



OFFICE OF THE INSPECTOR GENERAL

ILLINOIS STATE TOLL HIGHWAY AUTHORITY
2700 OGDEN AVENUE, DOWNERS GROVE, IL, 60515

SUMMARY ACTIVITY REPORT FOR OCTOBER 1, 2012 – MARCH 31, 2013

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

From: James W. Wagner
Inspector General

Date: March 31, 2013

Re: Office of the Inspector General Summary Activity Report for the Period Ending March 31, 2013.

INTRODUCTION

On January 1, 2011, the Office of the Inspector General (OIG) became effective at the Illinois State Toll Highway Authority. On July 28, 2010, Governor Pat Quinn signed the legislation (605 ILCS 10/8.5) passed by the General Assembly that created the office of the Inspector General for the Illinois State Toll Highway Authority. On October 18, 2010, Governor Quinn announced the appointment of James W. Wagner to the new position and on November 17, 2010 the Senate Executive Appointments Committee and the Illinois General Assembly approved the appointment, to run until June 30, 2015. The legislation, which became Section 8.5 of the Toll Highway Act, (605 ILCS 10/8.5) includes Subsection (m) of Section 8.5 which states:

(m) “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.”

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.

MISSION/JURISDICTION

The statute (605 ILCS 10/8.5) further advised in section (d) that *“the Toll Highway Inspector General shall have jurisdiction over the Authority and all Board members, officers and employees of, and vendors, subcontractors, and others doing business with the Authority. The jurisdiction of the Toll Highway Inspector General is to investigate allegations of fraud, waste, abuse, mismanagement, misconduct, nonfeasance, misfeasance, or malfeasance”*.

The statute required in section (f) (3) that: *Final reports and recommendations shall be submitted to the Authority’s Executive Director and the Board of Directors for investigations not involving the Board”*.

INVESTIGATIONS

The OIG previously operated with a Secretary and one Investigator under the General Manager. With the creation of the OIG the Secretary has been promoted to Administrative Assistant and the Investigator was promoted to Senior Investigator. One additional Investigator/Auditor was hired effective February 1, 2011 and a Deputy Inspector General was added to the staff on April 18, 2011. On September 17, 2012 the Administrative Assistant retired and was replaced by a new Administrative Assistant. An additional Investigator was hired effective October 16, 2012, but our Investigator/Auditor retired effective the end of December, 2012. Therefore, we now have one Deputy Inspector General, one Senior Investigator, one Investigator and one Administrative Assistant in our Department and will seek to hire a new Investigator/Auditor.

The Department has also worked closely with the Tollway Information Technology (IT) Department to obtain a separate computer business system for the OIG. This work resulted, during this reporting period, in the completion of the purchase and installation of a new system dedicated solely to the work of the OIG in an encrypted format for security and confidentiality of the investigations. All previous investigations have also been moved to a separate secure encrypted server utilized and accessed only by the OIG.

INVESTIGATIONS RESULTING IN DISCIPLINE:

The statute (605 ILCS 10/8.5) further required in Section (e) (3) *“Within 60 days after issuance of a final summary report that resulted in a suspension of at least 3 days or termination of employment, the Toll Highway Inspector General shall make the report available to the public by presenting the report to the Board of the Authority and by posting to the Authority’s public website”*. *“The Toll Highway Inspector General shall redact information in the summary report that may reveal the identity of witnesses, complainants, or informants”*.

Pursuant to these directions, this office is reporting the following investigations for the period of October, 2012 – March 31, 2013:

IG-12-0004

On February 27, 2012 the OIG received information from the Tollway Finance Department that a fraudulent Tollway check had been presented at a currency exchange for payment. Subsequently a total of twelve additional fraudulent checks were cashed and all checks totaled \$35,667.25. Investigation by the OIG determined the fraudulent checks were on the Tollway IPass Refund Account. The bank reimbursed the Tollway for the fraudulent checks so there was no financial loss. Further investigation by the OIG sufficiently identified one subject who negotiated the checks and the information was referred to the Cook County States' Attorney for prosecution. No Tollway employees were identified as being participants in the fraudulent check scheme.

