 and again on June 2, 2008. This restricted information included her driver's license number, social security number, home address, and photograph. Ms. Spurrier has "no idea" who Murphy Painter is or how he would have known her name. She has never applied for a

liquor license and has never had any business with ATC. Ms. Spurrier does not know why Mr. Painter accessed her private information and viewed her driver's license photograph.

Use of Voyager to Identify Anonymous Complainant

On August 6, 2010, Mr. Painter received an email from an unknown source that was critical of him and the ATC. The email was also sent to Paul Gates at WAFB news, Jeff Roedel of 225 Magazine, and Rachael Upton of 225 Magazine.

Mr. Painter began aggressively searching for the author of the email. He ran inquiries on a person with a name similar to the actual email address and accessed that person's confidential information. Our investigation determined this person is a young, female LSU student who is uninvolved with the transmission of the email. She does not know Mr. Painter and has never had any official business with the ATC.

On August 9, 2010, Mr. Painter ran four LA OMV inquiries directly related to that female LSU student's residence. He ran vehicle license plate inquiries on two cars parked at her residence, followed by searches on the two individuals who own those cars. These searches occurred between 8:16 p.m. and 8:21 p.m. Six minutes later at 8:27 p.m., Mr. Painter accessed Ms. Suire's restricted LA OMV records and driver's license photograph for the third time. Mr. Painter was documented on surveillance video entering the ATC office at 8:01 p.m. on August 9, 2010 and exiting at 8:40 p.m.

LSP examined Mr. Painter's state issued Blackberry device following his resignation. During that examination, it was found that on August 9, 2010, Mr. Painter sent a text message containing the female LSU student's address to a federal law enforcement agent. He advised the agent that he needed research done on the address for a legitimate law enforcement matter. The agent obtained the information that Mr. Painter requested and provided it to him via text message.

Taped interview with Admissions of Voyager Misuse

Mr. Painter participated in a recorded interview with WAFB news reporter David Spunt in mid-August 2010, shortly after resigning from his job. Mr. Painter made admissions related to his improper activity during this recorded interview. The entries that follow begin with a notation of the point in the recording when the particular admission occurs:

- 4:04 – Mr. Painter stated, “Anything that I did that had anything along this line has to do with me doing or looking into alleged irregularities or criminal activity within the Office of Alcohol and Tobacco Control.”
- 4:33 – David Spunt said that they talked earlier about Mr. Painter's having done the searches over 2,000 times. Mr. Painter replied, “Well, I'm, I'm very surprised it's not more.”

- 7:22 – Mr. Painter stated, “The governor’s office has been a carousel. Everybody moves around up there and there’s a new face every other day, and I’m not sayin’ nothin’ negative about that. I’m sure there’s a good reason for it. But if you go find and look, the three names or whatever they say I looked up, the only possibility that could be is that I had meetings at the governor’s office with those people, on that day. I had no idea who those people were or who I was going meet and I looked up their picture on the uh, on the computer to see what, who I was going meet, how old they were so I know what way to talk, or, or you know what way to present whatever information I was going to, I was going to present to ‘em.”
- 8:04 – Spunt asks who specifically at the Governor’s Office. Mr. Painter replied, “I had a meeting with Paul Rainwater. I had a meeting with uh, uh, Mimi Hedgecock, and, and forgive me, I had a meeting with another uh, another lady that’s in the uh, a, a lawyer that, that, that was there over some legislative issues and stuff and I, I, she was at the meeting when I was uh, terminated, and, and I’m just forgetting her name right now.”
- 8:31 – Spunt asks if it was just those three. Mr. Painter replied, “That, that I recall.”
- 26:29 – When referring to Kelli Suire, Mr. Painter said, “She is the one that told me she had a swim suit on. That she was around the swimming pool with her child and I went there to get documents that she had taken home from the office to work on. I spent 3 minutes around the pool talking business, got my documents, and went back to the office to work the rest of the day.”
- 30:23 – Spunt asks Mr. Painter if he ran any reporters at the station. Painter replied, “Well, if it’s Keitha Nelson, uh, uh, I, I mean there is no background check done on any of that. I, I probably ran her driver’s license to see how tall she is and uh, being a former basketball player and anybody knows me at six foot three that, that, uh, uh, height in women is always something that, that, that, that I look at. It had nothing to do with any impropriety and nothing else. Um, um, looking at a driver’s license situation is different than a criminal history check or what you want to call a background check.” (Spunt asks Mr. Painter if he saw anything wrong with that) –Mr. Painter replied, “Every police officer in the United States that has access to a drivers license system uses it to resolve questions that have to do with legitimate issues in their business.”

Sexual Harassment of Kelli Suire

Mr. Painter may have sexually harassed Kelli Suire, a former female employee of the ATC. He used his access to official law enforcement databases to search Ms. Suire's personal information a total of three times. The last inquiry on August 9, 2010 was an apparent attempt to locate Ms. Suire's new residence. Ms. Suire resigned from ATC in November 2009. Mr. Painter also conducted inquiries on Ms. Suire's elderly aunt and ex-husband. She eventually obtained a restraining order against Mr. Painter to stop his further attempts to contact her.

