

Illinois State Toll Highway Authority

Office of the Inspector General

SUMMARY ACTIVITY REPORT

For the period September 1, 2017 through February 28, 2018

Theodor J. Hengesbach
Inspector General


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

Date: March 29, 2018

Re: Office of the Inspector General Summary Activity Report for the Period Spanning
September 1, 2017 to February 28, 2018

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. On November 9, 2015, Governor Bruce Rauner appointed Theodor J. Hengesbach to this position, and the Illinois Senate confirmed this appointment in February 2017. The appointment runs through June 30, 2020.

MISSION AND JURISDICTION

OIG's mission is to foster effectiveness and efficiency in Tollway administration and operations by promoting 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.

OIG derives its authority and direction from the Illinois Toll Highway Act² and the Illinois Administrative Code.³

By statute, OIG's jurisdiction extends to Tollway officials, Tollway employees, and Tollway contractors and vendors.⁴ As a general rule, the OIG does not become involved in private

¹ 605 ILCS 10/8.5(m) provides: 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.

² 605 ILCS 10/8.5.

³ ILL. ADMIN. CODE title 2, sec. 3430 (2011).

⁴ See 605 ILCS 10/8.5(d).

disputes, labor-management issues, or litigation. Matters investigated by OIG 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.

INVESTIGATIONS

With the on-boarding of 2 Investigators in November 2017, all budgeted positions are filled and OIG is staffed with an Inspector General, a Deputy Inspector General, a Senior Investigator, 2 Investigators and an Administrative Assistant. The Inspector General, Deputy Inspector General, Senior Investigator, and both Investigators are certified by the National Association of Inspectors General. The Inspector General, Deputy Inspector General, and Senior Investigator are also certified by the Association of Certified Fraud Examiners. In addition, the Inspector General and the Senior Investigator are members of the Board of Directors for the Illinois Chapter of the Association of Inspectors General.

OIG conducts 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, and serves as liaison to law enforcement entities.⁵

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 or a declination. OIG can also refer matters to Tollway management, law enforcement or another appropriate entity.

Factors that impact these decisions 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. OIG also receives a number of complaints and calls relating to IPASS concerns or toll violations that 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 Furthermore, state and federal Whistleblower laws prohibit retaliation against individuals who provide information to or cooperate with an OIG investigation.

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 30-day extensions may be approved by the Inspector General.

⁷ Investigative Assistance matters include requests for information from law enforcement, regulatory agencies, or other Inspectors General.

⁸ See 605 ILCS 10/8.5(k)(1).

One way OIG receives complaints is via the Tollway OIG Hotline (866-786-5544), and during this reporting period there were 33 incoming calls. For 2017, the Hotline received an average of 10 calls per month.

In mid-October 2017, OIG rolled out a new online electronic report form that can be accessed through the OIG webpage. This form is encrypted and delivered directly to OIG, and allows individuals to provide information to OIG in a secure, confidential manner. Through the end of this reporting period, OIG has received 13 submissions.

From September 1, 2017 through February 28, 2018, OIG took action in 103 new matters:

| | |
|------------------------------------|--|
| Preliminary Investigations | 17 opened 18 closed (6 converted to Investigations, 3 converted to Referral, 1 converted to Review, 8 closed no further action) |
| Investigative Assistance | 11 cases opened ⁹ 14 closed |
| Investigations | 8 opened 6 closed (4 sustained, 1 not sustained, 1 suspended pending other matter) |
| Reviews | 3 opened 0 closed |
| Referral – Law Enforcement | 2 matters referred |
| Referral – Management | 29 matters referred |
| Referral – Other Entity | 2 matters referred |
| Declined | 1 matter |
| Calls referred to Customer Service | 30 |

As of February 28, 2018, the following matters were pending:¹⁰

| | |
|----------------------------|----|
| Preliminary Investigations | 11 |
| Investigative Assistance | 0 |
| Investigations | 7 |
| Reviews | 4 |

⁹ This number reflects the fact that responsibility for subpoena response transitioned to the Legal department on October 1, 2017.

¹⁰ These numbers include carry-over from previous reporting period.