IG-12-0018

On September 14, 2012 the OIG received information from the Tollway Finance Department that fraudulent checks had been presented for payment on the Tollway IPass Refund Account. It was determined that a total of sixteen checks had been negotiated for a total amount of approximately \$7800.00. The bank reimbursed the Tollway for the fraudulent checks so there was no financial loss. Additional investigation determined the location of the fraudulent activity and all investigative information was forwarded to appropriate police departments for further appropriate investigation. No Tollway employees were identified as being participants in the fraudulent check scheme.

The Finance Department reviewed their internal controls and consulted with the bank to determine methods to reduce the risk of check fraud. For the account mentioned in the above cases, any check above a specified sequence number was to be declined and returned by the bank. In addition the Tollway implemented a program for ensuring the legitimacy of checks clearing the Tollway accounts. This involved daily uploads to the bank of checks issued by the Tollway and provides for rejection of any checks presented for payment that were not on the daily list. The OIG has not received any further notice of fraudulent checks being negotiated on any Tollway accounts.

IG-13-0001

On October 22, 2012, the OIG began a cooperative investigation with the Illinois State Police Medicaid Fraud Unit regarding a Tollway employee. Information regarding the employee and the employee work record was provided pursuant to subpoena. On January 17, 2013 the employee admitted to defrauding the Illinois Department of Human Services by submitting timesheets claiming care for an individual when no care had been provided. The employee admitted to agreeing to split the money received with the alleged recipient of the care. The employee resigned from employment at the Tollway and agreed to never seek employment at the Tollway again. Theft charges, which may exceed \$30,000.00, are pending.

IG-12-0011

On March 27, 2012, the OIG initiated an investigation of a Tollway Maintenance Supervisor, following receipt of information from an elected official, regarding allegations of the Supervisor sleeping on the job and intimidating employees. The Supervisor had originally been hired in 2000 and had been terminated in 2001 for arguing with and head butting a co-worker and rehired in 2002. He had again been terminated in 2004 for a positive drug test following an accident with a Tollway vehicle and other infractions and then rehired in 2005 following arbitration. The investigation of the incidents raised in the current allegations confirmed the sleeping on the job accusation. The current investigation further determined the supervisory manner utilized by the employee to be described by employees as intimidating, threatening, abusive, condescending, and loud. Assignments of work, particularly to older staff, were described by employees as unsafe and discriminatory and expectations had created a hostile work environment. Threats to create and issue false disciplinary reports as punishment were also alleged by employees. The Supervisor was placed on suspension effective November 27, 2012 and was subsequently terminated in February, 2013.

IA-147-2012

On December 4, 2012, the OIG received information from Tollway Management that a Toll Collector had an extremely large number of unclassified vehicles for which money was collected. The collector had been reportedly retrained for similar incidents up to four times during the year. The information was discussed with the Toll Operations Department to determine appropriate corrective action. Toll Operations subsequently advised that the Toll Collector was placed on 35 days suspension on 12/13/12 and on 01/30/13 the Collector signed a last chance agreement to correct the conduct.

IG-13-002

On February 21, 2013, the OIG was notified by the management at the Tollway IPass call center that a call taker had offered to negotiate an off line settlement with a patron for violations. The call taker wanted to meet with the caller to negotiate payment for the violations. An investigation of the call takers phone transactions determined that the call taker had negotiated previous meetings with patrons to receive cash for dismissing or reducing their fines and/or violations. The call taker was confronted and confessed to receiving over \$4000.00 cash for removing fines, tolls and violations. The call takers employment was terminated by the employment agency contracted to fill those positions at the call center, and the investigation has been referred for prosecution to the DuPage County States Attorney.

ADDITIONAL INVESTIGATIONS RESULTING IN RECOMMENDATIONS:

IG-12-0012

On May 17, 2012, the OIG received information from Tollway Management regarding a subcontractor not performing work on a construction contract. The subcontractor was allegedly certified by both the Illinois Department of Transportation (IDOT) as a Disadvantaged Business Enterprise (DBE) and the City of Chicago as a Minority Business Enterprise (MBE). The DBE was listed as providing concrete services on three contracts with a prime contractor for the Tollway. Investigation at the current worksite determined that the work consisted of drilling and installing rebar for the barrier wall extensions. Work was also being done at the work site by a different company that was not a DBE or MBE certified firm.