Mr. Painter subjected Ms. Suire to repeated, uninvited visits to her home. She stated that Mr. Painter asked her what she was doing up at 5:00 a.m. because he had passed her house and seen her lights on. In a statement to an LDR investigator, Mr. Painter admitted that he made a work related visit to Ms. Suire's residence once while she was swimming. He stated that he did not specifically remember making a comment about Ms. Suire's "giving an old man his kicks," but said that it sounded like something he might say.

During her employment as his Administrative Assistant, Mr. Painter invited Ms. Suire to spend the night with him and repeatedly asked her to lunch. She stated that Mr. Painter became angrier over time as she ignored his romantic requests and comments. Ms. Suire's statement is consistent with information gained during interviews with current ATC staff members who witnessed Mr. Painter's interaction with Ms. Suire.

Department of Revenue Investigations

Before her resignation from ATC, Ms. Suire complained to the Louisiana Department of Revenue about Mr. Painter's treatment of her. LDR hired an outside consultant to "ensure there would be objectivity and fairness in" investigating the complaint. After the consultant found that "Mr. Painter acted in a controlling way toward Ms. Suire, but it was not based on a sexual motive or her gender," LDR informed Ms. Suire that "Painter's actions did not violate the LDR's Anti-Harassment Policy." The consultant supports her finding by pointing out that Ms. Suire stated "that she was 'sexually discriminated' against by the Commissioner" but not "sexually harassed."

On July 28, 2010, several ATC employees reported six specific allegations of wrongdoing by Mr. Painter to LDR management, including complaints that Mr. Painter sexually harassed Ms. Suire and abused the NCIC system. Three business days later on August 2, 2010, an LDR memo was written which states that "there is no evidence to support a full-fledged investigation" into Mr. Painter's activities. When we approached LDR about this matter, we were advised that since the ATC Commissioner is an appointed official, the complaint was never fully investigated because LDR had no means to suspend Mr. Painter. LDR normally suspends employees under investigation. In this instance, they feared that Mr. Painter would obstruct the investigation, destroy evidence, or seek retribution against the employees who made the complaint if he were allowed to remain as commissioner during a full-fledged investigation.

We found no evidence that anyone from LDR informed the Governor's Office of the need to suspend Mr. Painter so the complaints against him could be fully investigated. Further, once briefed by the Inspector General concerning Mr. Painter's illegal use of law enforcement databases, the Governor's Office requested and received Mr. Painter's resignation that same afternoon.

Recommendations:

1. The ATC has Law Enforcement and Criminal Investigative Divisions. These agents have a legitimate need for access to the LLETS system. ATC misuse of the system risks revocation of this access. The ATC Commissioner should immediately take measures to ensure that access to LLETS, NCIC, and Louisiana OMV records systems is restricted to those employees with a legitimate need for that access, and that those employees only use that access for legitimate reasons.
2. The DPS&C and the FBI AIU dictate that access to LLETS/NCIC is “restricted to criminal justice agencies for official criminal justice purposes.” ATC should establish an accurate logging system to create a record of who conducts inquiries and the purposes of those inquiries.
3. The Voyager system currently in use by ATC has an administrator level access feature that allows audits of its use. The Commissioner should implement a policy that causes the Voyager system to be regularly audited to reduce the risk of further misuse. This policy should include a self-reporting provision that notifies DPS&C if ATC identifies misuse.
4. The current legal framework divides supervisory authority over the ATC commissioner between the LDR and the Governor. In order for the LDR Secretary to more effectively supervise the ATC commissioner, a revision of this framework should be examined and considered.

This report will be forwarded to the United States Attorney for the Middle District of Louisiana and the District Attorney for the Nineteenth Judicial District Court of Louisiana for consideration of possible criminal prosecution for violations of federal and state law.

Glossary of Acronyms

ATC	Louisiana Office of Alcohol and Tobacco Control
CJIS	Criminal Justice Information Security
DPS&C	Louisiana Department of Public Safety and Corrections
FBI	Federal Bureau of Investigation
FBI AIU	Federal Bureau of Investigation, Access Integrity Unit
III	Interstate Identification Index
LA OMV	Louisiana Office of Motor Vehicles
LACCH	Louisiana Computerized Criminal History
LDR	Louisiana Department of Revenue
LLETS	Louisiana Law Enforcement Telecommunications System
LRS	Louisiana Revised Statute
LRS	Louisiana Revised Statute
LSP	Louisiana State Police
NCIC	National Crime Information Center
NLETS	National Law Enforcement Telecommunications System
OIG	Louisiana Office of State Inspector General
USC	United States Code

Endnotes

¹ La. R.S. 14:73.7. Computer tampering [in pertinent part]

A. Computer tampering is the intentional commission of any of the actions enumerated in this Subsection when that action is taken knowingly and without the authorization of the owner of a computer:

- (1) Accessing or causing to be accessed a computer or any part of a computer or any program or data contained within a computer.
- (2) Copying or otherwise obtaining any program or data contained within a computer.

