

Town of Orange

Former Highway Superintendent's Records

APRIL 2021



OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

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Report Highlights

Town of Orange

Audit Objective

Determine if the former Highway Superintendent (Superintendent) maintained adequate and appropriate records and reports.

Key Findings

- The former Superintendent intentionally destroyed highway records.
- The former Superintendent submitted five inaccurate claims to the New York State Consolidated Local Street and Highway Improvement Program (CHIPS) that resulted in the Town receiving \$86,000 more than it was entitled to.

Based upon our audit and investigation, the former Superintendent was arrested and charged with obstructing governmental administration in the Second Degree for destroying Town records. In December 2020, the Superintendent pled guilty to Attempted Obstruction of Governmental Administration and was sentenced to a conditional discharge and \$500 fine.

Key Recommendations

- The Superintendent should retain adequate records of all Department transactions and activity.
- Town officials should work with the New York State Department of Transportation (NYSDOT) to resolve any prior years' discrepancies with CHIPS claims.

Town officials generally agreed with our recommendations and indicated they planned to initiate corrective action.

Background

The Town of Orange (Town) is located in Schuyler County. The Town is governed by an elected Town Board (Board), which consists of the Town Supervisor and four council members. The Board is responsible for the general management and control of the Town's financial affairs. The Superintendent is elected for a two-year term and responsible for overseeing all Highway Department (Department) operations, including maintaining Town roads, bridges and culverts and providing snow and brush removal services.

The former Superintendent served from January 1, 2014 through December 31, 2017.

Quick Facts

2018 Budgeted Highway Appropriations	\$720,100
Highway Employees	4
Lane Miles Maintained by Town	123.49
Population	1,750

Audit Period

January 1, 2014 – January 3, 2019

Highway Records

Records created in the course of a government's business transactions are a vitally important asset and essential to the administration of local government operations. Public records contain information which allows government programs to function, provides officials with a basis for making decisions, provides authentic and reliable evidence of transactions and ensures continuity with past operations. Public records document the legal responsibility of government, protect the rights of citizens, and provide citizens with a means of monitoring government programs and measuring the performance of public officials. Such records need to be systematically managed and protected to ensure ready access to vital information and to promote the efficient and economical operation of government. Part of protecting electronic records is ensuring a backup is performed on a routine basis with testing of the backup to verify it is useable.

What Records Should the Highway Superintendent Maintain?

Every highway department should have a record keeping system that details the work performed. The records should be sufficiently detailed to enable users to access relevant information as to the date, time, place, work performed and persons involved.

New York State Arts and Cultural Affairs Law¹ requires local officials, including highway superintendents, to maintain records to adequately document the transaction of public business and the services and programs for which he or she is responsible, to retain and have custody of such records for so long as the records are needed for the conduct of the office's business, to adequately protect such records, and to cooperate with the local government's records management officer on programs for the orderly and efficient management of records including identification and management of inactive records and identification and preservation of records of enduring value. In addition, local officials are required to pass on to his or her successor records needed for the conduct of the office's business. Records no longer needed for the conduct of the office's business should be transferred to the custody of the town clerk for their safekeeping and ultimate disposal.²

The superintendent is responsible for approving department employees' time sheets, initiating and approving all department purchases, preparing claim vouchers for board audit and approval and monitoring the department's budget. Additionally, the superintendent is responsible for recording and monitoring the department's use of consumable inventories, such as gasoline and diesel fuel. Finally, the superintendent is responsible for keeping maintenance records for

Every highway department should have a record keeping system that details the work performed.

1 Section 57.25

2 Records Retention and Disposition Schedule MU-1 indicates the minimum length of time that the Town must retain its records before they may be disposed of legally.

all department equipment and preparing an annual inventory of all highway equipment with the value and the cost of estimated repairs and to deliver such inventory to the town supervisor before September 30th.³ As a result of these responsibilities, the superintendent has a duty to preserve and protect the records he generates, no matter the format.

The Former Highway Superintendent Intentionally Destroyed Records

During our initial interview with the former Superintendent in his highway garage office on October 30th, 2017, we were shown multiple filing cabinet drawers of Department records.

