



Illinois State Toll Highway Authority
Office of the Inspector General

SUMMARY ACTIVITY REPORT

March 23, 2016

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OFFICE OF THE INSPECTOR GENERAL
Theodor J. Hengesbach – Acting Inspector General

SUMMARY ACTIVITY REPORT

To: The Office of the Governor
The Board of Directors of the Illinois State Toll Highway Authority
The State of Illinois General Assembly

From: Theodor J. Hengesbach, Acting Inspector General *JH*

Date: March 23, 2016

Re: Office of the Inspector General Summary Activity Report for the Period Ending February 29, 2016.

INTRODUCTION

We provide this report pursuant to Section 8.5 of the Toll Highway Act (the Act).¹ The Act created the Office of the Inspector General (OIG) and the Governor-appointed position of Inspector General. The first Inspector General, James Wagner, served his full five-year term and retired effective June 30, 2015. On November 9, 2015, Governor Bruce Rauner appointed Theodor J. Hengesbach to this position and that appointment is pending Senate approval. Between July 1, 2015 and November 9, 2015, the Inspector General position was vacant; consequently, no report was issued prior to September 30, 2015 as provided by the Act. Therefore, this report will include a summary of OIG activity between March 2015 and November 2015, in addition to a summary of activity between November 2015 and February 29, 2016, under Acting Inspector General Hengesbach.

MISSION/JURISDICTION

OIG's mission is to promote effectiveness and efficiency in Tollway administration and operations by ensuring integrity and accountability of the Tollway Board, Tollway employees, and Tollway contractors and vendors. In furtherance of its mission, OIG strives to detect, deter, and prevent fraud, waste, abuse, corruption, misconduct, and mismanagement.

By statute, OIG's jurisdiction extends to Tollway officials, Tollway employees, and Tollway contractors and vendors.² As a general rule, the OIG does not become involved in cases involving private disputes, labor-management issues, or litigation. Matters investigated by OIG

¹ 605 ILCS 10/8.5(m) sets forth: The Toll Highway Inspector General shall provide to the Governor, the Board of the Authority and the General Assembly a summary of reports and investigations made under this Section no later than March 31 and September 30 of each year. The summaries shall detail the final disposition of the Inspector General's recommendations. The summaries shall not contain any confidential or identifying information concerning the subjects of the reports and investigations. The summaries shall also include detailed, recommended administrative actions and matters for consideration by the Governor, the Board of the Authority, and the General Assembly.

² See 605 ILCS 10/8.5(d).

may also fall within the jurisdiction of other agencies (e.g., federal, state, or local law enforcement, other inspectors general, etc.). In such cases, the Inspector General is authorized to refer matters or work jointly with these other agencies to investigate allegations of wrongdoing.

OIG derives its authority and direction from the Illinois Toll Highway Act³ and the Illinois Administrative Code.⁴

INVESTIGATIONS

OIG is currently fully staffed with an Inspector General, a Deputy Inspector General, a Senior Investigator, an Investigator, an Investigator/Auditor, and an Administrative Assistant. Investigative Staff are all certified by the National Association of Inspectors General and by the Association of Certified Fraud Examiners. In addition to conducting administrative and criminal investigations of alleged violations of law, rule or regulation, and misconduct or mismanagement, OIG also reviews Tollway policies and procedures, and employment and hiring files.⁵ Furthermore, OIG provides assistance to law enforcement entities.

COMPLAINTS

OIG receives complaints from the general public, Tollway officials and employees, vendors, bidders, and anonymous sources; OIG can also self-initiate investigations and reviews. Complaints are screened and assessed to determine the most appropriate action, which can include opening a Preliminary Investigation (PI)⁶, an Investigation (IG), a Review (R), or an Investigative Assistance case (IA)⁷. OIG can also decline or refer matters, as appropriate, to Tollway Management or another investigative entity. Factors that impact this decision include: the reliability and accuracy of information based on OIG's knowledge of the subject matter; the nature of the conduct alleged and the ability to independently verify the allegations; the age of the conduct complained of; the likely impact on Tollway operations; and the availability of investigative resources. Finally, OIG receives a number of calls respecting toll violations which are referred to Tollway Customer Service Managers.

By law, the identity of any individual providing information or reporting possible or alleged misconduct to OIG may not be disclosed without consent of that individual or as otherwise required by law.⁸ In addition, state and federal Whistleblower laws prohibit retaliation against individuals who provide information to or cooperate with an OIG investigation.

From March 20, 2015 through September 30, 2015, OIG took action in 142 new matters:

9 Preliminary Investigations were opened; 9 were closed
6 Investigations were opened; 12 were closed

³ 605 ILCS 10/8.5.

⁴ Ill. Admin. Code title 2, sec. 3430 (2011).

⁵ See 605 ILCS 10/8.5(f).

⁶ A Preliminary Investigation is initiated to conduct limited scope inquiries to determine the next appropriate action. Generally, these inquiries are open for 30 days, although one 30-day extension may be approved by the Inspector General.

⁷ Investigative Assistance matters include tracking of employee arrests and requests for information or subpoenas from law enforcement, regulatory agencies, or other Inspectors General.