REPORTS OF FINDINGS

Summary reports detailing sustained findings and/or recommendations are submitted to the Board Chair, the Executive Director and appropriate management officials, and set forth investigative findings and recommendations for corrective action. As required by law, narrative summaries of investigations (without confidential or identifying information) along with the final disposition of OIG recommendations are provided in semi-annual reports. Final summary reports resulting in discipline of more than 3 days are publicly released in redacted form on the OIG website. OIG also issues Management Advisory Reports to the Board Chair, the Executive Director and appropriate management officials, which describe operational concerns observed by OIG in the course of its activities. Summaries of these advisories 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 September 1, 2017 and February 28, 2018.

OIG Investigations Resulting in Personnel Actions

Discharge/Termination/Resignation

IG-17-001 Toll Collector

OIG initiated an investigation after receiving information that a Toll Collector had an extensive criminal history that may not have been fully considered before s/he was hired as a Seasonal Toll Collector. Our investigation determined that the decision to approve the candidate's hire was made without a complete understanding of relevant aspects of his/her criminal history. The candidate's background check identified a conviction, and the Tollway conducted an individualized assessment to determine suitability for employment. However, the candidate failed to provide complete and truthful information to the Criminal Background Review Committee (CBRC) about his/her prior conviction for Attempt Robbery/Party to a Crime. In addition, the candidate did not inform the CBRC, and s/he was not asked, about a subsequent conviction for Misappropriation of Identity, which was apparently not available to the CBRC or the Administrative Review Board (ARB).

When interviewed by OIG, the Toll Collector admitted to having been untruthful with the CBRC about the actions that lead to his/her conviction for Attempt Robbery/Party to a Crime, and also confirmed that s/he had a subsequent conviction for Misappropriation of Identity resulting from improper use of personal information of a former employer's client. The Toll Collector resigned following the OIG interview.

OIG recommended that the Tollway consider the former Toll Collector to be ineligible for re-hire. OIG also recommended that the Tollway review the candidate background check process

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.

and make changes to ensure that it conducts fair and complete assessments of selected candidates' suitability for employment.

In its response, Tollway management concurred with OIG's recommendations, directed Administration take steps to effectuate the recommendations, and anticipated that changes to the background check process would be implemented shortly.

OIG will monitor developments to the Tollway's background check process and report any changes in subsequent Semi-Annual reports.

IG-17-010 Equipment Operator Laborer (EOL)

An OIG investigation determined that an Equipment Operator Laborer (EOL) submitted a false employment application and failed to provide complete, truthful information during the hiring process. The EOL position requires a high school diploma or General Educational Development (GED) certificate, and this candidate submitted an application attesting that s/he graduated from high school and received a diploma; in addition, the candidate also answered "Yes" to the question "This position requires you to have a high school diploma or equivalent. Do you meet this requirement?" OIG received a complaint that the EOL had not graduated high school; and confirmed that fact by calling the high school.

When interviewed by OIG investigators, the EOL admitted that s/he falsely claimed to be a high school graduate in two separate places on his/her Tollway application, but claimed it was due to being rushed when completing the application. However, the EOL also admitted that s/he did not tell interviewers that s/he did not have a diploma or a GED, and that s/he did not obtain his/her GED until after being selected for the position. The employee eventually obtained a GED, but only raised the issue with the Tollway after being asked to provide the high school diploma during processing after being selected for hire. The employee further acknowledged having been discharged by the Illinois State Police around the same time for not having the required educational prerequisite. Had the employee provided truthful information during the selection process, s/he would not have met a minimum requirement to be considered for the position.

One month after his/her OIG interview, the employee resigned. Had s/he not resigned, OIG would have recommended his/her discharge. OIG recommended that the Tollway consider the employee ineligible for re-hire and place a copy of this report in his/her personnel file and hiring file.

In addition, our investigation identified two weaknesses in the post-selection background check process for which we recommended review and corrective action. First, to ensure that selected candidates have a valid Commercial Driver's License, OIG recommended that a copy of an Illinois Secretary of State driver's abstract be included in the selected candidate's hiring file. Second, to ensure that prior employment reference checks are performed, OIG recommended that Administration make every effort to contact a selected candidate's most recent employer.

Tollway Administration responded that the employee had been entered on the do not re-hire list and that a copy of the OIG report will be placed in his/her personnel file. Tollway Administration further responded that it believes it conducts sufficient background checks because it examines each selected candidate's physical driver's license and makes a copy of it

for the file, and gives selected candidates consent forms to sign to allow human resources to verify previous employment.

OIG will continue to encourage Administration and the workforce and hiring process consultant to confirm driver's license validity with the Secretary of State rather than just check a selected candidate's physical license (especially where the position requires a Commercial Driver's License), and to conduct employment reference checks rather than basic employment verification requests.