An interview of an owner of the DBE firm in question determined that most of the previous work by the company was for the City of Chicago and that the company lacked the required equipment to perform the heavy work on the Tollway contracts. They therefore rented the needed heavy equipment from the company seen at the work site. However, the appropriate forms had not been filed with the Tollway prior to the subcontracting of work. The Tollway requested additional supporting documentation from the prime contractor and requested the suspension of the subcontractor until the Tollway conclusively determined that the subcontractor was self-performing work stipulated in the plan submitted by the prime contractor.

Interviews of owners of the DBE subcontractor company determined that shortages of equipment resulted from lack of work and therefore needed equipment was rented and other companies were utilized for larger jobs. When the DBE bid on the Tollway work they advised that they made it known to the prime contractor that the DBE would be subcontracting with a non-DBE sub. The Tollway communicated to the prime contractor that the DBE participation would be limited to work performed by the DBE's own employees including cost of materials and supplies. Additional requirements included submission of appropriate forms by the company actually performing the work originally assigned to the DBE.

The December 4, 2012 OIG report listed numerous concerns with the contracts and procedures including the lack of information received by the Tollway from the Contract Manager and the Resident Engineers regarding companies at the worksites that were not part of the contracts. These individuals are hired to function as the "eyes and ears" of the Tollway and the Tollway was not aware of these issues until an anonymous call was received. None of the documentation reviewed by the OIG made any reference to two companies that were at the worksite but were not part of the contract. As a result the OIG made the following recommendations:

- Additional oversight seems to be required for the worksites and the recommendation is for the Construction Managers to review this matter and adhere to Tollway policies during evaluations including Section 5.6.1 of the Construction Managers Manual (CMM)

which states, “The CM is responsible to monitor and report on the Contractor’s adherence to the DBE and EEO requirements of their Tollway Contract”.

- The CMM, Section 5.10.4.1 details the requirements of the Resident Engineer’s Project Diary which is described as a generalization of source information about the daily construction activities and all significant items relating to the contract; including but not limited to:
 - Brief description of both Contractor and Subcontractors daily activities, including hours worked and number of persons working
 - Brief description of any potential DBE/EEO issues
 - Arrival and departure of major equipment, and
 - Visitors to the site.

On March 26, 2013 the following information was received in response to these recommendations:

Management Response:

The Engineering Department provided the following actions taken:

We have addressed this at both IRTBA, ACEC and Move IL meetings along with meetings with our own project managers. We have highlighted the importance of approved A-15’s for subcontractors. We have also advertised for a professional service that will augment monitoring of worksites with respect to DBE specifications and requirements. This service will be selected as part of Professional Service Bulletin 13-1.

The final evaluations have not been issued yet. This issue will be mentioned in their final review and will be considered when providing their final rating.

After further review, the Engineering Department believes that it was determined that forms A-15 would not have been necessary for Haltz. The Engineering Department is currently seeking to obtain the documentation to support this conclusion. An A-15 for Hard Rock was submitted on July 20, 2012.

IG-12-0011

This investigation was discussed above since it resulted in the termination of a supervisory employee due to management misconduct and failure to follow Tollway procedures. The OIG investigation presented in the summary report also included recommendations due to issues noted during the investigation. On 3/20/13 the OIG was advised that the Departments of Administration, Legal and Equal Employment Opportunity were considering the recommendations. Those procedural recommendations were as follows:

- The Administrative testing process for hiring and/or promotion within departments should include the opportunity for the Department Chiefs to review applications and any pertinent background information prior to approving a new hire or promotion.
- The Tollway should consider a management program of classes to provide instruction in appropriate management techniques and should require completion of the courses prior to promotions.
- The Tollway should consider amending the Policies and Procedures Manual to ensure that there is no “second chance” when testing positive for any drug or alcohol use in conjunction with on-duty operation of a Tollway vehicle and/or on-duty conduct resulting in injury or additional criminal violations.
- The Tollway should consider requiring that any written requests for outside employment be submitted through the chain of command in each department so that every management level is aware of and can approve or deny a request. Overall approval should remain with the Department Chief with input from each level.