⁸ See 605 ILCS 10/8.5(k)(1).

93 Investigative Assistance cases were opened,⁹ 99 were closed
34 Tollway Customer Service calls received, 34 referred

From October 1, 2015 to February 29, 2016, OIG took action in 106 new matters:

7 Preliminary Investigations were opened; 6 were closed
1 Investigation was opened; 2 closed (1 referred)
63 Investigative Assistance Cases were opened,¹⁰ 65 were closed (1 referred)
35 Tollway Customer Service calls received, 35 referred

As of February 29, 2016, the following matters were pending:

2 Investigations
2 Preliminary Investigations
8 Investigative Assistance cases

REPORTS OF FINDINGS

Summary reports detailing sustained findings and/or recommendations are submitted to the Board Chair, the Executive Director and appropriate management officials, which set forth investigative findings and recommendations for corrective action. De-identified narrative summaries are provided in semi-annual reports, and, as required by law, final summary reports resulting in discipline of more than 3 days are publicly released in redacted form on the OIG website. OIG also issues department advisories to the Board Chair, the Executive Director and appropriate management officials, which describe management concerns observed by OIG in the course of its activities. Summaries of these notifications and management responses will be provided in the semi-annual reports.

There are no recommended administrative actions or matters for consideration by the Governor, the Board of the Authority, or the General Assembly during this period.

The following are summaries¹¹ of sustained OIG cases concluded between March 20, 2015 and October 31, 2015.

IG-2013-009

OIG concluded an investigation into allegations that work performed on one Tollway construction contract had been paid for twice under different contracts, and the potential for a conflict of interest created by allowing the same vendor serve as both the Design Section Engineer (DSE) and the Construction Manager (CM) on one of the contracts.

⁹ This number includes 87 new cases opened and 6 which were re-opened when additional subpoenas were subsequently received in the same matter.

¹⁰ This number includes 56 new cases opened and 7 which were re-opened when additional subpoenas were subsequently received in the same matter.

¹¹ These summaries are intended to illustrate the general nature and outcomes of these cases for public reporting purposes and thus may not contain all allegations and/or findings for each case.

The first allegation was determined to be not-sustained because OIG found that, while there was an overlapping scope of work between the two related construction contracts, documentation established that there was only one payment for the work performed.

In the course of this investigation, OIG requested that Tollway Internal Audit conduct an audit of the Construction Upon Request (CUR) and Design Upon Request (DUR) process. Internal Audit made three recommendations to Engineering: 1) develop written CUR/DUR policies and procedures; 2) develop a method to track the financials for individual tasks within a contract; and 3) develop written closeout procedures to ensure that all tasks have been completed. Engineering concurred with Internal Audit's recommendations and agreed to update policies and procedures, create a tracking system for select DUR contracts, and develop written procedures for completing the "Task Closeout Letter" for each contract.

Respecting the second allegation, OIG determined that because the CM essentially serves in an oversight capacity of DSE activities, such arrangements have the potential to create an appearance of a conflict of interest.¹² OIG recommended that Engineering: 1) not allow the same vendor to serve in potentially conflicting roles on the same project (e.g. CM and DSE, or CCM and CM); and, 2) develop and distribute a written conflict of interest policy and a public FAQ for easy reference for those currently or potentially doing business with the Tollway.

Engineering partially concurred with these recommendations. First, Engineering said that, occasionally on certain smaller projects with tight construction schedules or specialty work, efficiencies are achieved if these roles are performed by the same vendor. Understanding that this arrangement could appear problematic, Engineering has tasked the General Engineering Consultant with auditing all CM contracts, which it believes "effectively eliminates the potential conflict of interest." Second, Engineering agreed to develop a conflict of interest policy by expanding the guidance provided in the Professional Services Bulletins. Engineering declined to include guidance respecting familial or marital relationships, contending that it would be difficult and expensive to manage and administer. Instead, Engineering said it will focus its guidance on emphasizing ethical obligations owed by professional engineers, including the need to avoid and resolve conflicts of interest.

IG-2015-003

OIG concluded an investigation into allegations that a Tollway Management employee violated Tollway policy by failing to swipe in and/or out in the Velocity system (which controls access to the building, but does not track timekeeping) when leaving or returning to the Central Administration (CA) building. OIG obtained evidence that established that on two occasions in early 2015 the Manager failed to swipe out when leaving and failed to swipe in when returning to CA. The Manager admitted to failing to swipe in or out on some occasions. Given the Manager's supervisory role, OIG recommended disciplinary action. The former Executive Director provided corrective counseling to the Manager, and emphasized the importance of following Tollway policies respecting swiping in and out, especially for those in supervisory roles.

¹² In this case, OIG determined that no actual conflict of interest existed.

IG-2015-008

OIG concluded an investigation of an allegation that an Equipment Operator/Laborer (EO/L) had failed to report an off-duty arrest as required by Tollway policy. In the course of its investigation, OIG found records establishing that the EO/L had been arrested for retail theft in March 2015, but had not reported it as required by Tollway Policy and Procedure Manual Section VIII.G.1. OIG also determined that between 2005 and 2012, while a Tollway employee, the EO/L had been arrested on six prior occasions while off duty, but never reported any of them. OIG interviewed the EO/L who admitted the prior arrests and acknowledged the failure to notify. The EO/L resigned.