B. For purposes of this Section:

- (1) Actions which are taken without authorization include actions which intentionally exceed the limits of authorization.

C. Whoever commits the crime of computer tampering as defined in Paragraphs (A)(1) and (2) of this Section shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

² 18 U.S.C. §1030. Fraud and related activity in connection with computers [in pertinent part]

(a) Whoever—

- (2) intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains—

(C) information from any protected computer;

(c) (2) (A) except as provided in subparagraph (B), a fine under this title or imprisonment for not more than one year, or both, in the case of an offense under subsection (a)(2), (a)(3), or (a)(6) of this section which does not occur after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph. . . .

³ 18 U.S.C. §2721. Prohibition on release and use of certain personal information from State motor vehicle records

(a) **In General.**— A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

- (1) personal information, as defined in 18 U.S.C. 2725 (3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section; or
- (2) highly restricted personal information, as defined in 18 U.S.C. 2725(4), about any individual obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom such information applies, except uses permitted in subsections (b)(1), (b)(4), (b)(6), and (b)(9): *Provided*, That subsection (a)(2) shall not in any way affect the use of organ donation information on an individual's driver's license or affect the administration of organ donation initiatives in the States.

(b) **Permissible Uses** –

- (1) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.

18 U.S.C. §2722. Additional unlawful acts

(a) **Procurement for Unlawful Purpose.** — It shall be unlawful for any person knowingly to obtain or disclose personal information, from a motor vehicle record, for any use not permitted under section 2721 (b) of this title.

18 U.S.C. §2723. Penalties

(a) **Criminal Fine.** — A person who knowingly violates this chapter shall be fined under this title.

18 U.S.C. §2724. Civil action

(a) **Cause of Action.** — A person who knowingly obtains, discloses or uses personal information, from a motor vehicle record, for a purpose not permitted under this chapter shall be liable to the individual to whom the information pertains, who may bring a civil action in a United States district court.

(b) **Remedies.**— The court may award—

- (1) actual damages, but not less than liquidated damages in the amount of \$2,500;
- (2) punitive damages upon proof of willful or reckless disregard of the law;
- (3) reasonable attorneys' fees and other litigation costs reasonably incurred; and
- (4) such other preliminary and equitable relief as the court determines to be appropriate.

18 U.S.C. §2725. Definitions

In this chapter...

- (1) "motor vehicle record" means any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles;
- (2) "person" means an individual, organization or entity, but does not include a State or agency thereof;
- (3) "personal information" means information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status.¹¹
- (4) "highly restricted personal information" means an individual's photograph or image, social security number, medical or disability information; and
- (5) "express consent" means consent in writing, including consent conveyed electronically that bears an electronic signature as defined in section 106(5) of Public Law 106-229.

APPENDIX A

Responses

**Louisiana Department of Revenue's
Response**

BOBBY JINDAL
Governor



CYNTHIA BRIDGES
Secretary

State of Louisiana
Department of Revenue

January 12, 2011

VIA HAND DELIVERY

Mr. Stephen B. Street, Jr.
State Inspector General
Office of the Governor
Post Office Box 94095
Baton Rouge, LA 70804-9095

RE: Case No. CID-11-007

Dear Mr. Street:

I have reviewed the preliminary draft of the State Inspector General's Investigative Report regarding the case referenced above. While I concur with the finding that Mr. Painter accessed law enforcement data systems for non-business related purpose, I do take exception to the report's conclusions regarding the Louisiana Department of Revenue's (LDR) handling of two complaints about Mr. Painter's activities.

The first complaint involved a sexual harassment allegation by Ms. Kelli Suire. LDR takes seriously any harassment complaint by employees. These types of complaints are handled through a process outlined in LDR's Policy and Procedure Memorandum No. 10.3.

As a result of Ms. Suire's 2009 complaint, LDR's Human Resources Director transferred the grievance to the Office of Legal Affairs, which is the Secretary's designee. The Office of Legal Affairs retained a third party investigator to review the complaint. The investigator concluded:

"Based upon the information obtained from the employee interviews, the investigator concludes that Mr. Painter did not violate the Department's Anti-Harassment Policy. While several of Mr. Painter's actions likely constitute poor management style, the investigator concludes that such actions were not based on Ms. Suire's gender, nor were they of a sexual nature. Ms. Suire herself admitted that her complaint was not one of sexual harassment. She does not contend that Mr. Painter made unwelcome sexual advances toward her, requested sexual favors, or engaged in verbal or physical conduct of a sexual nature. The isolated actions Ms. Suire does allege that could be considered unwelcome sexual advances or verbal or physical conduct of a sexual nature are denied by Mr. Painter with no witness corroboration and/or do not rise to the level of sexual harassment under the Department's policy."

