



Illinois State Toll Highway Authority

Office of the Inspector General

SUMMARY ACTIVITY REPORT

For the period March 1, 2019 through August 31, 2019

Theodor J. Hengesbach
Inspector General

Hotline: 866.786.5544
Fax: 630.795.7661
<https://www.illinoistollway.com/OIG>



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: September 19, 2019

Re: Office of the Inspector General Summary Activity Report for the Period Spanning March 1, 2019 to August 31, 2019.

INTRODUCTION

We submit 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) to provide independent oversight of the Illinois Tollway. The Illinois Senate confirmed the appointment of Theodor J. Hengesbach on February 8, 2017.

MISSION/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 cases involving 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

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).

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 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

STAFF

OIG is staffed with an Inspector General, a Senior Investigator, 2 Investigators, and an Administrative Assistant. The Inspector General, Senior Investigator, and both Investigators are certified by the National Association of Inspectors General. During the reporting period both Investigators successfully completed training and testing and have joined the Inspector General and Senior Investigator as Certified Fraud Examiners. In addition, the Inspector General and the Senior Investigator continue as active members of the Board of Directors for the Illinois Chapter of the Association of Inspectors General and have assisted in developing the Fall training session for local inspectors general.

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, as appropriate, to Tollway management, law enforcement or another appropriate entity, or decline to open a case.

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. OIG also receives a number of complaints and calls relating to I-PASS concerns, or toll violations and fines that we refer to Business Systems' 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 law⁸. Furthermore, state and federal Whistleblower laws prohibit retaliation against individuals who provide information to or cooperate with an OIG investigation.

One method by which OIG receives complaints is via the Tollway OIG Hotline (866-786-5544). During this reporting period, there were 15 incoming calls. A second way is through our 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

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).

delivered directly to a secure OIG email account. During this reporting period, OIG received 44 online submissions.

From March 1, 2019 through August 31, 2019, OIG took action in 141 new matters:

Preliminary Investigations	22 opened 24 closed 9 converted (1 Investigation, 5 Referred, 3 Review)
Investigative Assistance ⁹	1 case opened 1 closed
Investigations	4 opened 8 closed (2 Referred, 1 converted)
Reviews	4 opened 6 closed
Referrals	53 matters referred
Declined	5 matters
Calls referred to Customer Service	52

As of August 31, 2019, the following matters were pending¹⁰:

Preliminary Investigations	8
Investigative Assistance	0
Investigations	4
Reviews	5

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 were no recommended administrative actions or matters submitted for consideration to the Governor, the Board of the Authority, or the General Assembly during this period.

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.

The following are summaries of OIG cases concluded between March 1, 2019 and August 31, 2019.

OIG Investigations Resulting in Personnel Action

Discharge/Termination/Resignation

IG-19-006 (Seasonal Toll Collector)

The OIG completed an investigation into an allegation regarding large cash shortages for several shifts of Seasonal Toll Collector (STC), totaling \$871.34. Toll Audit provided documentation reflecting these variances but indicated that no video was available.

When interviewed, the STC denied taking the money but could not explain the shortages. The STC also indicated a willingness to pay the money back to the Tollway. Following the interview, the Toll Operations Department determined that the actions constituted either theft or gross negligence and offered the STC the opportunity to resign in lieu of discharge. The STC accepted and agreed to restitution in the amount of their last Tollway paycheck, \$793.90. In addition, the STC was coded as do not re-hire.

Suspension/Counseling

IG-18-006 (Manager, Manager, General Manager)

The OIG completed an investigation of a complaint that a Manager (Manager A) misused their assigned Tollway vehicle and committed time abuse. Our investigation showed that Manager A and their supervisor (Manager B) were assigned “operationally-assigned” Tollway vehicles and had been allowed to use these vehicles and adjust their workday routines to their advantage with little, if any, discernable benefit to the Tollway. Specifically, under this arrangement Manager A had been allowed a to drive approximately 70 miles at the end of the day from their assigned work location and swipe out at another Tollway site 2 miles from their home without transportation costs or tax consequences. Similarly, Manager B had been allowed to drive a Tollway vehicle (parked at a Tollway site near their home) to and from their assigned work location and to go to lunch and run other personal errands during the day using a Tollway vehicle. We also found that the General Manager with responsibility for both Managers acquiesced to these arrangements and failed to ensure appropriate use of Tollway resources. In addition, we found that Manager B had submitted some inaccurate, illegible, and vague Vehicle Use Logs, which the General Manager had approved.

