



Illinois State Toll Highway Authority
Office of the Inspector General

SUMMARY ACTIVITY REPORT

For the period September 1, 2018 through February 28, 2019

Theodor J. Hengesbach
Inspector General

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

SEMI-ANNUAL SUMMARY ACTIVITY REPORT

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

From: Theodor J. Hengesbach, Inspector General

Date: March 29, 2019

Re: Office of the Inspector General Summary Activity Report for the Period Spanning
September 1, 2018 to February 28, 2019

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 board members, officials, and employees, as well as Tollway contractors and vendors.⁴ As a general rule, OIG does not become involved in

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).

private 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

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 is also empowered to review 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. OIG can also refer matters to Tollway management, law enforcement or another appropriate entity or decline to open a case.

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 I-PASS concerns, or toll violations and fines 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.

⁴ See 605 ILCS 10/8.5(d).

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). During this reporting period, there were 45 incoming calls, for an average of more than 7 calls per month.

In mid-October 2017, OIG rolled out a new online electronic form that allows individuals to provide information to the OIG in a secure, confidential manner. This form can be accessed through the OIG webpage; it is encrypted upon submission and delivered directly to a secure OIG email account. During this reporting period, OIG received 29 online submissions.

From September 1, 2018 through February 28, 2019, OIG took action in 126 new matters:

Preliminary Investigations	12 opened 9 closed
Investigative Assistance	2 cases opened ⁹ 2 closed
Investigations	4 opened (3 converted from PI) 4 closed
Reviews	1 opened 1 closed
Referral – Law Enforcement	2 matters referred
Referral – Management	41 matters referred
Declined	13 matters
Calls referred to Customer Service	51

As of February 28, 2019 the following matters were pending:¹⁰

Preliminary Investigations	10
Investigative Assistance	0
Investigations	8
Reviews	7

⁹ On October 1, 2017, responsibility for responding to law enforcement subpoena requests for Tollway records transitioned from OIG to the Legal Department.

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

REPORTS OF FINDINGS

Summary Reports of Investigation detailing sustained findings and/or recommendations for corrective action are submitted to the Board Chair, the Executive Director and appropriate management officials. 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.

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 OIG cases concluded between September 1, 2018 and February 28, 2019.

OIG Investigations Resulting in Personnel Actions

Discharge/Termination/Resignation

IG-19-001 Messenger Driver

OIG completed an investigation that established reasonable cause to find that a Messenger Driver committed time/attendance fraud, misused Tollway resources, and damaged Tollway property in violation of numerous Tollway policies. These findings support significant discipline standing alone. However, our investigation revealed that on more than 80% of the days worked in December and January, the employee drove the assigned vehicle home, left the vehicle idling, and took breaks of as much as 2.5 hours without approval and in violation of Tollway policies. These findings established reasonable cause to find that the employee regularly committed time/attendance fraud and misuse of Tollway resources. Given the serious and persistent nature of these violations, the OIG recommended that the employee be discharged from the Tollway and be required to pay for the damages to the Tollway vehicle.

Our investigation also identified potential improvements to the drug and alcohol testing training and procedures, and the monitoring of Tollway vehicles and employees.

The Tollway agreed with the OIG findings and initiated the disciplinary process. After reviewing the employee's response to the charges identified in the OIG report it decided to terminate the employee due to the numerous Tollway policy violations, but it declined to require payment for damages. Tollway management further stated that it will conduct training respecting Tollway drug and alcohol testing procedures and will provide more information on Crossroads, the Tollway employee web resource. In addition, Tollway management indicated that the Tollway Vehicle Policy will be reinforced with employees, and that it will monitor daily activities and driver logs to ensure that staff are properly utilized during work hours.

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.