These records included:

- Maintenance files for Town equipment that detailed the type of repair or maintenance work completed and parts used, including applicable invoices. (Records retention requirement (RRR) - six years after vehicle or equipment no longer in use)
- Fuel logs for both diesel and gasoline tanks that listed the date, employee name, equipment number, starting gallons, ending gallons and total gallons dispensed. (RRR - six years)
- Material bid forms used by the former Superintendent to solicit bids from local businesses. (RRR - six years after expiration or termination or six years after final payment under contract, whichever is later)
- CHIPS claims including, but not limited to summary and detail of claim, worksheets and other supporting documents. (RRR - six years)
- Daily employee task sheets prepared by highway employees to record by the hour the activity performed, as well as the equipment and material used for supporting the CHIPS claim. (RRR - six years)
- Employment applications (RRR - six years after termination of employment; three years if not hired)

The former Superintendent also showed us various electronic records he maintained and prepared on the Town's computer in his locked office.⁴ For example, the records included equipment, road and bridge inventories and the computerized accounting program he used to prepare Department vouchers. Based on our cursory review of these records, it appeared that the former

³ New York State Highway Law Section 142(3)

⁴ The former Superintendent was the only person who used this office and held the only key to it according to the Department employees and Supervisor during our initial interview with the former Superintendent. However, the former Superintendent later stated during our discussion of the records destruction and computer cleaning that others had access.

Superintendent's records were highly organized, detailed and supported the work performed by the Department.

Shortly after that meeting, on November 13th, 2017 and six days after the former Superintendent lost his bid for re-election, we were informed that he discarded documents into the Department's trash receptacle.⁵ We were able to retrieve hundreds of these documents from the trash prior to their destruction, including fuel logs, task sheets and employment applications. All of these records should have been retained for the incoming Superintendent or turned over to the Town Clerk. The disposal of the documents, especially in such an unsecured manner, is problematic; particularly the employment applications which contain personal, private and sensitive information. We cannot determine whether other documents had been properly disposed of.

The former Superintendent stated that the Department's computer crashed when he placed a coffee cup on the tower⁶ and that information contained on it was no longer available. In addition, backups of the computer's data were not made. However, we found that on December 22, 2017 action was taken to delete data and user activity from his computer.⁷ We replicated the computer's hard drive and recovered some of the deleted data and user activity, which included a significant amount of inappropriate and pornographic material and activity. Specifically, there were over 4,300 pornographic materials and the recovered Internet browsing history also revealed a significant amount of additional inappropriate activity (e.g., over 13,000 Craigslist and 10,000 ebay visits). Figure 1 summarizes the Internet browsing activity from classified advertisement and auction websites during the audit period. While some of the activity on these sites could have been for legitimate Town business, most were personal in nature including a significant amount of sexually explicit personal ads and the replies to such ads.

We replicated the computer's hard drive and recovered some of the deleted data and user activity, which included a significant amount of inappropriate and pornographic material and activity.

Figure 1: Superintendent's Personal Internet Use

	2014	2015	2017	Total
Classified Ad Web Addresses	1	6,086	7,122	13,209
Auction Web Addresses	3,535	3,294	3,378	10,207
Total	3,536	9,380	10,500	23,416

⁵ The former Superintendent told us that he thought he could destroy the records because he designed and created them for his use.

⁶ The former Superintendent told us he had taken the computer to the vendor used to repair the Town's computers; however, the Town did not receive an invoice from any vendor for computer repairs.

⁷ Logs that document Internet use must be retained for three backup cycles, but may not be disposed of before appropriate review and verification.

Due to the destruction of records, we were unable to determine if certain issues were a result of not complying with policies and procedures or if the supporting documentation was destroyed. For example, during the period January 1, 2017 through September 12, 2017:

- We found that documentation was not available to support that competition was solicited in accordance with the Town's procurement policy for quotes and bids when procuring Department goods and services. We found 85 of the 179 claims (47 percent) totaling \$340,598, including \$173,798 for road repair and maintenance materials, lacked adequate support that competition was sought.
- The purchase and hauling of various consumable inventory items, in conformance with competitive bidding statutes, was not supported. The Town purchased 1A stone totaling \$22,106, crushed item #4 totaling \$93,232, ice control sand totaling \$36,260 and low sulfur diesel totaling \$22,199. An additional \$52,127 was spent on hauling highway materials. We found no evidence was available to show that the former Superintendent obtained bids for these items, as required. Our review of the Steuben County⁸ roadway material bid awards found the rates per ton paid by the Town for these items was comparable. However, the Town still may have been able to save money by purchasing materials from one vendor with the lowest bid, rather than buying from multiple vendors as needed.

We also found that there was inadequate documentation for the hauling of materials. According to the former Superintendent, he saved the Town money and increased employee productivity by outsourcing most of the material hauling needed to perform road repairs. Although he showed us an email detailing the hauling cost per ton for various materials, there was no evidence he had prepared a cost-benefit analysis to support this decision and after our initial meeting, the email documentation was unavailable for our review. We later located an employee cost analysis in the documents recovered from the trash.

We performed a cost-benefit analysis (Figure 2) of material hauling to determine if the former Superintendent's decision to outsource this task was in the Town's best interest.