Our investigation established reasonable cause to find that these arrangements were inconsistent with Tollway vehicle use and time/attendance policies and constituted waste of Tollway resources. We recommended appropriate disciplinary action for these employees, as well as other administrative corrective action, including reassessment of their vehicle assignments.

Response

The Tollway responded by highlighting the employees’ good work records and their need for Tollway vehicles to perform their duties but acknowledged that some of their actions violated the Tollway Vehicle Manual and the Tollway Policies and Procedures Manual. Consequently, it imposed a ten-day suspension on Manager A for misuse of the operationally-assigned vehicle. In addition, Manager A was assigned a permanently-assigned vehicle, which requires additional use documentation, and is now required to swipe in and out at their assigned work site.

The Tollway imposed a one-day suspension on Manager B for failing to supervise Manager A's vehicle use, and for submitting illegible vehicle logs, taking an unauthorized trip home in a Tollway vehicle and failing to adequately document work hours. The Tollway further required Manager B to park their operationally assigned vehicle at the Central Administration building and to fully comply with vehicle log submission requirements.

The Tollway issued the General Manager a written disciplinary notice for failing to adequately supervise Managers A and B and will require additional management training.

OIG Investigations Resulting in Administrative Action

IG-18-009 (General Manager)

The OIG completed an investigation of a 2016-17 General Manager hiring sequence based on a referral from Internal Audit. Internal Audit's referral identified the following concerns: 1) whether the Tollway followed proper hiring practices in the filling of this position, and 2) whether the selected candidate met the requirements outlined in the position description.

Our investigation confirmed Internal Audit's concerns and identified two related problems: 1) the continued lack of a standard process for filling Rutan-exempt Tollway positions, as previously noted by audit findings and OIG reports; and 2) the failure to establish an accurate position description at the outset of the selection. These factors contributed to the lengthy, disjointed, and inconsistently documented hiring sequence. These process concerns created questions about the hire itself, regardless of the quality of the candidate.

Our investigation established reasonable cause to find collective mismanagement involving this hiring sequence by the Administration and Executive departments for failing to develop a standard hiring process for Rutan-exempt positions and for failing to maintain or require accurate and updated position descriptions. The user department also was responsible for failing to measure candidates against the position description and for failing to consistently document the selection and hiring action taken.

Recognizing the new leadership in Administration and based on documentation that the employee was performing well, we declined to make disciplinary recommendations, but we made several recommendations to improve the Tollway's general hiring process.

Response

The Tollway agreed with our findings, acknowledged deficiencies in the past Rutan-exempt hiring process, and committed to its ongoing effort to develop a comprehensive standard process designed to select qualified candidates. Among these changes, hiring departments are now required to draft a hiring justification memorandum for all hires. The Tollway has initiated an agency-wide review of Rutan-exempt position descriptions to ensure accuracy and consistency. Administration will provide regular updates on this process, and we will include these in subsequent reports.

IG-18-012 (Manager)

The OIG completed an investigation of the 2016 hiring of a Manager, and the circumstances of their subsequent termination. We initiated an investigation after receiving an allegation that the termination was retaliatory.

Our investigation determined that a then-Board Director gave the former Executive Director a resume of a personal acquaintance generally recommending the person for hire, and this resume eventually made it to the then-Chief of Administration. The then-Chief of Administration reviewed the resume and identified a vacant Rutan-exempt manager position (Manager) as a possible fit. Although the user department had not sought to fill this position, the then-Chief of this department invited the person to visit Central Administration for a “walking interview” to explain the position. Following this meeting, the then-Chief of the user department informed the then-Executive Director that that the candidate “could grow into the position.” The then-Chief of Administration told the OIG that they had informed the then-Executive Director that the candidate was not qualified, but the then-Executive Director relied on the then-Chief of the user department’s opinion and approved the hire. No justification for hire memo was prepared.