Suspension/Counseling

IG-18-013 Supervisor

OIG completed an investigation that established reasonable cause to find that a Supervisor in the Procurement Department violated Tollway time and attendance policies by approving Kronos timekeeping records that did not accurately reflect leave taken, which meant that leave was not properly allocated for time that the employee was away from work on four occasions. There were no documented requests for leave for any of these dates, and the employee's two supervisors could not recall any specific requests. But the supervisors admitted that the employee could ask for leave from either of them, and that most requests are verbal. Given this unstructured reporting system and lack of standardized method for leave requests, there was no way to verify if leave was requested or approved. For these reasons there was insufficient evidence to find that the employee intentionally falsified time or took unauthorized leave.

However, Tollway policy requires employees to review and attest to their timesheets, and the records did not accurately reflect the time the employee was away from work. Consequently, the OIG recommended that the Tollway impose discipline commensurate with the circumstances.

The Tollway agreed with the OIG findings and provided a verbal counseling to the employee reiterating the importance of complying with Tollway timekeeping policies and ensuring that time records are diligently reviewed. In addition, the Tollway provided documentation that the employee's time records have been edited to accurately reflect the time away from work and the type of leave taken.

Our investigation also identified gaps in processes in the Procurement Department respecting the documentation of time off requests and approvals, which is exacerbated by an unclear chain of command that hinders proper management and oversight of leave requests and timekeeping. In addition, our investigation identified misunderstandings of FMLA and the allocation of leave. Tollway management agreed to consistently require email documentation of leave requests and approvals, and to provide FMLA training materials to managers and supervisors. The Tollway also said it will continue to use available resources, such as Velocity, to monitor employees.

OIG Investigations Resulting in Administrative Action

IG-18-002 – Drug Testing

OIG completed an investigation that identified procedural deficiencies in hiring processes that establish collective mismanagement by the Administration Department in relation to the re-hire of a former employee as an Equipment Operator/Laborer (EOL), a position that requires a Commercial Driver's License (CDL). The employee had resigned from the Tollway after testing positive for cocaine in 2016 and was hired approximately nine months later in 2017 into the same position after passing a pre-employment drug test. However, there is no documentation in the Tollway hiring file that the employee satisfied the U.S. Department of Transportation (USDOT)/Federal Motor Carrier Safety Administration (FMCSA) mandates for CDL holders who test positive for illegal drugs. Our investigation identified concerns with the Tollway's process for hiring EOLs, and we cited available USDOT guidance in support of several recommendations to address these procedural and record-keeping deficiencies.

In December 2018, the Tollway's initial response stated that this re-hire occurred due to "irregularities" under a prior Executive Director and Chief of Administration, and asserted that the new Executive and Administrative leaders were addressing these policy and process "exceptions." The response referenced a new policy emphasizing the Tollway's commitment to USDOT/FMSCA standards and provided two new pre-employment forms designed to comply with these standards. The response did not address five of the six OIG recommendations.

In March 2019, after the departure of the Executive Director and the Acting Chief of Administration, the Tollway provided an updated response that addressed most of the remaining OIG recommendations. First, it confirmed that the employee is on a regular random drug test cycle, and that it is considering other appropriate action. Second, it reported that drug and alcohol program training has been scheduled for managers and supervisors in April, and identified the designated and certified Department Employer Representatives. Third it provided a copy of a brochure to be distributed Tollway-wide that explains the federal drug and alcohol testing regulations. Fourth, it included a commitment from the current Executive and Administrative leadership to assess Tollway processes and implement improvements to the hiring and pre-employment review procedures to ensure the Tollway hires the best candidates. Fifth, it promised to revise the Tollway policy manual as needed to comply with USDOT/FMSCA regulations in anticipation of the January 2020 roll out of the federal Clearinghouse program.

MANAGEMENT ADVISORY REPORTS

R-17-003 – Administrative Hearing Officers

The OIG issued a Management Advisory Report following a review that included an examination of the most recent Administrative Hearing Officer selection process and a general overview of the administration and management of the Hearing Officers. This review identified several processes or procedures that could be improved, and we provided recommendations to promote and enhance credibility of the system as a whole.

