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Office of the General Counsel

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Mr. Robert H. Kammer  
Director, Division of Supply  
and Property Management  
Office of the Assistant Secretary  
for Administration and Management  
United States Department of Labor  
Washington, D.C. 20210

Dear Mr. Kammer:

This is in response to your letter of December 1, 1988, addressed to Mrs. Rollee Efros, of our Office, which requests an opinion concerning the recordkeeping required by Public Law No. 99-550.

Public Law No. 99-550, approved October 27, 1986, 100 Stat. 3067, amended section 1344 of title 31, United States Code (Supp. IV, 1986), to restrict the use of government vehicles for home-to-work transportation. As so amended, 31 U.S.C. § 1344(a)(1) establishes the general rule that home-to-work transportation is not transportation for an official purpose and, therefore, is unauthorized. However, § 1344(a)(2)(B) provides, in part, that--

"transportation between the residence of an officer or employee and various locations that is . . . essential for the safe and efficient performance of . . . criminal law enforcement duties . . . is transportation for an official purpose, when approved in writing by the head of the Federal agency."

In terms of recordkeeping, § 1344(f) provides:

"Each Federal agency shall maintain logs or other records necessary to establish the official purpose for Government transportation provided between an individual's residence and such individual's place of employment pursuant to this section."

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You state that the Labor Department's Office of Inspector General (OIG) believes that their criminal law enforcement agents should not be required to maintain home-to-work logs that would be accessible to personnel outside of OIG. Enclosed with your letter is an analysis prepared by the OIG which discusses this matter.

The OIG position, as set forth in its analysis, is not entirely clear. At one point, the analysis suggests that no logs or other records of home-to-work transportation by criminal investigators need be maintained beyond the Secretary of Labor's designation, pursuant to 31 U.S.C. § 1344(a)(2)(B), supra, that such transportation is essential for law enforcement purposes. On the other hand, the analysis later acknowledges that internal controls and appropriate records must be kept concerning the use of government vehicles by any of its agents and states that OIG will maintain such records and make them subject to audit by Congress.

Fundamentally, the OIG analysis seems to merge two separate issues: whether detailed logs or other records must be maintained for home-to-work transportation by law enforcement agents, and, if so, to whom such logs or records must be made available. As to the first issue, we believe that 31 U.S.C. § 1344(f) does require detailed logs or records documenting the use of government vehicles in order to establish the official purpose for all such transportation, including home-to-work transportation by criminal law enforcement officials that is sanctioned by § 1344(a)(2)(B). The language of § 1344(f) does not limit the categories of home-to-work transportation to which its recordkeeping requirements apply, nor is such a limitation suggested in the legislative history. On the contrary, the legislative history indicates that all categories of home-to-work transportation are covered by the recordkeeping requirements. Thus, Senator Proxmire described the legislation as requiring "that every agency maintain logs or other records each time a Federal employee receives home-to-work transportation." 132 Cong. Reg. § 15866-67 (daily ed., Oct. 10, 1986).

This is also the interpretation of the law adopted by the General Services Administration in the preamble to its regulations:

"Agencies should note that even though this regulation may not apply to employees who perform intelligence, counter-intelligence, protective services, or criminal law enforcement duties,

31 U.S.C. 1344 does not exempt agencies from controlling home-to-work transportation for such employees. Rather, the law requires agencies to prepare the same documentation for employees performing such duties as it does for employees performing field work." 53 Fed. Reg. 26773, 26774 (July 15, 1988).

In our view, therefore, the determination by the head of an agency pursuant to § 1344(a)(2)(B) that certain home-to-work transportation is essential for the performance of law enforcement duties neither preempts nor satisfies the recordkeeping requirements of § 1344(f).

Section 1344 does not specifically address the disclosure of records required to be maintained by § 1344(f). Therefore, disclosure issues would be governed by other applicable statutes or legal requirements. For example, we certainly agree with the OIG analysis that the records are subject to audit by Congress. They also are subject to GAO's audit and access to records authority. Requests by the public for access to such records would be governed by the Freedom of Information Act, including, of course, any of the Act's exemptions from mandatory disclosure that might be determined to apply in a particular case. In any event, issues concerning the disclosure of records of home-to-work transportation do not affect the basic requirement that such records be maintained.

Sincerely yours,



Henry R. Wray  
Senior Associate General Counsel