Further investigation revealed that, during the Manager’s short tenure, they had numerous performance issues and policy violations, which led to an extended probationary period and at least two poor reviews. In addition, this poor performance resulted in modification and reduction of the Manager’s duties. Ultimately, but only after the former Executive Director had left the Tollway, the Manager was terminated.

Our investigation identified numerous concerns with the Manager’s performance that did not support a finding that their termination was retaliatory. These facts did, however, provide reasonable cause to find collective mismanagement respecting this hiring by the Executive and Administrative departments for failing to develop or require standards for filling Rutan-exempt positions. The user department was also responsible for not conducting or documenting a meaningful selection process for this position.

Because the parties involved in the hire are no longer with the Tollway, we made no disciplinary recommendations, but we made several recommendations to improve the hiring process for, and management of, Rutan-exempt positions. Specifically, in addition to the recommendations made in OIG Case #IG-18-009 (referenced above), we also recommended that those supervising Rutan-exempt positions receive training in how to address performance issues in ways that are consistent with the requirements of the position.

Response

The Tollway agreed with our findings, acknowledged deficiencies in the past Rutan-exempt hiring process, and committed to its ongoing effort to develop a comprehensive standard process designed to select qualified candidates and will require hiring departments to draft hiring justification memoranda for all hires. The Tollway has initiated an agency-wide review of Rutan-exempt position descriptions to ensure accuracy and consistency.

In addition, the Tollway indicated that it will be implementing a new performance appraisal system to better assess and document employee effectiveness and productivity. Administration will provide regular updates on this process, and we will include these in subsequent reports.

IG-19-005 (Equipment Operator Laborer Candidate)

The OIG completed an investigation of a complaint submitted by a candidate for an EOL position alleging that in 2018 they had been offered a position at the Tollway that was subsequently rescinded following a criminal background check. Our investigation confirmed that the candidate had been offered the position and given a start date by mistake as a result of a clerical data-entry error in the Department of Administration, and that they received a call explaining that the offer had been rescinded because of a prior criminal conviction.

This investigation established reasonable cause to find mismanagement in the Administration Department for the failure to comply with Tollway policy or Illinois law respecting the review and assessment of the candidate's criminal history.

Based on these findings and recognizing the recent change in leadership in Administration, we recommended that the Tollway design, adopt, and adhere to a thorough criminal background review and an individualized assessment process that complies with state law. Furthermore, we recommended that the Tollway review its records to determine if there were other similarly-situated candidates.

Response

The Tollway agreed with our recommendations and expressed its commitment to develop and implement a more comprehensive background review process. The Tollway indicated that the criminal background review and individualized assessment process has been reestablished, which includes many of the OIG-recommended enhancements. Administration will provide regular updates, and we will include these in subsequent reports.

MANAGEMENT ADVISORY REPORTS

R-18-004 (pre-employment drug testing)

The OIG issued a Management Advisory Report (MAR) following our review of the Tollway pre-employment drug testing process as it related to three employees hired in June and July 2018. We initiated a review to determine the reasons why testing was not performed on these employees before they started work. This process included reviewing relevant documentation and conducting interviews of Department of Administration management personnel.

Our report noted that the Tollway's commitment to a drug-free workplace is well-documented in the Employee Policies and Procedures Manual (Policy Manual). Specifically, the Policy Manual provides that "the Tollway is committed to providing a safe, efficient and productive work environment for all employees and the public . . . [E]mployees on Tollway premises or conducting Tollway related business shall not use, possess, distribute, sell, or be under the influence of alcohol, unauthorized controlled substances or illegal drugs." In furtherance of this policy and commitment, the Tollway has unequivocally asserted that "[p]rospective employees will be instructed that their employment is contingent upon passing a pre-employment drug test. Appointments will be made with a doctor or clinic selected by the Tollway." Traditionally, every new employee has undergone a pre-employment drug test. In the course of our work, we learned that three current, full-time, Rutan-exempt employees were not required to undergo this test before they began working at the Tollway.