IG-11-0033

The OIG received information from Tollway Management on August 11, 2011 regarding a Toll Collector filing a workers’ compensation claim alleging a leg was injured at work and crutches were needed and therefore the employee could not return to work. Extensive research was necessary to obtain all documentation regarding the injuries claimed and the background medical information provided as substantiation of claims. Additional records were located regarding other claims made by the employee. It was determined that the employee had three pending workers’ compensation claims. Currently the Tollway’s workers’ compensation claims are managed by Cannon Cochran Management Services (CCMCI). Due to procedural issues and other responsibilities the OIG was not able to conduct an interview of the employee until August 2, 2012. The employee stated a Tollway employee in the Benefits Section gave her advice on what to write in a letter presented to the Tollway to justify time off. The Benefits Section employee, who was no longer employed at the Tollway, subsequently admitted that it was possible that such advice was given.

The October 19, 2012 OIG report listed the following recommendations. On 3/20/13 the Tollway provided the following responses:

- The Tollway should consider disciplinary action regarding the employee for excessive absenteeism and/or absence without notice.
 - **Management Response:** *In situations where it appears an employee violated provisions of the Tollway’s Policy Manual, facts are reviewed and if appropriate, discipline is issued.*
- The Tollway Managers should receive instruction on what injuries may qualify for an accommodation under the ADA, who may request them and whether an employee can return to work with restrictions. All requests for accommodations should be routed through the Tollway’s ADA Officer.
 - **Management Response:** *The need for on-going training for supervisory and managerial staff regarding the Tollway policy and application and interaction of*

various laws (i.e., Workers Compensation, FMLA, ADA, etc.) is practical and would be beneficial. Training has been conducted in the past, and employees, supervisors and managers are (or should be) aware of the current processes applicable to various situations. Specifically, any request for accommodations should be referred to the ADA Coordinator who will make appropriate inquiries to determine if the request is from someone who is a qualified individual with a disability, engage in the interactive process, and obtain necessary medical documentation to support the request, if appropriate. The ADA Coordinator then conveys the needed accommodation to the appropriate supervisory staff. To centralize this process and ensure procedures are followed consistently informal accommodations at the work site without the involvement of the ADA Coordinator are to be avoided. The ADA Coordinator is in the process of conducting updated guidance and clarification regarding disability and accommodation related issues for supervisory staff.

- The Tollway should require that weekly employee phone calls due to any type of injury related leave should be tracked, HR should be informed, and employees should be notified of this responsibility in writing as well as their responsibility to inform the Tollway of their medical appointments so that the proper type of leave can be entered timely into the timekeeping system.
 - **Management Response:** *Tollway policy, which all employees receive at the time of hire, sets forth call-in obligations by the employee. Mandatory call in does not apply to all types of leave (i.e., ADA leave). A central call-in number while helpful for ensuring accurate and timely notation of absences could place an undue burden for adequate staffing at the external worksites. The practice of calling before hours and leaving a voice mail message needs to be reviewed and perhaps modified to ensure appropriate communication and notation in KRONOS is conducted. The Tollway began utilizing a vendor to coordinate FMLA and ULWOP to streamline the process. However, certain leaves can be granted after the fact (i.e., an employee without benefit time is noted as ULWOP but subsequently granted FMLA). Reviewing processes to determine whether additional enhancements can be made is sensible, keeping in mind the confidentiality rights employees have regarding medical conditions.*
- The Tollway should consider mandating that a drug test be administered after any reportable injury (not just involving traffic accidents) and consideration should be given to including a ten-panel test with an expanded opiates test since prescription drug abuse has become a much more prevalent and serious problem.
 - **Management Response:** *The Tollway follows the USDOT drug testing for CDL holders and other safety sensitive positions. There may be a challenge to the implementation of stricter drug testing requirements than federal regulations. There must be a basis to subject all employees to drug testing particularly to determine abuse of prescription drugs. Further, testing after every injury, while desired and practical may not provide a deterrent if employees do not report work related injuries immediately. Implementing this change could be costly. Additionally, any changes to the Tollway's drug and alcohol policy must be mindful that it does not violate any privacy protections afforded to employees under a variety of federal regulations (i.e., ADA, GINA, etc.)*