We also found that there was inadequate documentation for the hauling of materials.

8 Steuben County material bids were available for previous years and the material vendors used by the Town were located in Steuben County.

Figure 2: Vendor vs. Employee Hauling Price per Ton

Material	Vendor Hauling Costs Average Cost Per Ton	Employee Hauling Costs Average Cost Per Ton	Difference in Average Hauling Costs per Ton
1A Stone	\$5.75	\$9.01	(\$3.26)
Cobble Stone	\$4.00	\$3.99	\$0.01
Crushed Item 4 from Vendor 1	\$4.00	\$3.79	\$0.21
Crushed Item 4 from Vendor 2	\$4.00	\$2.12	\$1.88
Crusher Run	\$5.50	\$11.91	(\$6.41)
Ice Control Sand	\$4.75	\$4.60	\$0.15
Rip Rap	\$7.75	\$4.31	\$3.44
Screen Item 4-2	\$4.00	\$4.28	(\$0.28)
Cumulative Difference in Hauling Costs per Ton			(\$4.26)

In general, based on a comparison of the average hauling cost per ton for certain materials, we found the former Superintendent’s decision to outsource material hauling was a cost-effective choice for most materials. However, we were only able to draw this conclusion using task sheets that the former Superintendent attempted to destroy.

Had the former Superintendent maintained and presented to the Board the documentation related to hauling costs and his cost-benefit analysis, his decision would have been transparent.

Based upon the Comptroller’s audit findings and subsequent investigation, the former Superintendent was arrested in early 2020 and charged with obstructing governmental administration in the Second Degree for destroying town records. In December 2020, the Superintendent pled guilty to Attempted Obstruction of Governmental Administration and was sentenced to a conditional discharge and \$500 fine.

How are CHIPS Reimbursements Received?

The Consolidated Local Street and Highway Improvement Program (CHIPS) was established for the purpose of making payments toward the construction, operation and/or maintenance of highways, bridges and highway-railroad crossings that are not on the State highway system. The superintendent must maintain consistent and accurate records pertaining to highway projects submitted for CHIPS reimbursement. Project costs claimed or previously reimbursed which cannot be supported are subject to audit disallowance by NYSDOT, the Office of the New York State Comptroller or Office of the Inspector General. Amounts paid to the municipality by NYSDOT, which are subsequently disallowed are subject to

recovery by NYSDOT from the municipality or, at the option of the State, will be offset or reduced against current or future reimbursement claims of the same or other projects.

The Former Superintendent Filed Inaccurate CHIPS Reimbursement Claims

Department employees prepare and sign weekly time sheets that record daily start and end times, hours worked, overtime earned and leave usage. The former Superintendent signed the weekly time sheets after his review and approval and submitted them to the Supervisor for payroll processing. In addition to the time sheets, daily task sheets were prepared that detail the actual work performed by the individual employees. Some of these individual task sheets for 2017 were among the records recovered from the trash. We used these records, as well as available time sheets, to analyze the accuracy of the CHIPS claims.

Our review of the detailed task and time sheets found the former Superintendent filed inaccurate annual CHIPS reimbursement requests by overstating labor and equipment usage. For example, during the period from May 22, 2017 through May 25, 2017, the former Superintendent claimed 280 hours (70 hours per day) of equipment usage on the Town's reimbursement request. However, time sheets for the four employees totaled 133.5 hours of work. Even if the former Superintendent worked 40 hours, the total possible man hours would be 173.5 hours. Therefore, the former Superintendent inaccurately claimed an additional 106.5 hours, which resulted in the Town receiving \$7,500 more than it was entitled. During the audit period, the former Superintendent submitted five inaccurate requests for reimbursement and the Town received \$86,000 more than it should have. It appears that \$56,000 of the 2017 overage resulted from using the incorrect⁹ 2017 equipment rate, which was not identified or corrected.

...the former Superintendent filed inaccurate annual CHIPS reimbursement requests by overstating labor and equipment usage.

9 The equipment rate used for an eight hour period was \$7,033 rather than \$70.33

Figure 3: CHIPS Reimbursement Received vs. Reimbursement Supported

Year	CHIPS Amount Claimed	Amount Received	Supported by Actual Hours	Overage Paid to Town	Labor and Equipment Hours Claimed	Hours Supported	Inappropriate Hours Claimed
2017	\$250,906	\$235,055	\$171,687	\$63,368 ^a	1,420.00	1,089.25	330.75
2016	206,428	206,428	192,944	13,484	1,360.00	1,071.50	288.50
2015	70,164	68,785	60,636	8,149	400.00	300.00	100.00
2014	124,139	124,139	123,139	1,000	930.00	882.00	48.00
Total	\$651,637	\$634,407	\$548,406	\$86,001	4,110.00	3,342.75	767.25

^a The amount claimed included \$56,264 in equipment cost using the incorrect rate. However, the remaining overage of \$7,105 is the result of unsupported hours claimed.

