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January 24, 2013

Mayor Matthew T. Ryan,
Members of the City Council
City of Binghamton
38 Hawley Street
Binghamton, NY 13901

Report Number: S9-12-12

Dear Mayor Ryan and Members of the City Council:

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

In accordance with these goals, we conducted an audit of eight units comprising four cities and four towns throughout New York State. The objective of our audit was to determine if these units have conducted background checks for individuals involved in the municipalities' youth programs. We included the City of Binghamton (City) in this audit. Within the scope of this audit, we examined the policies and procedures of the City. We also examined various records including employment records, youth program documentation, and third-party contracts for the period January 1, 2010 to April 27, 2012.

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

Summary of Findings

The City has not adopted a policy for background screening of employees, contractors and volunteers who provide services to the City's youth programs, but does have an unwritten screening process in place for all except seasonal employees and contractors. The City did not perform background checks for the 115 and 99 summer employees,¹ in 2010 and 2011 respectively, many of whom were involved in programs dealing directly with the City's youth.

The City has not implemented an entity-wide monitoring system of the background checking process to ensure that individuals involved in any of the City's youth programs are free of criminal records. We were unable to rely on the background check documentation that was conducted on the volunteers used in programs for further testing, as the records provided were not permanent.² However, the process was verified as being in place through interviews with separate department personnel. We tested 356 names of individuals providing service to the programs to determine if there were any public records documenting either a sex offense or criminal history. The service providers included full- and part-time City employees, contractors, and volunteers. Our tests of the names disclosed no findings.

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

Background and Methodology

The City of Binghamton is located in Broome County, with a population of approximately 47,000 people. The City's youth programs provide services to its residents. The City's 2010 and 2011 actual expenditures for youth programs were approximately \$340,000 and \$325,000 respectively. Budgeted youth program expenditures for 2012 are approximately \$355,000.

The City is governed by the City Council, which comprises seven elected members. The City Council is responsible for the general management and oversight of the City's financial and operational affairs. These responsibilities include setting policies and establishing effective controls over operations. The chief executive officer is the Mayor. The City offers a multitude of youth programs through its Parks and Recreation Department and Youth Bureau. The Director of the Parks and Recreation Department and the Director of the Youth Bureau are responsible for organizing the programs offered to the community, which includes screening prospective staff and contracted individuals needed for specialty services. There were about 6,400 participants enrolled in approximately 29 City youth programs during our scope period.

Youth programs encompass a wide variety of activities and are offered as a response to community interest. These include contracts, made through the Youth Bureau, to provide employment and literacy programs. Programs offered through the Parks and Recreation Department include skills training for a variety of sports, safety programs, and swim programs. The Parks and Recreation Department, in conjunction with community organizations, operates a

¹ Summer employees over age 18 as of June 1, 2010, and June 1, 2011, respectively

² The volunteer's background check results were documented by the City using a post-it note on the consent form. There was no indication on the post-it notes, whom the information was associated with, other than it was stuck to the consent form.

variety of sports leagues throughout the year. With these youth programs, parents are entrusting their children's learning experience and safety to the adults (full- or part-time employees, contractors, or volunteers) that the City engages to administer the programs. A municipality can help create a safe environment for community youth through background checks in the hiring and screening of all individuals associated with the municipality's youth programs. During the employee hiring process, two types of background checks can be conducted and documented: a criminal history background check, which is done with the consent of the individual, and a search of the New York State Sex Offender Registry, which is public information.

New Federal legislation that has been introduced but not yet enacted, the Child Protection Improvements Act of 2011,³ focuses on several aspects of criminal history investigations for child service organizations. However, while on the State level the Education Department has requirements⁴ for school districts for background checks on individuals dealing with students, there is no one law or regulation that provides overall guidance for youth programs found in municipalities. Instead, depending on the type of program offered, specific legislation guides the level of background check screening required. For instance, Article 13-B of Public Health Law requires children's camp⁵ operators to determine whether an employee or volunteer is listed on the New York State Sex Offender Registry. This check, which DCJS conducts on names submitted by the City, must be completed prior to the day the individual starts work at the camp and annually thereafter. Additionally, national youth sports groups recognize the need to provide general guidance for youth program administration, including a criminal history background check for all volunteers.

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

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

Audit Results

The City has not adopted a policy for background screening of employees, volunteers or contractors who provide services to the City's youth programs, but does have an unwritten

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

⁴ Part 87 of the Regulations of the Commissioner of Education and the Safe Schools Against Violence in Education (SAVE) legislation (Chapter 180 of the Laws of 2001)

⁵ The law applies to all children's camps (day, traveling day, and overnight) and to all prospective employees and volunteers at the camp regardless of their job title/responsibility or employment status.

screening process in place for all individuals, except seasonal employees and contractors. Concurrently its Civil Service Department implemented an unwritten process that conducts a county level criminal history and New York State Sex Offender Registry background check on all new full- and permanent part-time employees over 18 years old. This process does not include those summer and other seasonal part-time employees providing services to City youth programs. For regular employees, the City uses its employment application and a consent and release form, which contains a statement about conducting investigations and includes a consent statement from the individual to allow it. However, City officials told us that the background checks and investigations for individuals in the summer youth programs, whether full- or part-time, are not required for employment.