Based on this conclusion and the lack of evidence to substantiate Ms. Suire's claims, no action could be taken against Mr. Painter regarding the sexual harassment complaint. However, Mr. Painter was advised

Contributing to a better quality of life.

that he needed to address his management style. Therefore, there is no basis to substantiate the statements that LDR neglected to pursue an investigation of Mr. Painter due to his status as an appointed official.

The second complaint, which involved multiple allegations, including the potential abuse of access to certain law enforcement data systems by Mr. Painter, were not reported to LDR's Human Resources Division. Instead the complaints were lodged with other LDR employees and assigned to LDR's Criminal Investigations Division (CID). With respect to the allegations of improper access, CID concluded the following:

"There are two factors that make me believe that no such prosecution would take place. The first is that the Government Accounting Office previously reported that misuse of NCIC is usually not prosecuted. The second is the fact that Louisiana State Police is the agency responsible for administering the usage of NCIC, which noted such violations in a September 16, 2008 letter directed to Murphy Painter. That letter requested a written response from Mr. Painter indicating corrective actions. Mr. Painter sent a response letter dated September 23, 2008, which apparently satisfied LSP. The most that can be expected would be a misdemeanor offense. In addition, Mr. Murphy may be able to justify why he accessed NCIC. There is little reason to believe that there would be any prosecution as a result of Misuse of NCIC."

CID's report ultimately concluded with regard to all allegations it investigated that, "[a]t this time, there is no evidence to support a full-fledged investigation by the Criminal Investigations Division." Again, this report also does not disclose or discuss a failure to investigate Mr. Painter due to his status as an appointed official.

As a result of the findings related to the first investigation, there was no plausible reason, legal basis, or justification to legally discipline Mr. Painter. With regard to the second investigation, I did not become aware of the potential abuse until 2010. Upon becoming aware, an internal investigation commenced. Furthermore, the handful of accesses that were brought to my attention occurred in early 2008. State Police, the administrator of the database conducted their own inquiry subsequent to the cited accesses in 2008. State Police was satisfied with Mr. Painter's response and made no determination for prosecution. Therefore, I concluded that further investigation beyond the finding of CID was unnecessary.

As it relates to the recommendations contained in the report, I provide the following responses:

- 1. RECOMMENDATION: The ATC Commissioner should immediately take measures to ensure that access to LLETS, NCIC, and Louisiana OMV records systems is restricted to those employees with a legitimate need for that access, and that those employees only use that access for legitimate reasons.**

I concur with this recommendation. The new ATC Commissioner, Mr. Troy Hebert, has requested a review of the ATC program's various business functions, policies and procedures. LDR's Internal Audit Division began such a review with a target completion date of February 28, 2011. The results of this examination will be instrumental in evaluating changes required to

existing policies and/or the creation of new policies. These policies will be incorporated into LDR's formal Policy and Procedures Manual with a goal of doing so by March 31, 2011.

- 2. RECOMMENDATION: ATC should establish an accurate logging system to create a record of who conducts inquiries and the purposes of those inquiries.**

I concur with this recommendation. The new ATC Commissioner, Mr. Troy Hebert, is proceeding with the establishment of a system to log employee's inquiries and the intended use for each access to the LLETS/NCIC systems. LDR's Internal Audit Division will provide assistance as needed in devising the process. The anticipated date to establish and implement this process is March 20, 2011.

- 3. RECOMMENDATION: The Commissioner should implement a policy that causes the Voyager system to be regularly audited to reduce the risk of further misuse. This policy should include a self-reporting provision that notifies DPS&C if ATC identifies misuse.**

I concur with this recommendation. The new ATC Commissioner, Mr. Troy Hebert, is developing a policy that encompasses the process in response to item number two above and provisions for routine reviews of employee accesses to the Voyager system and the purpose for such inquiries. The anticipated completion date for this policy is March 20, 2011. Additionally, LDR's Internal Audit Division will incorporate these ATC reviews in its annual internal audit assessments and conduct periodic reviews for compliance with the policy.

- 4. RECOMMENDATION: The authority over the ATC commissioner should be revised to vest full authority in a single entity.**

I concur with this recommendation. A conflict exists between LA R.S. 36:457(B) and (D), and LA R.S. 26:791-796 as it relates to the management of the Alcohol and Tobacco Control Program and the Commissioner. It is this statutory construction that must be addressed to ensure effective supervision of both the Commissioner and the ATC Program.

In closing, LDR is proceeding with its corrective plans of action. If there are any concerns or questions, please feel free to contact me.

Sincerely,



Cynthia Bridges
Secretary

Murphy Painter's Response



BREAZEALE, SACHSE & WILSON, L.L.P.