Suspension/Counselling

IG-17-011 Toll Collector and Plaza Supervisor

An OIG investigation established reasonable cause to find that a Toll Collector failed to return the \$300.00 bank provided at the start of his/her shift before leaving work. The evidence including video recordings that show the Toll Collector with the bank bag in the booth, but the bag is not subsequently seen and the receipts reflect a \$300.00 shortage for that same day. Under these circumstances the money was missing either due to gross negligence or intentional misappropriation, and OIG recommended that the Tollway impose discipline up to and including discharge

The investigation further established reasonable cause to find that the Plaza Supervisor failed to timely follow Tollway Operations procedures to confirm that the Toll Collector returned the bank and also incorrectly completed paperwork reflecting that the bank had been collected when it had not. OIG recommended that the Tollway impose discipline commensurate with these findings.

Tollway Operations informed OIG that it had discharged the Toll Collector, and imposed a one-day suspension on the Plaza Supervisor.

OIG Investigations Resulting in Administrative Recommendations

IG-17-003 Hiring

OIG completed an investigation into allegations of misconduct and mismanagement in the 2016 hiring of the Rutan-covered Manager position. The allegations included a claim that a High level Manager in Administration had a personal connection to the candidate ultimately selected for the position, and may have manipulated the hiring process to give that candidate an unfair advantage. In addition, there were claims that the hiring process used in this sequence was ineffective and inefficient, and that Tollway Administration's hiring file (aka the *Rutan* file) lacked required documentation to show who was actually hired.

OIG's investigation could not substantiate any prior personal connection and determined that allegations against the High-level Manager respecting intentional misconduct and improper influence in the hiring process to favor the selected candidate were not sustained. However, our investigation established reasonable cause to believe that the hiring process as a whole was not managed effectively by Tollway Administration. In addition to the lack of documentation for this hire, our investigation confirmed other hiring process deficiencies identified by an Internal Audit

review including ineffective candidate screening and interviewing, and incomplete prior employment checks.

OIG recommended that the Tollway commit to addressing concerns with the hiring process raised in this report and Internal Audit's review. OIG also recommended that Tollway Administration work to advance the revised hiring process and procedures being developed by the Tollway's workforce and hiring process consultant.

Tollway Administration responded that corrective action has been taken to ensure that hiring files contain proper documentation as to which candidates are ultimately hired. Administration further responded that it disagrees that the process was managed ineffectively because the user department reviews and updates position descriptions and Administration reviews any proposed changes before every posting. Likewise, Administration also claimed that it performs sufficient employment verifications, but did allow that lessons from this hiring sequence led to revisions in this position description.

Furthermore, Administration acknowledged that its "previous, narrow, interpretation of *Rutan*'s requirements likely hampered the Tollway's ability to hire the most qualified candidates" and attributed "limitations in [its] prior system" for many of the problems identified in the OIG report. But it expressed hope that new *Rutan*-compliant changes in the hiring process suggested by the workforce and hiring process consultant, such as devising better application questions and allowing interviewers to have candidate applications and resumes, will ensure that more meaningful information is elicited from candidates.

Management Referrals Resulting in Corrective Action

RF-17-035 (Operations)

OIG learned from Operations that a Toll Collector had reported that an Acting Plaza Manager (APM) required two Toll Collectors to use their own money to cover shortages in daily toll collections. OIG referred the matter to Operations as a management issue. Operations responded that, based on its review TC-32 cash shortage reports for plazas that the APM had managed throughout her tenure, it had determined that the APM had violated Tollway Policies and Procedures, Chapter 7, Section A - Employee Conduct:

- Failure to follow Tollway or Departmental policies and procedures
- Inattention or failure to perform a duty
- Neglect of duties
- Other conduct unbecoming a Tollway employee

As a result, Operations suspended the APM for one day.

PI-16-025 (Executive)

OIG initiated a preliminary investigation into allegations that unspecified improprieties respecting a test given in 2016 for a *Rutan*-covered position provided an unfair advantage to certain candidates and undermined the validity of the test. Following its preliminary inquiry, OIG was unable to sustain allegations that improper actions attributable to specific individuals

created an unfair advantage to any candidate who took the test. However, our inquiry did identify some significant red flags respecting the creation and storage of the tests that raised questions about the effectiveness and credibility of the testing process. OIG referred this matter to Tollway management for a comprehensive assessment of the testing process, with specific attention to the creation, security, and administration of candidate tests, and the appropriate roles for Administration and the employing department.