The Parks and Recreation Department hires seasonal help after the completion of an application, interview, and reference checks. The Parks and Recreation Department bases its hiring, in part, on being familiar with individuals whom the City employs from year to year, referrals from known community residents, and knowledge of individuals with school district affiliations. The City does use individuals with school district affiliations in both Parks and Recreation Department and Youth Bureau programs. The Parks and Recreation Department requests and keeps on file the New York State Education Department fingerprint clearance for employment documentation for each teacher, while the Youth Bureau does not.

In addition, the City uses volunteers as coaches for their various sports leagues. These coaches often have a relative on the team that they coach while other volunteers serve year after year. The Parks and Recreation Department management indicated that a background screening process has been used for volunteer coaches since prior to 2010. The process was described as using the City Police Department to conduct county level criminal history background and New York State Sex Offender Registry checks on volunteer coaches that are new to the program. In the fall of 2011, the Parks and Recreation Department updated the process to include conducting background checks on all youth program volunteer coaches each season. A similar acknowledgement and consent form, as used for hiring City employees, was used with the volunteer coaching application.

The Youth Bureau was the only department identified as using contractors in City youth programs. There is no documented or written background screening process for contractors who work directly in the City's youth programs. The Youth Bureau used two contractors in its summer literacy program and the Parks and Recreation Department did not use any. The City does not require a background check for these contractors, and therefore has no process to monitor these checks.

There were no new full- or part-time (non-seasonal) youth program employees hired during our scope period that would have been selected to test for proof of background documentation kept in the City records. However, City officials stated that summer seasonal youth program workers did not have background checks conducted. In 2010 and 2011, there were 115 and 99 summer workers,⁶ respectively. We found no background check documentation in the City records for these individuals.

Additionally, the Park and Recreation Department does not have a monitoring process to ensure that all individual names are submitted to the Police Department to have the names checked prior

⁶ Summer employees over age 18 as of June 1, 2010, and June 1, 2011, respectively

to the first day of employment. We identified 93 names of volunteers who coached during our audit scope period. Of the 93, the City could not provide background check documentation for 41; 30 were in the process of being checked; and 22 had an individual consent form with post-it notes describing the screening results. However, the post-it notes showing results were not permanently attached to the documentation and did not have any identifying information (name), or the date and name of the person who conducted the check. We were unable to rely on the background check documentation conducted on the volunteers used in youth programs for further testing, as the records provided were not permanent⁷ or entirely available. However, the process was verified as being in place through interviews with separate department personnel. The updated process used by the Park and Recreation Department to test all volunteers each season has resulted in one volunteer's background check results coming back with a prior sexual offense, showing that the City's process does work as intended.

We also tested 356 names of individuals providing service to the youth programs to determine if there was a public record⁸ documenting either a sex offense or a criminal history. These individuals included full- and part-time City employees, contracts and volunteers. Our tests of the names disclosed no findings. Nonetheless, background checks of all individuals who provide services to the City's youth programs are not only in the City's best interest in protecting its children against unsafe individuals, but can also help protect the City against liability from possible legal action.

Recommendations

1. The City Council and City officials should develop and implement written policies and procedures for a background check of all individuals who are providing, or are expected to provide, services for youth programs.
2. City officials should institute a monitoring process to ensure that background checks are performed for all individuals that provide services for youth programs.

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

⁷ The volunteer's background check results were documented by the City using a post-it note on the consent form. There was no indication on the post-it notes whom the information was associated with, other than it was stuck to the consent form.

⁸ Public information available for New York State includes the Sex Offender Registry from the DCJS and state prison records from the Department of Corrections.

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

Sincerely,

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

APPENDIX A

RESPONSE FROM CITY OFFICIALS

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



Department of Parks & Recreation

Mayor, Matthew T. Ryan

Director, John C. Whalen

Assistant Director, Carol A. Quinlivan

Ms. Ann Singer
State of New York
Office of the Comptroller
Albany, New York 12236

July 10, 2012

Dear Ms. Singer:

After reviewing your Summary of Findings in regard to the City of Binghamton Youth Program Background Check Screening Process Audit, we would like to make note on some of the following statements.

Although we have not implemented an entity-wide monitoring system for background checks we have followed a procedure set from within our confines of our own department. Since I have been overseeing all of our youth programs, October 2011, we have had our Police Department run a background checks on every volunteer coach that we have secured into a volunteer coaching position. With the little information we were able to acquire, we dismissed two coaches. That refers to Pee-Wee Football that was held in October of 2011.

Beginning in November of 2011, we began the process of securing Little Binghamton League Volunteer Coaches, Greenman League Coaches and Girls Pee Wee and Junior Softball Coaches for our Youth Baseball Programs via several off site meetings. This process had not occurred in the past to this extent. By Season start up, we had all 2012 Volunteer Coaches listed and background checks were done, again by the Binghamton Police Department. This process resulted in dismissing 3 coaches.