- The Tollway should require that after every reported injury the manager should create a list of all employees on duty and any available video should be copied; both of which should be tendered to CCMSI to aid in its investigation.
 - **Management Response:** *Enhanced investigation and report gathering from witnesses or relevant staff at the time of injury, including photos if appropriate is desired and has been implemented. Requests to preserve video are also made when after injuries are reported, but because injuries are not required to be immediately reported, video or photo documentation may not always be available. This process could be streamlined and coordinated by the Workers' Compensation Division and/or Safety. Passing along the information to the Tollway's TPA, (currently CCMSI) as appropriate ids in the defense of claims and determining compensability, and currently occurs.*
- The Tollway should create an Administrative Directives Manual to detail all various HR procedures and make it available via the Tollway Crossroads intranet to all employees to set out employee and management responsibilities and avoid confusion over management's and employees' responsibilities. A description of the role of the various Departments and vendors in the workers' compensation process from injury to settlement and who in management is responsible for requesting any employee discipline should be included.
 - **Management response:** *The majority of Tollway personnel do not have access to the Tollway's intranet (i.e., Toll Collectors and EO/L). Thus prior to utilizing the intranet as the source for Directives or Policy (i.e., via CrossRoads) measures must be implemented to ensure all employees have access. Administrative Directives that relate in a broad sense to human relations (i.e., Human Resources, Benefits, Employee Services, EEO, Ethics, ADA, Workers' Compensation, Labor Relations, Safety, and Training, etc.) will be considered by management. Maintenance and Traffic and Toll Operations have Administrative Directives that cover their respective departmental specific procedures.*
 - *The Tollway maintains direction and control of its workers compensation claims. It currently utilizes a third party administrator (CCMSI) to supplement any investigation, maintaining a claims file, making prompt payment for medical bills, TTD payments, and other expenses (as required by the Workers Comp Act) coordinating medical appointments, coordinating other necessary vendors and assisting defense counsel as needed. Coordinating Tollway personnel as needed on claims is the responsibility of the Tollway staff. In the event a claim appears questionable (possible fraud), the claim needs to proceed in the Workers Compensation Commission on a disputed basis. At the conclusion of the litigation, if a questionable claim is denied by the Commission that has been suspected of being fraudulent, it can be referred to the Illinois Department of Insurance Workers' Compensation Fraud Unit. However, before claims can be referred to that division for investigation, the claim must be thoroughly defended and trial completed to avoid the risk of compromising success at trial or retaliatory claims being brought by the employee for filing workers compensation claims.*

GENERAL SUMMARY OF ACTIVITY:

In order to provide a more complete summary of the activity of the OIG during this period, it should be noted that in addition to the investigations discussed above, the OIG also received, from Tollway Management and individuals, various allegations and concerns and conducted investigations into numerous additional matters during this period, which were completed with no material findings or procedural recommendations.

During the period of October 1, 2012 through March 25, 2013 the Office of the Inspector General opened sixteen (16) Inspector General (IG) cases and closed seventeen (17) IG cases. There are currently fourteen (14) IG cases open

There were seventy-four (74) Investigative Assistance (IA) cases opened and sixty-nine (69) IA's closed and three were converted to an IG investigation. Of the IA cases opened, fifty-two (52) were responding to a subpoena requesting Tollway information.

The office opened ten (10) Preliminary Inquiry (PI) Investigations and ten (10) of the PI investigations were closed. Three cases were converted to an IG investigation.

The IG office received thirty-four (34) complaints from citizens and twenty-five (25) complaints were closed.

The above numbers represent a total number of one hundred (100) cases opened and a total number of ninety-six (96) cases closed for a total of one hundred ninety-six (196) cases handled during this time period. The total is two hundred fifty-five (255) matters handled when the complaints received and closed are included.

There were three (3) redacted investigative reports posted on the Tollway website for public review during this six month period and additional ones will be posted when appropriate.