The Tollway responded that a new test was created by a consultant, and that in March 2017 Administration codified and implemented specific procedures to define roles in the testing process and limit the access to the tests. The 2016 postings were cancelled, and the vacancies were filled in 2017 using the union bid process, which included administration of the new test using the new testing protocol.

Management Referrals Resulting in Administrative Actions

During the reporting period, OIG referred 23 matters involving disputes over Toll Violations/Fines or other IPASS-related concerns to Business Systems. To date OIG has received responses from Business Systems reflecting resolution of 20 of those matters.

Management Referrals Resulting in No Action

RF-17-045 (Operations)

In conducting a preliminary investigation of an employee who reported an off-duty arrest as required by Tollway policy, OIG obtained records reflecting that the employee had been arrested previously in 2006 and 2009. However, Tollway records provided to OIG did not show that the employee ever reported them even though Tollway policy since at least 2005 has required Tollway employees to report such arrests. OIG referred the matter to Operations to consider action as it deemed appropriate. Operations verified that it could find no record that the employee reported the arrests, but because it could not confirm that a Report of Criminal Arrest/Indictment form existed at the time, Operations decided not to impose any disciplinary action.

Update on Management Responses to Prior OIG Reports

IG-17-005 Part-Time Toll Collector

As reported in our September 2017 Summary Activity Report, an OIG investigation established that a Part-Time Toll Collector (PTTC) stole \$1,200 in Tollway revenue, and s/he admitted that s/he took the money without authorization.

The PTTC resigned and submitted a reimbursement check to the Tollway for the \$1,200.

OIG referred the matter to the DuPage County State's Attorney's Office, which issued a 3-count felony indictment that included two counts of Official Misconduct and one count of Theft. The next court date is April 18, 2018.

OIG also recommended that the Tollway consider including credit history checks, in accordance with Illinois and federal law, as part of an individualized assessment of candidates selected for Toll Collector vacancies. The Tollway responded that because of the high volume of Toll Collectors hired each year, it would be an “immense administrative challenge” to implement such a review because there is “[no] model to determine whether debt is a necessary predictor of theft” so any review would be subjective. The Tollway did agree to raise the issue with the workforce and hiring process consultant to identify options for identifying candidates at risk for dishonesty.

IG-17-004 Driver Messenger

As reported in our September 2017 Summary Activity Report, an OIG investigation found that a Tollway employee working as a Driver Messenger violated several provisions of the Tollway Employee Policy and Procedure Manual and the Tollway Vehicle Code when s/he 1) failed to notify the Tollway that his/her license had been suspended due to an insurance issue, 2) operated a Tollway vehicle while his/her license was suspended, and 3) failed to notify the Tollway when his/her license was suspended for refusing to submit to chemical test. OIG recommended that the Tollway impose discipline up to and including discharge.

The Procurement Department responded that it agreed with the findings, but, because the Indiana charges had been reduced, the resulting license suspension had been rescinded and the Driver Messenger currently held a valid CDL. As a result, Procurement entered into an agreement under which the Driver Messenger agreed to not grieve a six week time-served suspension and agreed to submit to counselling and random testing. Procurement also reserved the right to impose further discipline if either Indiana or Illinois took further action respecting the Driver Messenger’s driving privileges.

After the Board meeting in September, OIG requested a copy of the agreement and learned that it had never been formally executed. Following OIG’s inquiry, the agreement was signed by the Driver Messenger and the Tollway on October 30, 2017.

GENERAL SUMMARY OF OTHER ACTIVITY

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

- Engaging in regular discussions and meetings with Tollway stakeholders including Internal Audit, Diversity, Finance, ISP, the Equal Employment Officer, and Executive staff about common issues and opportunities for collaboration.
- Collaborating with Information Technology and Communications to develop and implement the electronic confidential reporting solution that allows for a secure and encrypted means to report fraud, waste, abuse, corruption, misconduct, and mismanagement to OIG.
- Meeting with new managers during orientation to discuss the role of OIG, and reinforce the common goal of fostering and enhancing integrity in Tollway operations.

- Providing input to Administration, Legal, and Executive on proposed Tollway policy and procedure revisions.
- Publishing three redacted Summary Reports of Investigation.