The Toll Highway Act empowers the Tollway to assess civil fines for non-payment of required tolls, and to establish a system to review and adjudicate assessed toll violations and fines. In furtherance of this law, the Illinois Administrative Code enumerates specific requirements for appointing independent Hearing Officers and for the adjudication processes that these Hearing Officers conduct. Hearing Officers can impose judgments with severe penalties, including increased monetary fines that can lead to suspension of driving privileges or vehicle registration if unresolved. These potential adverse consequences mean that the Tollway's civil administrative adjudication system and the Hearing Officers who preside over it must operate in a way that preserves and promotes public trust and credibility.

The Illinois Administrative Code provides that "Hearing Officers shall be attorneys admitted to the practice of law in the State of Illinois for at least 5 years and shall participate in a formal training program on the relevant substantive and procedural law and judicial conduct before assuming their duties as hearing officers." Our OIG review determined that the Tollway's Hearing Officer selection process, which is done as a procurement largely administered by the Procurement Department, substantially complies with these minimum requirements.

However, given the importance of having independent, unbiased Hearing Officers, the Tollway would be well-served by ensuring that it undertakes a more robust selection process and maintains up-to-date financial disclosure and conflicts of interest data on each Hearing Officer. The Procurement Department's current selection process appears to include little, if any, external assessment or confirmation of professional acumen or demeanor, or follow up on potential concerns.

OIG made several recommendations, including: conducting reference checks and following up on any issues that may impact a Hearing Officer's credibility, such as prior misconduct or malpractice; more stringent financial and conflict of interest disclosures for Hearing Officers; annual attestation of previous disclosures and ARDC registration; periodic evaluation and regular training on relevant legal trends; and reviewing and updating the *Hearing Officer Bench Book* (last revised in 2008) to ensure that it remains current and relevant. We also recommended that the Tollway include information on its website about a Respondent's legal right to bring a motion to disqualify a Hearing Officer, and provide guidelines for bringing and resolving those motions. In addition, the Tollway should develop a recusal process for Hearing Officers who determine that they may have a conflict of interest or other potential bias that could be seen to impact their impartiality.

The Tollway responded that employment reference checks are already performed on Hearing Officers, although it did acknowledge that two of the 28 lawyers selected did not have references. So the Tollway said it would review whether the Tollway Legal Department should be more involved in the process. The Tollway declined to require greater financial or conflict disclosures than those required for similar contractors. The Tollway further said it would develop a recusal process for Hearing Officers who determine they have a conflict of interest. Finally, the Tollway said it would consult with the Legal Department about including information on the website about a respondent's right to bring a motion to disqualify, and conducting a review of the *Hearing Officer Bench Book* with updates as appropriate.

MANAGEMENT REFERRALS

OIG refers matters that are either not within its jurisdiction, or which are most appropriately handled by Tollway management. We provide responses to several notable referrals below.

Management Referrals Resulting in Administrative Actions

RF-19-002 – Acting Chief of Administration

In the course of its work, the OIG learned that the Tollway hired a person serving as a 75-day employee in the Interim Chief of Administration role as an "Acting Chief of Administration" pursuant to a Personal Services Contract. However, documentation, including their application and resume, did not reflect that they possessed the master's degree set forth as a requirement in the most current Position Description. The OIG sought a response describing the selection process used for filling the position and the basis for the hire.

In the Tollway's initial response, dated February 8, 2019, it did not address the master's degree requirement, but did state that the selected hire had "30+ years of government experience" that included "developing, implementing and directing hiring programs at various state agencies," which

“qualify [the hire] for the Acting Chief of Administration position.” The Tollway further explained that it considered the position to be critical to the agency, and, given the circumstances and the “often-lengthy process of getting an optimal permanent replacement,” it considered this hire to be an “appropriate interim remedy to the situation” in order to stabilize the department at a time when a new hiring process was being implemented.