Any amounts paid that are disallowed from the reimbursement requests are subject to recovery from the Town by NYSDOT or will be offset or reduced against current or future reimbursement requests of the same or other projects.

What Do We Recommend?

The Superintendent should:

1. Ensure that adequate records are retained of all Department transactions and activity, as required by law.
2. Backup electronic records routinely and periodically test the backups.
3. Limit use of the computer to official Town business.
4. Have adequate and accurate supporting documentation for all future CHIPS reimbursement requests.

The Board should:

5. Adopt and monitor information technology policies including acceptable use, employment of Internet filters and data backups, to ensure Town information is secured and computers are used for official use only.
6. Review future CHIPS requests for accuracy, as the Town is responsible for disallowed amounts paid.
7. Work with NYSDOT to resolve any discrepancies from prior years' CHIPS reimbursement requests.

Appendix A: Response From Town Officials

TOWN OF ORANGE
SCHUYLER COUNTY
899 HORNBY ROAD
BEAVER DAMS, NY 14812

March 1, 2021

Phone: 607-962-2978 Fax: 607-962-1003

NYS Comptroller's Office
Rochester Regional Office
The Powers Building Ste. 522
16 West Main Street
Rochester, NY 14614-1608


A huge thank you to both of you for all your work in auditing our former Superintendent of Highways for the years of 2014 through 2017.

The greatest regret is that this audit did not occur after the first two years he had been in office before he got to do more damage in the next two years. Also, more records for him to destroy.

We are in complete agreement he took advantage of his position and did just what he wanted to do with what he considered his records. So, glad you were able to retrieve some of them even though I am sure dumpster diving is not part of your job description.

With a new Superintendent of Highways, comes a whole new outlook and performance. He came from NYSDOT so he knows how important these records are, and understands they are the property of the Town.

All Highway records for vehicles, roads, inventories, purchases and bidding is being maintained as prescribed by Highway law between him and his deputy. Also, due to the CHIPS discrepancies all documentation is double checked for accuracy before being submitted.

The Town agrees with your findings and will continue to make sure that all highway records are kept safely and available for the next elected Highway Superintendent.

Sincerely,

Joanne Randall
Supervisor

Appendix B: Audit Methodology and Standards

We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed Town officials, including the former Superintendent, to gain an understanding of Town operations.
- We reviewed Board meeting minutes, including available Department reports prepared by the former Superintendent and Town policies and procedures.
- We reviewed all 179 Department claims from January 1, 2017 through September 12, 2017, and a random sample of 20 Department claims from each year, 2014, 2015 and 2016, to determine if the claims were properly supported, Board-approved, appropriate Department expenditures and complied with the Town's purchasing policy. We sent subpoenas for records to select vendors to verify that their records matched the Town's vouchers.
- We reviewed claim vouchers for consumable inventory items (e.g., road surface material and fuel) to determine the aggregate amount purchased and if bids should have been solicited.
- We conducted a physical inventory of equipment and tools at the Department's two facilities that were listed on the former Superintendent's inventory list.
- We compared the Town's payroll documents to the labor and equipment hours on the CHIPS reimbursement requests for 2014 through 2017, as well as available 2017 employee daily task sheets.
- We attempted to perform a reconciliation of fuel and gas purchases and usage by comparing the quantity of fuel purchased from paid vouchers and subpoenaed records to the quantity used according to the fuel logs provided by the former Superintendent and the fuel logs and employee task sheets retrieved from the trash.
- We prepared a cost-benefit analysis for material hauling performed by an outside vendor. We compared the cost per ton paid to the vendor to the estimated cost per ton for employees to haul the material by determining the number of hours and miles for each trip when actual amounts were not available.
- We conducted a digital forensic analysis of the former Superintendent's office computer.

We conducted this performance audit in accordance with GAGAS (generally accepted government auditing standards). 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 objective.

We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of 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 Board to make the CAP available for public review in the Town Clerk's office.

Appendix C: Resources and Services

Regional Office Directory

www.osc.state.ny.us/sites/default/files/local-government/documents/pdf/2018-12/regional_directory.pdf

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263196&issued=All

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263206&issued=All

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

www.osc.state.ny.us/sites/default/files/local-government/documents/pdf/2020-05/cyber-security-guide.pdf

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263211&issued=All

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/local-government/academy

Contact

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