ATTORNEYS AT LAW

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February 9, 2011

PERSONAL AND CONFIDENTIAL

Stephen B. Street, Jr. B. Street, Jr.
Louisiana State Inspector General
State of Louisiana
Office of State Inspector General
P.O. Box 94095
Baton Rouge, LA 70804

Re: Murphy Painter

Dear Mr. Street:

Enclosed please find a copy of the response by Murphy Painter to the investigative report of the Office of Inspector General

Sincerely,

BREAZEALE, SACHSE & WILSON, L.L.P.

Bernard E. Boudreaux, Jr.

BEB:clb
Enclosure

cc: Murphy Painter



One American Place, 23rd Floor
Post Office Box 3197
Phone: 225-387-4000

MEMORANDUM

TO: Office of State Inspector General, Stephen B. Street, Jr.

FROM: Counsel for Murphy Painter

DATE: February 8, 2011

SUBJECT: Case No. CID-11-007; RE: Murphy Painter

The following is Murphy Painter's written response to the investigative report dated November 23, 2010 conducted by the Office of State Inspector General (OIG) and relating to Case No. CID-11-007. Pursuant to the directives of Stephen B. Street, Jr., State Inspector General, this written response will address each finding and recommendation of the OIG in its report.

I. Improper Use of Criminal History Databases

Allegations that Mr. Painter violated state and federal law are false and misguided. The overwhelming majority of the alleged possible criminal activity involves the access of driver's license information. It is apparent that the OIG is attempting to create a crime where no crime ever existed.

A review of La. R.S. 14:73.7(A)(1) reveals that the statute applies to someone who gains unauthorized access to a computer or computer database. Mr. Painter did not commit such an act. The Criminal Division of the Louisiana Department of Revenue (LDR) stated as much when a prior allegation was made against Mr. Painter shortly before the OIG received a similar complaint regarding a driver's license inquiry by Mr. Painter. It appears that the OIG has taken the valid inquiry of that driver's license to fabricate the entirety of this "criminal matter."

Regarding the alleged violation of 18 U.S.C. § 1030(a)(2), there has been no fraud committed by Mr. Painter and none will be uncovered. Mr. Painter unequivocally denies violating this statute. Mr. Painter did not perform any unauthorized or invalid inquiry and acted within his authority as an ATC official.

Pertaining to 18 U.S.C. §§ 2721-2725, Mr. Painter has not released any personal information that could be obtained from a person's motor vehicle records. Any relevant information obtained by Mr. Painter was kept confidential. Further, Mr. Painter never accessed

any information, including anyone's social security number, unless it was used for a legitimate purpose in a law enforcement matter.

Mr. Painter vehemently denies the allegation that he abused the Louisiana Law Enforcement Telecommunications System (LLETS) or inappropriately used the Voyager system. The investigative report fails to differentiate between criminal history checks and those regarding one's driver's license and motor vehicle information, particularly when it favors the OIG's stance in its report. Mr. Painter's position as a sworn Louisiana Peace Officer, and the head of the law enforcement agency vested with the authority to produce an affidavit for arrest, by itself gives Mr. Painter access to certain databases. Also, such statutory authority provides Mr. Painter the latitude to conduct driver's license inquiries and to determine good character regarding license applications and nefarious businesses. State law prescribes that, where Mr. Painter has the discretion to issue or to not issue an alcohol or tobacco permit, he is permitted to conduct an investigation and identify those seeking to obtain the license and those acting on their behalf. It is absolutely Mr. Painter's responsibility to ensure that all transactions are compliant with applicable laws and policies.

All inquiries made by Mr. Painter regarding a person's criminal history were for valid law enforcement purposes. At no time was any information transferred to anyone for anything other than legitimate law enforcement purposes.

ATC also issues "responsible vendor certifications" to servers, sellers, and managers of alcohol and tobacco outlets. ATC has issued over 700,000 of these certifications since 2000. There is a constant need to identify individuals for violation issues and criminal activity occurring at an outlet. Consequently, conducting driver's license and criminal history inquiries in such matters is paramount. Mr. Painter personally conducted most of the initial investigations in order to determine whether to spend scarce budget dollars further investigating a possible impropriety.

The investigative report fails to address tobacco licensing issues. The same need for proper licensure exists, necessitating confirming questionable applications or driver's license reviews to identify and determine the relationship between possible criminal activity that would not appear on the tobacco license. Due to the failure of certain ATC employees to follow policy and, in some cases, illegally issue permits, this function rested with Mr. Painter and the administration office.

An overwhelming majority of alcohol and tobacco licenses are located in what the OIG report refers to as "Chart 2." The purportedly disproportionate number of searches cited is not due to any alleged wrongdoing by Mr. Painter. Mr. Painter has made driver's license inquiries most often in the identified areas listed in Chart 2, mainly because a larger portion of the licenses in these areas, specifically New Orleans, are related to organized crime and persons prohibited from obtaining a license. This is also the case where a large number of ATC system failures caused licenses to be issued improperly. Baton Rouge also has a disproportionate number of licenses compared to other parts of the state. The figures do not prove anything relating to improper or illegal inquiries by Mr. Painter or the ATC.