IG-2015-009

OIG concluded an investigation into an allegation that a Toll Collector was short changing patrons and keeping the proceeds.¹³ Video recordings showed the Toll Collector short changing patrons, keeping track of these transactions by writing them down, and removing currency prior to turning in sealed deposit bags.

When initially questioned by OIG investigators, the Toll Collector denied taking any money or keeping track of the illicit transactions. However, after viewing video footage, the Toll Collector admitted stealing \$4,000.00 from the Tollway.

The Toll Collector submitted a letter of resignation and agreed to make restitution to the Tollway for violating the Illinois Tollway Policy and Procedure Manual. The Tollway has received the \$4,000 repayment.

The following are summaries of department advisories issued by the OIG between November 2015 and February 29, 2016.

IG-15-0012

OIG issued a Department Advisory based on information it learned while tracking a matter involving an EO/L required to maintain a valid Commercial Driver's License (CDL), who reported an off-duty arrest for Operating While Intoxicated. Specifically, OIG observed potential vulnerabilities in the Tollway's current process for verifying the validity of Tollway employee CDLs. Given that Tollway employees with CDLs can operate very large pieces of equipment, like snow plows, the Tollway has significant responsibilities to ensure they all possess valid CDLs. However, existing Tollway guidance relating to CDL holders is located in several places and not cross-referenced. Because there is not one central repository for CDL policies and procedures and not all procedures are written down, it is difficult to ensure efficient and effective due diligence respecting CDL license verification.

OIG recommended that the Tollway: 1) Review its policies and procedures, and update as necessary; 2) Provide training to Supervisors and Managers; and, 3) Develop guides for Supervisors, Managers, and employees relating to responsibilities and expectations for Tollway employees who must hold a CDL as part of their duties.

¹³ No summary report was issued from the OIG because there was no appointed Inspector General at the time.

Tollway management concurred with these recommendations and stated that the appropriate departments will work collaboratively to streamline current policies, and develop a Supervisory Training Program that will serve as an administrative and legal guide to ensure full compliance and accountability of staff and the employees for tracking and verifying the validity of Tollway CDLs.

The Tollway indicated that it will conduct more frequent license checks, not allow employees whose license status is questionable to operate Tollway vehicles, and require employees to produce requested documents respecting license validity within three business days. Finally, the Tollway said it will incorporate a Frequently Asked Question element into the Supervisory Training Process, and develop materials for Field Managers to educate all CDL holders in the field.

IA-2016-007

OIG issued a Department Advisory based on information it learned while responding to a subpoena seeking Tollway records for a criminal case against a person who spat upon a Toll Collector. In that matter, OIG learned that video footage from the relevant location and date had been overwritten because no timely request to preserve it had been made. Based on past experience, it appears that there is a failure of communication that is exacerbated by the lack of a consistent or written protocol for identifying, locating, and preserving Tollway video recordings of incidents involving Tollway employees or property.

OIG recommended that the Tollway develop a written protocol that includes assigned responsibilities for identifying, locating, and preserving Tollway video recordings of incidents involving Tollway employees or property.

OIG also recommended that the Tollway develop training or a Frequently Asked Questions-type document to provide guidance to those responsible for documenting incidents involving Tollway employees or property, such as ISP patrol and Plaza/Maintenance Supervisors.

Tollway management concurred with the recommendations, and opined that Administrative Directive 1.04, which instructs employees on how to address and report significant events, should have been followed. To clarify any gaps in reporting and preserving requirements, the Tollway updated this Directive and has shared this with all units that have access to video recording systems. Furthermore, the Tollway indicated that it will create a Frequently Asked Questions document and re-emphasize proper incident reporting protocol in future Tollway training.

RECOVERIES/RESTITUTION

During the reporting period, the Tollway received the following payments as recoveries/restitution resulting from OIG investigations:

DI-10-0052 ¹⁴	\$2,209.75
IG-2013-002	\$1,800.00
IG-2014-019	\$6,023.00
IG-2015-009	\$4,000.00
Total	\$14,032.75

GENERAL SUMMARY OF OTHER ACTIVITY

In addition to investigatory activities described above, the Inspector General and OIG staff have engaged in other related projects, including:

- Updating the Inspector General's webpage on the Tollway public website and the Tollway internal Crossroads site;
- Meeting new Tollway employees as part of the orientation process to emphasize the importance of integrity and accountability and introduce them to OIG's role;
- Providing detailed suggestions on proposed Tollway policy revisions to the Tollway Policy and Procedure Manual;
- Reviewing and revising internal OIG procedures to standardize and streamline intake and case processing; and
- Collaborating with Tollway Information Technology to address OIG technology needs, and preparing for database upgrade.

¹⁴ This case was opened in 2010 under the Tollway's Office of Investigations and Audit, but was completed by the OIG in March 2014.