



Illinois State Toll Highway Authority

Office of the Inspector General

SUMMARY ACTIVITY REPORT

September 1, 2021 through February 28, 2022

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 31, 2022

Re: Office of the Inspector General Summary Activity Report for the Period Spanning September 1, 2021 to February 28, 2022.

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. On February 22, 2022, the Illinois Senate confirmed the re-appointment of Theodor J. Hengesbach to a second five-year term.

MISSION/JURISDICTION

The 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, the OIG strives to detect, deter, and prevent fraud, waste, abuse, corruption, misconduct, and mismanagement.

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

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 10/8.5 605 ILCS 10/8.5.

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

By statute, the 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 the 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.

The OIG conducts administrative and criminal investigations of alleged violations of law, rule or regulation, and misconduct or mismanagement. In addition, the OIG reviews Tollway policies and procedures, and employment and hiring files, and serves as liaison to law enforcement entities.⁵

STAFF

The OIG is currently staffed with a General Manager of Investigations, an Investigator II, 2 Investigator Is, and an Executive Secretary. The Inspector General, General Manager of Investigations, and the Investigator II are certified by the National Association of Inspectors General and the Association of Certified Fraud Examiners. In addition, the Inspector General and the General Manager of Investigations continue as active members of the Board of Directors for the Illinois Chapter of the Association of Inspectors General. The Inspector General currently serves as Vice-President of that Board.

There are three budgeted positions that are vacant that are in the process of being posted and filled: the Deputy Inspector General, an Investigator II, and Information Analyst.

INTAKES

The OIG receives complaints and reports of concerns and allegations of wrongdoing⁶ from the general public, Tollway officials and employees, vendors, bidders, and anonymous sources. These are screened and assessed to determine the most appropriate action, which can include opening a Preliminary Investigation (PI),⁷ an Investigation (IG), a Review (R), or an Investigative Assistance case (IA).⁸ The OIG can also refer matters, as appropriate, to Tollway management, law enforcement or another entity, or decline to open a case.

Factors that impact this decision include: the reliability and accuracy of information based on the 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.

Most often matters are opened as Preliminary Investigations, which are limited scope inquiries to develop and evaluate available information to determine the most appropriate next action.

The OIG also receives a number of complaints and calls relating to I-PASS concerns, or toll violations and fines that we refer to the Tollway Operations Customer Service section.

⁴ See 605 ILCS 10/8.5(d).

⁵ See 605 ILCS 10/8.5(f).

⁶ The OIG can also self-initiate investigations and reviews.

⁷ 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.

⁸ Investigative Assistance matters include tracking of employee arrests and requests for information or subpoenas from law enforcement, regulatory agencies, or other Inspectors General.

By law, the identity of any individual providing information or reporting possible or alleged misconduct to the 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.

The Tollway OIG Hotline (866-786-5544) provides one of several means by which the OIG receives reports of wrongdoing. During this reporting period, there were 45 incoming calls.

A second source of information is the OIG online electronic form that allows individuals to provide information 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, the OIG received 33 online submissions.

From September 1, 2021 through February 28, 2022, the OIG took action in 105 matters:

Preliminary Investigations	21 opened 17 closed 4 converted (2 Investigations, 1 Referral, 1 Review)
Investigative Assistance ⁹	3 opened 4 closed
Investigations	3 opened 4 closed
Reviews	1 opened 3 closed
Referrals	73 matters referred 2 to Law Enforcement
Declined	4 matters

As of February 28, 2022, the following matters were pending¹⁰:

Preliminary Investigations	9
Investigative Assistance	0
Investigations	6
Reviews	3

⁹ On October 1, 2017, responsibility for responding to law enforcement subpoena requests for Tollway records transitioned from the 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. The OIG also issues Management Advisory Reports to the Board Chair, the Executive Director and appropriate management officials, which describe operational concerns observed by the OIG in the course of its activities.

There were no recommended administrative actions or matters submitted for consideration to the Governor or the General Assembly during this period.

The following are summaries of OIG reports issued between September 1, 2021 and February 28, 2022.