Our preliminary inquiry revealed that the then-Chief of Administration directed that pre-employment drug tests not be administered for these employees. The then-Chief of Administration told the OIG that they deemed such tests unnecessary for these candidates, and that this decision was authorized by the then-Executive Director, who had authority to waive Tollway policies.

Our review identified inconsistencies respecting new employee pre-employment drug testing and we made several recommendations to ensure that all new employees are treated equally, and that records are accurately maintained.

Response

During the pendency of this investigation, but following interviews, two of these employees were sent for drug testing, and the current Chief of Administration sent the third employee for testing soon after receiving our report. The Tollway verified that these tests were negative but acknowledged that they had been completed months after the employees' start dates in violation of Tollway policy. The Tollway agreed with our recommendations and committed to developing and implementing a consistent pre-employment drug testing protocol and accurate tracking and documentation.

PI-19-003 (Pre-employment Background Checks)

The OIG issued a MAR describing our review of the Administration Department's process of reviewing backgrounds for candidates selected as Equipment Operator/Laborers (EOLs) in late 2018 and early 2019. OIG initiated this inquiry after receiving an allegation that the Administration Department failed to comply with these regulations before onboarding EOL candidates selected in the Fall 2018 EOL Hiring Sequence.

Several Tollway positions require employees to hold a valid commercial driver's license (CDL). One position is Equipment Operator Laborer (EOL). The U.S. Department of Transportation (USDOT) Federal Motor Carrier Safety Administration (FMCSA) regulates CDL holders and entities that employ CDL holders who operate Commercial Motor Vehicles (CMVs), like the Tollway. The regulations require employers to request alcohol and controlled substances information from "all DOT-regulated employers that employed the driver within the previous 3 years and the scope of the information requested must date back 3 years." To ensure employer compliance, the USDOT FMCSA provides best practice guidance for this process as well as sample forms for employers.

Our inquiry confirmed that: 1) the Tollway failed to send out release of information forms for recent EOL hires in a timely manner; 2) Tollway records do not adequately document good faith efforts to obtain responses from previous employers; and 3) the Tollway failed to seek information from all previous employers within the prior three years. Recognizing the recent leadership change in Administration, our report included several recommendations to address these findings. These recommendations included restructuring the background review process when filling a position that requires a CDL.

Response

The Tollway agreed with our findings and recommendations and committed to developing and implementing a comprehensive background review process that complies with federal regulations and maintains appropriate records. The Chief of Administration reported that the April EOL

posting had been cancelled and would be re-posted after developing a more comprehensive selection and background review process. Administration subsequently reported that the EOL vacancy was posted in August and the selection process will include improved testing and more rigorous verification of CDL licensure and prior employment. Administration will provide regular updates on this process and we will include them in subsequent reports.

R-19-001 (Summer Intern Program)

The OIG issued a MAR describing our review of the Tollway's 2018 Summer Intern program, which provided temporary, full-time, paid employment to approximately 25 individuals. We initiated this inquiry after receiving an allegation that the Tollway did not send the 2018 summer interns for drug testing as part of their initial processing, as required by the Tollway Employee Policies and Procedures Manual. In addition to looking into the drug testing matter, we also reviewed the process used for the selection and hiring of these individuals.

Our inquiry confirmed that no 2018 summer interns were drug tested, based on then then- Chief of Administration's decision that drug testing for these positions was unnecessary.

Our investigation further found that the 2018 Summer Intern (aka Summer Temporary) program was poorly defined and lacked a standardized selection or assignment process.

We noted that the Summer Temporary position had been posted from March 1, 2019 to March 14, 2019, and we learned that over 100 applications had been received. Recognizing the recent leadership change in Administration, the OIG recommended that this posting be suspended to permit a thorough review and restructuring of this program. There are several areas for consideration, including: creation of a position description that describes the responsibilities and qualifications for this role, obtaining a Rutan determination, establishing a structure for the selection and processing of these individuals that takes into consideration the user department's needs, and complies with Tollway policy, including pre-employment drug testing.