Another reason for the disproportionate number of inquiries is due to Mr. Painter's background as an Ascension Parish law enforcement officer. Mr. Painter has received many phone calls regarding possible drug users and dealers in Ascension and Livingston Parishes. Mr. Painter conducted the proper inquiries when credible information was provided and then transferred that information to the proper authorities. Also, the large number of gentleman's clubs in that area contributed to the number of inquiries made by Mr. Painter. Those types of establishments usually involve numerous issues, necessitating the need for extensive and appropriate action by Mr. Painter and the ATC. Again, Mr. Painter unequivocally rebukes the OIG's claims that he conducted unauthorized inquiries.

A. LSP Audits of ATC's Criminal History Inquiries

After every Louisiana State Police (LSP) audit, Mr. Painter met with and instructed those responsible for Voyager to audit and correct any issues. Mr. Painter specifically took the necessary action after the September 25, 2001 letter from LSP regarding a previously conducted audit. Mr. Painter denies that he violated the effective AFT policies and procedures, including those policies pertaining to criminal history inquiries.

At no time did Mr. Painter utter the alleged words derogating the police, as expressly claimed in the OIG report. Such a claim is simply untrue. The use of nameless employees to validate such a claim is completely unreliable and, frankly, irresponsible. In fact, Mr. Painter addressed the issues contained in the 2008 audit, mandating that all ATC agents be retrained and exposed, again, to proper ATC protocol.

Two members of the ATC staff, Brant Thompson and Louis Thompson, are people with whom Mr. Painter conversed about Voyager and using the proper procedures. Louis Thompson, as the head of the Enforcement Section of ATC, bears the principle responsibility for Voyager. He was never instructed by Mr. Painter to do anything other than follow the proper procedures and applicable laws. Louis Thompson was directed to train each and every agent and to document the training after the 2008 audit. He is a long-time employee and a graduate of the FBI National Academy. The OIG's conclusion that Mr. Thompson failed to obey a LSP audit because Mr. Painter told him otherwise is completely false.

Louis and Brant Thompson both advised Mr. Painter that there were no issues with access by agents and that the agents all understood what their responsibility with Voyager was. All criminal history inquiries had to be for criminal law enforcement purposes and not simply for licensing purposes. In other words, there had to be some showing that the applicant filed false information on his application to give cause for an NCIC check. Mr. Painter also specifically discussed conducting driver's license inquiries for identification purposes. Both Louis and Brant Thompson advised that doing so was approved under the Voyager system.

The law requires an investigation for proper qualifications before even a temporary permit can be issued. Because of improper issuances of temporary permits by agents in the past, necessary investigations were also a function of the ATC administration office. The ATC, usually Mr. Painter, would conduct an inquiry when any public official, employee thereof, or any private citizen sought a temporary permit.

In every audit conducted of ATC, there was never any direct violation by any person at ATC, including Mr. Painter, that was noted, as the OIG investigative report claims. Interestingly, the investigative report fails to reference an OIG audit conducted during 2001, when another ATC employee under investigation for violations of state law filed a 36-count allegation against Mr. Painter (which also alleged improper driver's license inquiries). After a complete investigation by the OIG, Mr. Painter was cleared of violating any law, state or federal, regarding driver's license and criminal history inquiries. Mr. Painter's actions, as alleged in the OIG report, are no different than what transpired then and was deemed legal.

B. Examples of Alleged Unauthorized Inquiries

The OIG investigative report lists examples of Mr. Painter's alleged unauthorized inquiries, specifically naming: Jonathan Babb, Jill Craft, Joyce McIntire, Therese Nagem, Joseph Brantley, Toby Edwards, Cecil Blanche, Fabian Blanche, Jr., Kermit Smith, Peggy Guidry, Keitha Nelson, Thomas Hodson, Wendy Vitter, and Mindy Spurrier. Mr. Painter unequivocally denies that he conducted unauthorized inquiries regarding those specifically mentioned, as well as anyone intimidated by such allegations. Any inquiry Mr. Painter made was authorized and for a legitimate purpose. No information was improperly transmitted.

i. Jonathan Babb, et al.

Mr. Painter's inquiries of Mr. Babb were for a legitimate, law enforcement purpose. Mr. Painter denies any wrongdoing in this instance. No restrictive information was transferred, copied, or maintained in any instance.