Because some of the background checks were completed prior to the season year in which they signed the actual application, this caused some confusion for the auditors and then we believe they were credited to the wrong year and therefore actual names of coaches were not counted according by the year and/or season of the program. This resulted in leaving some unaccounted for in the final totals.

See
Note 1
Page 11

For the first time in many seasons, all volunteer coaches involved in any of our youth programs since 2011 have all been background checked.

As of this year's current summer hiring, we have installed a plan which all summer/seasonal hires will now have the background run through our Binghamton Police Department. Currently we have released one potential summer hire based on the findings of their background check. A retention plan too has been established to ensure we have these background checks on hand for any future needs.



Department of Parks & Recreation

Mayor, Matthew T. Ryan

Director, John C. Whalen

Assistant Director, Carol A. Quinlivan

It would be most beneficial if we were presented with a straightforward procedure and guideline for the future. As we move forward and strengthen our programs and detail our background checks what we would find helpful is a procedure that spells things out, without question. We have run into some issues through the background check process, which are not really related to any hindrance with the job or working with children. This has taken up much time just to decide which avenue we take based on incident.

See
Note 2
Page 11

The City of Binghamton has taken this matter seriously prior to this audit. However this audit process has shown us what could be done to improve this procedure. We have partnered with the Personnel Department and the Binghamton Police Department to much improve on our current process. We send all background checks applications to the Police Department first where they no longer place a post-it note to show the arrest but now they are manually typed on each individual application. Once they are completed by the Police Department they are forwarded onto the Personnel Department for review and discussion. As mentioned above, we would like to develop or receive a clear-cut procedure for the future mandated by New York State.

See
Note 2
Page 11

The City of Binghamton Parks & Recreation Department is dedicated to ensuring the safety of all children and young adults not only through its background checking process but also in the way our programs are monitored. We strive every year to improve on all of the aspects of every program. We struggle with our financial restraints wishing we could take our background checks to a higher level to include a fingerprinting process; however, again the cost factor is too great.

Given that all our season coaches are on a volunteer basis, we realize how difficult it is to find these people year after year. Placing the fee onto the volunteers themselves is not an option. We would request that the State look into increasing dollars to include such procedures.

CORRECTIVE ACTION PLAN TEMPLATE:

Unit Name: City of Binghamton, Parks & Recreation
Audit Report Title: Youth Program Background Check Screening
Audit Report Number: S9-12-12

Audit Recommendation:

1. The City Council and City officials should develop and implement written policies and procedures for a background check of all individuals who are providing, or are expected to provide, services for youth programs
2. City officials should institute a monitoring process to ensure that background checks are performed for all individuals that provide service for youth programs.



Department of Parks & Recreation

Mayor, Matthew T. Ryan

Director, John C. Whalen

Assistant Director, Carol A. Quinlivan

Implementation Plan of Action:

1. Met with City Council on Monday July 2, 2012. All agreed that a more extensive in plan would be implemented as soon as we have the final audit report.
2. Met with Personnel Department in June 2012 and have developed a new procedure and retention plan. All mentioned in the above document.
3. Met with Police Department Assistant Chief in June 2012, changed our actual background check application to mirror an employment check vs. a volunteer coach application.
4. No longer will post-it-notes be part of the documenting process of any infractions. They will now be typed listed at the bottom of each application.
5. All applications will now be on file in the Personnel Department.

Implementation Date:

All of the actions listed above have been put in place as of June 2012. Further actions will be set in place at the time of the final report and future meetings with City Council.

Person or Persons Responsible for Implementation:

Director of Parks & Recreation, John C. Whalen

Assistant Director of Parks & Recreation, Carol Quinlivan

Director of Personnel, Trish Keppler

Binghamton City Council: Jerry Motsavage District 1

Joseph Mihalko District 2

Teri Rennie District 3

Lea Webb District 4

Chris Papastrat District 5

John Matzo District 6

Bill Berg District 7

Signed:

Carol Quinlivan,
Assistant Director of Parks & Recreation

July 10, 2012

APPENDIX B

OSC COMMENTS ON THE CITY'S RESPONSE

Note 1

Our numbers are correct. We reviewed all coaching applications provided by the City for 2010, 2011 and part of 2012. As reported, 41 applications did not have documentation that City officials conducted a background check in any portion of the period audited, and pre-2010 checks would not change the conclusion.

Note 2

In the absence of State legislation or regulation, local government officials should consider the available options for conducting background checks, such as those contained in our audit report, and develop their own procedures to limit liability and ensure the safety of participating children.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

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

We reviewed available records that identified youth programs offered; the types of individuals providing services for each program, and personnel file documents for Town employees, looking for background check documentation. We listed all individuals by youth program, if the individuals could be identified. We then compiled the individual names into a list of those that did not have a completed background check documented. We then tested all identified names using software⁹ that accesses public records to determine if the individual has either a criminal history or a registered sex offense.

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

⁹ The software accesses public records only if the records are reported in electronic format.