Response

The Tollway agreed with our findings and the current Chief of Administration cancelled the Summer Intern/Summer Temporary program for 2019. Administration indicated that it will restructure the summer program before posting in 2020 to address OIG recommendations and will require drug testing. Administration will provide updates on this program, which we will include in our subsequent reports.

R-19-002 (Management Trainee)

The OIG issued a MAR following our review of the development and selection of a Rutan-exempt trainee position that was filled in July 2018 under the direction of the then- Chief of Administration.

Based on our review, we identified several concerns with this irregular hire: 1) the Tollway does not have a defined trainee program; 2) the current iteration of this position description was developed after the selected candidate had interviewed; 3) the selected candidate was placed into a department that had not requested such a trainee and which had no involvement in the selection; and 4) no management position exists to which this position could advance. In addition, we noted that our review was hindered by the Tollway's past lack of documentation regarding, or

standardized process for making, Rutan-exempt hires, which rendered it difficult to determine with certainty how this position came to be or why the candidate was selected.

We made several recommendations ranging from developing an actual trainee program with a defined transition plan, to ensuring that position descriptions accurately reflect qualifications and responsibilities and selecting candidates that meet those qualifications.

Response

The Tollway agreed with our findings and acknowledged there is no established Tollway trainee program. It noted that the employee's original one-year term had been extended with Executive and Administration's approval based on operational need and the employee's strong work record. The Tollway further stated that it would evaluate the structure of a management trainee program and the current position and will make a decision no later than December 31, 2019. The Tollway further expressed its commitment to hiring candidates into Rutan-exempt positions who are qualified to perform the duties of those positions. Administration will provide regular updates, and we will include them in subsequent reports.

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-19-051 Hiring Practices

OIG learned that in 2016 a Rutan-exempt manager position was filled, but shortly thereafter Central Management Services determined the position to be Rutan-covered. Since the position had been filled outside of the competitive Rutan requirements, we referred the matter to Administration to address the issue. Around the same time that we issued our report, the manager left state service. Administration concurred with our recommendations and said it was addressing hiring managerial concerns. Administration further responded that it was performing a comprehensive review of all Rutan-exempt position descriptions to ensure they accurately reflect duties and qualifications and that the positions are properly classified. Administration will provide regular updates on this process and we will include in subsequent reports.

Management Referrals Resulting in Corrective Action

RF-19-032 Toll Collector

Toll Audit informed OIG about records showing consistent anomalies in the collections of a Toll Collector. These records showed differences between what revenue was expected to have been collected (based on treadle records) and what was actually collected – on at least 2 days that totaled more than \$100. Toll Audit reviewed video, which showed the Toll Collector repeatedly allowing unauthorized vehicles to pass through without payment. OIG referred the information and documentation to Toll Operations. Toll Operations reported to the OIG that they questioned the Toll Collector about the shortages and showed the video. The Toll Collector denied any wrongdoing but could not explain their actions. The Toll Collector accepted the offer to resign with an agreement not to seek re-employment and was classified as Do Not Re-Hire.

Customer Service Referrals

During the reporting period, OIG referred 28 matters involving disputes over Toll Violations/Fines or other I-PASS-related concerns to Business Systems. To date OIG has received timely responses from Business Systems reflecting resolution of 22 of those matters. The response dates for the remaining 6 referrals are in October.

RECOVERIES/RESTITUTION

During the reporting period, the Tollway received the following restitution payment resulting from an OIG investigation:

IG-18-003 \$588.00 (Payment on Court-ordered restitution)

IG-19-006 \$793.90

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:

- Meeting with new managers during orientation to discuss the role of OIG and to reinforce the common goal of fostering and enhancing integrity in Tollway operations.
- Providing input to the Chairman, Administration, Legal, and Executive on proposed Tollway policy and procedure revisions.
- Working with Ethics, Internal Audit, and Legal on Conflict Review Committee.
- OIG Investigators both successfully completed training and testing to become Certified Fraud Examiners.
- The Inspector General and Senior Investigator helped to develop and organize the Fall training for local inspectors general sponsored by Illinois Chapter of the Association of Inspectors General.