As noted previously, any inquiry of public officials and their respective employees was done for a legitimate, authorized purpose. No restrictive information was transferred, copied, or maintained in any instance.

ii. Jill Craft

Due to the ongoing legal dispute involving Mr. Painter and a client of Ms. Craft, it is inappropriate to address any inquiry of Ms. Craft allegedly conducted by Mr. Painter. Still, Mr. Painter denies any wrongdoing.

iii. Joyce McIntire

Mr. Painter denies that he conducted any improper inquiry of Ms. McIntire. Nevertheless, no restrictive information was transferred, copied, or maintained in any instance.

iv. Therese Nagem

Theresa Nagem is the wife of the holder of multiple alcohol permits which, therefore, permits ATC to check and verify relevant information. A spouse must have the same qualifications as the applicant. Mr. Painter asserts that any inquiry conducted was for a

legitimate, authorized purpose. No restrictive information was transferred, copied, or maintained in any instance.

v. Joseph Brantley

Mr. Painter has no specific recollection of the issues involving Mr. Brantley. Accordingly, Mr. Painter asserts that had any inquiry occurred, it would have been compliant with all applicable policies and laws.

vi. Toby Edwards

Mr. Painter denies that he conducted any improper inquiry of Ms. Edwards.

vii. Cecil Blanche

Mr. Painter denies that he conducted any improper inquiry of Mr. Blanche.

viii. Fabian Blanche, Jr.

Mr. Painter denies that he conducted any improper inquiry of Mr. Blanche.

ix. Kermit Smith

Mr. Painter conducted an authorized inquiry of Mr. Smith relating to certain regulatory issues concerning alcohol and tobacco licenses. Mr. Painter was authorized to duly investigate the issues involving Mr. Smith. No restrictive information was transferred, copied, or maintained in any instance.

x. Peggy Guidry

Ms. Guidry, whom Mr. Painter had never met, called Mr. Painter to file a confidential complaint based on information she received about an establishment outside of her jurisdiction that was operating illegally. She also suspected that the club was receiving permission to do so from members of ATC. Because of the sensitive nature and severity of the possible allegation, Mr. Painter used the sources available to him to conduct the proper investigation. Mr. Painter reiterates that any inquiry conducted was for a legitimate, authorized purpose. No restrictive information was transferred, copied, or maintained in any instance. The matter was documented and dealt with according to ATC policy.

xi. Keitha Nelson

Mr. Painter denies that he conducted any inquiries of Ms. Nelson.

xii. Thomas Hodson

Mr. Painter denies ever accessing Thomas Hodson's information for any unauthorized purpose.

xiii. Wendy Vitter

Mr. Painter denies ever accessing Ms. Vitter's information.

xiv. Mindy Spurrier

Mr. Painter denies ever accessing Ms. Spurrier's information.

C. Use of Voyager to Identify Anonymous Complainant

A proper response to this allegation requires the inclusion of relevant facts necessary to provide the proper background. There was an internal investigation at ATC involving the issuance of an alcohol wholesale permit to a family in Lake Charles. Mr. Painter investigated the matter and determined that ATC employees were complicit in the improper issuance of the permit. The Deputy Commissioner had known about this, yet refused to correct or report the matter. Mr. Painter, along with legal counsel of ATC, personally continued the investigation into the matter. Shortly thereafter, the office received a freedom of information request from WBRZ News looking for certain documents regarding the re-hiring of a former ATC employee and Mr. Painter's 2010 appointment calendar.

After careful investigation, Mr. Painter obtained enough documentation to determine that improprieties had occurred in the issuance of the alcohol permit. Mr. Painter gave the findings of his investigation to the FBI in Baton Rouge, the District Attorney's Office, and local law enforcement. A large number of driver's license checks and other database inquiries were made by Mr. Painter during that investigation.

A dispute ensued between Mr. Painter and a representative of WBRZ regarding the documents given to WBRZ by Mr. Painter. Subsequently, Mr. Painter received an email replete with half-truths and outright lies. Mr. Painter adamantly denies the OIG's contention that the email was anonymous, as the sender of the email was readily identifiable. Mr. Painter surmised that the email was written by someone with inside, confidential information regarding ATC, possibly an existing or former employee. Armed with this knowledge, and utilizing his statutory authority, Mr. Painter used the proper databases to further conduct his investigation of the license issue. Mr. Painter continued to legally gather relevant information in an effort to resolve the matter. Mr. Painter submits that he did not act outside of his authority in conducting the investigation.

D. Taped Interview with Admissions of Voyager Misuse

Mr. Painter adamantly asserts that he has not committed any crime nor has he participated in any criminal activity using any database during his tenure at ATC. Mr. Painter

categorically denies the OIG investigative report's claim that he "made admissions related to his improper activity." Any interpretation otherwise is absolutely false.

II. Sexual Harassment of Kelli Suire

The accusations of sexual harassment made by Kelli Suire against Mr. Painter have absolutely no relevance to the OIG investigation, and its inclusion in the investigative report is utterly unnecessary and was obviously only included for inflammatory purposes. The unfounded claims of sexual harassment will be addressed by the proper court. Mr. Painter's response to Ms. Suire's allegations are properly before said court, precluding the need for Mr. Painter to respond here. Nevertheless, Mr. Painter categorically denies the allegations made by Kelli Suire regarding Mr. Painter's alleged inappropriate conduct.