SUMMARY REPORTS OF INVESTIGATION

IG-21-003¹¹

The Office of the Inspector General completed an investigation of an allegation that a Tollway employee sought and received special treatment from ISP respecting their child's DUI arrest in 2016.

This investigation established reasonable cause to find that a Tollway employee violated Tollway policies when they used their position and work relationships to seek favorable treatment from a (now) former ISP employee who ultimately effectuated the dismissal of the arrest. When interviewed, the Tollway employee admitted that, while at work, they used Tollway equipment to contact the (now) former ISP employee and asked them to help. They also confirmed that the arrest was later dismissed.

Response

The response was expected on July 15, 2021 and received July 7, 2021, and indicated that the Tollway agreed with the OIG findings and concurred with the recommendation of discipline, which it was in the process of assessing.

On November 22, 2021 the Tollway reported that it had suspended the employee without pay and presented them with charges seeking termination that alleged violations of Tollway policies. After reviewing the employee's response to those charges, the Tollway agreed to reduce the recommended termination to a time-served, unpaid suspension of 38 days with the understanding that future misconduct would be grounds for immediate termination.

¹¹ As noted in the September 2021 Semi Annual Report, the final discipline for this matter had not been determined as of August 31, 2021, so this summary is included in this report.

IG-21-005

The Office of the Inspector General completed an investigation into the circumstances that led to a payment of \$8860 to a vendor that had been contracted to provide a “12 foot x 12 foot Canine Concrete Kennel Pad with Canine Kennel Cage” at an ISP K9 officer’s residence. A previous OIG investigation (OIG Case # IG-20-002) determined that the vendor had violated their contract with the Tollway when they used a subcontractor without approval to perform the concrete work and when they sought payment for services they did not provide (specifically construction of the kennel), and the OIG recommended that the Tollway not pay the full amount it had been invoiced. In its response to that report, the Tollway informed the OIG that during the pendency of the investigation, the Tollway had paid the vendor the full amount they had invoiced (\$8860).

The OIG initiated an investigation of this payment. This investigation established reasonable cause to find that the Tollway committed waste when it paid the vendor for services it did not receive. While it appears that ISP did not perform a sufficient review of the matter or make full use of BidBuy resources before approving payment, there are inconsistencies in documentation and processes, which, combined with inadequate communication between the Tollway and ISP, contributed to a collective failure. The OIG recommended that the Tollway and ISP develop better communication and documentation for future procurements like these, and that timely and complete verification of services is requested and confirmed. OIG also recommended that the Tollway consider developing a stipend or reimbursement system for this type of project. Finally, OIG recommended that the Tollway consider corrective action and/or seek a refund from the vendor for amounts paid in excess of the services they provided.

Response

The response was expected on October 15, 2021 and received on November 15, 2021. The initial response noted that this was an unusual contract and agreed that better communication and documentation were important.

A subsequent response received on January 20, 2022 provided more complete information and detailed changes to the small purchase process that simplify and ensure accuracy of the process, and reported that numerous trainings had been developed and presented by Procurement for Tollway stakeholders.

The Tollway reported that it had discussed the matter with the state’s Chief Procurement Office, which advised that it felt there was not sufficient basis to suspend the vendor. The Tollway also indicated that stipends are not permitted for small purchases, and that a reimbursement system would require coordination with other departments.

MANAGEMENT ADVISORY REPORTS

R-20-002

The OIG completed a review of a hiring sequence that culminated in the Procurement department hiring eight Contract Compliance Analysts in early 2020. The review included an examination of available documentation and interviews of key Tollway stakeholders and was undertaken to assess compliance with Rutan requirements and applicable Tollway Hiring Procedures and Policies.

Our review found that basic Rutan processes were followed, but identified opportunities for improved documentation to standardize the process. Specifically, in this sequence only 42% of candidates who met the minimum qualifications were selected for an interview, yet there is no documentation of how this interview list was determined. In addition, high level managers involved in the hiring disclosed potential conflicts in their Confidentiality and Conflict of Interest forms based on prior work relationships with several of these candidates, but no documentation reflects that these forms were reviewed or that potential conflicts were meaningfully assessed.