In a supplemental response dated March 18, 2019, the Tollway reported that the Acting Chief of Administration had resigned on March 15, and a new permanent Chief of Administration had been selected who “has the skills require to lead the Administration Department to develop and implement the administrative policies and procedures and employee compliance.”

Management Referrals Resulting in Corrective Action

RF-18-066 – IT Security

OIG learned that temporary summer interns working in Administration who did not have their own Tollway IT credentials were accessing and entering data into Tollway databases using full-time Tollway employee credentials. Although this appeared to be done with approval of the department, we referred the matter to Administration and Information Technology with a recommendation that they confer to discuss best practices to ensure compliance with Tollway IT security mandates. Tollway IT responded that the definition of Tollway employee would be revised to include interns, temporary and seasonal workers. IT also stated that its Security Awareness Training would emphasize to employees the need not to share passwords and not to permit others to access their systems or applications. Finally IT said that it would work with Administration to determine the appropriate level of access for employees given their roles.

RF-18-068 – Seasonal Toll Collector

Toll Audit provided OIG with documentation reflecting that a Seasonal Toll Collector had a \$149.12 cash variance shortage following a shift. OIG referred the matter to Toll Operations. Toll Operations reported that it reviewed video from the shift in question and determined that while there was no evidence of theft, the shortage did indicate gross negligence. In addition, the video review identified further Tollway policy violations related to unauthorized personal texting and ignoring patrons. When the Seasonal Toll Collector could not provide a reasonable explanation, Toll Operations moved to terminate the employee.

Management Referrals Resulting in No Action

RF-18-057 - Senior Toll Collector

OIG received a complaint from a patron who claimed that he was given incorrect change after paying a toll. With the patron’s consent we referred the matter to Toll Operations. Toll Operations reported that video of the incident did not support the allegation and the Toll Collector’s drawer balanced at the end of his shift. Under the circumstances, Toll Operations determined that no management action was appropriate.

RF-18-063 – Building Access

OIG received information about Administration employees who were observed exiting and/or entering the building through the front lobby without using their badge. In so doing, their exits and entries were not tracked in the Tollway's Velocity system, in violation of the Tollway building security procedures. The then-Acting Chief of Administration responded that she spoke with the employees who told her that they had occasionally forgotten their badges, and she reported counselling the employees on the need to follow Tollway policy and the need to obtain a visitor badge when they forget their Tollway ID.

Customer Service Referrals

During the reporting period, OIG referred 27 matters involving disputes over Toll Violations/Fines or other I-PASS-related concerns to Business Systems. We have noted a marked increase in the number of concerns about the perceived excessiveness of fines. To date OIG has received responses from Business Systems reflecting resolution of 26 of those referrals.

We also referred to Engineering a complaint from a patron who had not received a gift card won at a vending machine at a Tollway Oasis. Engineering worked with the Oasis vendor and the gift card was provided to the patron.

UPDATE ON LAW ENFORCEMENT ACTIONS

In the course of its work, OIG works with outside law enforcement on matters related to the Tollway. One matter previously reported in the September 2018 Semi-Annual Report resulted in a criminal conviction in this reporting period.

IG-18-003 – Customer Service Representative

OIG received information that on November 28, 2018 the former Tollway Customer Service Representative (CSR) pleaded guilty in Cook County Circuit Court to one count of Official Misconduct, a Class 3 Felony, and one count of Computer Fraud, a Class 4 Felony. The court's sentence included a two-year term of probation, 60 hours of community service and restitution to the Tollway in the amount of \$588. To date the Tollway has received \$558.00.

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 Executive, Legal, and Ethics to draft revised Board By Laws, and conflict of interest procedures.

- Working with Executive, Legal, and Ethics to develop and provide orientation for new board members.
- Publishing three redacted Summary Reports of Investigation.