Regarding the claim that Mr. Painter conducted an inquiry on Ms. Suire's ex-husband, it was Ms. Suire who initiated the inquiry. In an impromptu meeting in Mr. Painter's office, Ms. Suire told Mr. Painter about an altercation in which Ms. Suire's husband was involved at a bar near Bourbon Street in New Orleans. While there, someone (presumably the bouncers) severely battered him, enough to hospitalize him. He was arrested. Ms. Suire told Mr. Painter about a number of criminal violations her husband alleged were taking place at the bar and that her husband was involved in the illegal distribution and consumption of certain drugs. After Ms. Suire left Mr. Painter's office, Mr. Painter reviewed the bar's file and conducted the necessary inquiries relating thereto. Mr. Painter notified members of the DEA task force of Ms. Suire's information and opened an ATC investigation of the bar.

III. Department of Revenue Investigations

Again, Mr. Painter emphasizes that the accusations of sexual harassment against Mr. Painter have no place in the OIG investigation and should not be included in the OIG's investigative report. Subject to the irrelevance of the claim, it should be noted that the Louisiana Department of Revenue (LDR) conducted an investigation and concluded that Mr. Painter did not violate the LDR's Anti-Harassment Policy and that there was insufficient evidence to support a full-fledged investigation by the Criminal Investigations Division. No disciplinary action was taken against Mr. Painter. Mr. Painter objects to, and unequivocally denies, any insinuation of sexual harassment as suggested in the OIG investigative report.

IV. OIG Recommendations

1. Concur. The ATC agents have a legitimate need to access the LLETS system. Ensuring that access to the LLETS, NCIC, and OMV records systems is restricted to the proper employees for appropriate reasons is vital. However, such a recommendation should be addressed by the proper authority.
2. Concur. An accurate logging system to create a record of who conducts inquiries, and the purpose of said inquiries, would ensure compliance with mandates of the Louisiana Department of Public Safety and Corrections and FBI Access Integrity Unit. However, such a recommendation should be addressed by the proper authority.

3. Such a recommendation should be addressed by the proper authority.
4. Such a recommendation should be addressed by the proper authority.

V. Request on behalf of Mr. Painter

It is specifically requested that any and all exculpatory evidence that currently is or may come into the possession of the OIG be furnished to counsel for Murphy Painter. As you are aware, *Brady v. Maryland* 373 U.S. 83, (1963), and subsequent jurisprudence, requires disclosure of evidence favorable to a defendant which is either exculpatory or impeaching and is material to either guilt, innocence or punishment. Evidence is "favorable" to the defendant if it either helps the defendant or adversely affects the prosecution. The suppression of evidence favorable to an accused violates due process where the evidence is material either to guilt, innocence or to punishment, irrespective of the good faith or bad faith of the prosecution. Under the purview of the *Brady* rule, it is requested that counsel for Mr. Painter be furnished the full list of names of those persons about whom Mr. Painter allegedly conducted unauthorized inquiries, as stated in the investigative report. The OIG's report only listed the names of fourteen (14) individuals whose restricted information was allegedly accessed by Mr. Painter. The OIG report left out the rest of the approximately 1,150 people whose restricted information Mr. Painter allegedly accessed. The failure to comply with *Brady* requirements constitutes a direct violation of due process to Mr. Painter. Moreover, without such necessary and exculpatory evidence, Mr. Painter has insufficient means to rebut all allegations and insinuations of impropriety, as suggested in the OIG investigative report. It cannot be assumed that the actions of Mr. Painter did not occur pursuant to his official duties, particularly without all relevant information being made available to him. The potentially onerous undertaking required to compile a complete list of names is not a legitimate reason for failing to provide such information. It is imperative that all of the names of the persons about whom inquiries were made be provided so that it may be shown that every inquiry was made for a legitimate purpose. Failure to provide all of the names, and thereby any opportunity to properly defend the allegations of wrongdoing, is nothing more than an effort to imply guilt by insinuation. Fundamental fairness requires that all names be disclosed so that a proper defense can be made.

APPENDIX B

Additional IG Comments

Inspector General Comments

Murphy Painter

In his response, Mr. Painter incorrectly claims that our report fails to address tobacco licensing issues. OIG's investigation included a comparative analysis between the list of all inquiries conducted by Mr. Painter and internal ATC databases that are inclusive of all individuals licensed or permitted by the ATC. The results of that comparison are included in our report.

In his response, Mr. Painter also makes a specific request under *Brady v. Maryland*, 373 U.S. 83 (1963) for any evidence which may be exculpatory, i.e., favorable to the defendant and material to guilt, innocence or punishment. OIG is thoroughly familiar with the *Brady* decision, which established clearly that prosecutors have an affirmative duty, as a matter of constitutional law, to disclose all known exculpatory evidence to the accused in a criminal proceeding. Although this matter is being referred to prosecutors to decide whether criminal charges are appropriate, no such charges have been filed to date. Mr. Painter's request is therefore premature and misdirected. In the event that formal criminal charges are filed, Mr. Painter may direct this request to the prosecuting agency at the appropriate time.

OIG has carefully examined the remainder of Mr. Painter's response, and stands by its report and recommendations.

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