The OIG made several recommendations:

- Screening criteria, including that used to reduce the pool of qualified candidates, should be established prior to selection and documented in the hiring file.
- The Confidentiality and Conflict of Interest form and assessment process should be revised using the Central Management Services (CMS) form as a model so that:
 - Disclosures should be required of all hiring participants
 - The form should be certified by someone outside the process who has reviewed and assessed any disclosures to determine if the potential conflicts would undermine the integrity of the hiring process, and
 - The forms should be submitted several days prior to the interviews to allow for a meaningful review and adjustment of participation if necessary.

Response

The response was expected October 15, 2021 and the initial response was dated November 8, 2021 and received on November 15, 2021. That initial response recited the OIG's findings and pledged to generally "consider the OIG recommendations."

The Tollway subsequently provided a more complete response as well as a separate update.

The second response (dated December 17, 2021, and received January 20, 2022) addressed the specific recommendations and indicated that:

Administration now documents how interview pools are determined and approved and includes this documentation in the hiring file.

Administration began using the CMS Relationship Disclosure & Conflict of Interest Certification Form, which is required to be completed by all hiring participants including those who create/revise the position requirements, hiring/screening criteria, and the interview questions/weight, as well as those who conduct the screening, interviews, scoring and selection. These forms must be submitted before the interviews and must be reviewed and signed off on by someone not involved in the selection.

However, the update from the Human Resources division of the Administration department (dated December 20, 2021, and received January 20, 2022) incorrectly stated that the OIG Summary Report had been issued after Administration had decided to use the CMS Disclosure form. In fact, the OIG Summary Report had been issued a week before Administration sent an email announcing the intent to adopt the use of the CMS form.

On March 28, 2022, the Tollway provided a follow-up memorandum acknowledging the date error in the December 20 memo, and confirming that the Tollway had implemented enhanced processes and documentation based on the OIG recommendations.

The memo further pledged to enhance the review process to ensure timely responses, that dates are properly reflected, and management action plans accurately address OIG findings and recommendations.

R-21-001

The OIG completed a review of a Tollway vendor and its subcontractors after receiving a complaint about potential conflicts of interest created by their work and their other Tollway contracts. This review confirmed that between November 2018 and February 2020, Vendor A and its subcontractors provided a wide range of contract compliance services that included reviewing Tollway vendors' participation goals. The OIG further confirmed that Vendor A and Subcontractor 1 and Subcontractor 2 worked on other Tollway contracts that had participation goals like those that they were tasked with assessing.

This review found that, while the services performed by Vendor A and its subcontractors created potential conflicts of interest, there were no actual conflicts of interest with their other Tollway contracts. Specifically, this review found that, during the pendency of this contract, Tollway staff and Vendor A took steps to avoid potential conflicts between Vendor A and its subcontractors and their other Tollway contracts. However, this arrangement seems to have relied on the knowledge of a few Tollway staff and vigilance of Vendor A's personnel, and there was and is no established standard process to ensure that these types of conflicts are assessed and managed. Without a process to assess potential conflicts or a plan to manage them, there remains a strong risk that a conflict could occur either intentionally or inadvertently in other contracts involving less experienced staff.

Based on this review, the OIG recommended that the Tollway develop and implement a process to assess vendor relationships to determine if their work on one Tollway contract might conflict with their responsibilities on another Tollway contract. This process should mandate and empower a Tollway representative to identify, assess, and determine potential conflicts, and document this review and any mitigation efforts. This would ensure consistency and help guard against potential or actual conflicts.

Response

The response was expected on December 28, 2021 and received January 20, 2022. The Tollway responded that key leadership personnel are reviewing the policy and procedures to ensure that they mandate and empower a Tollway representative to identify, assess, and determine potential conflicts, and document this review and any mitigation efforts. A follow up response will be provided that will address any changes in the process when the review is completed.

R-21-002

The OIG completed a review of the Revolving Door determination for a former high level manager following their acceptance of employment with a Tollway vendor. The Illinois Revolving Door statute restricts former state employees from working for a state vendor for which that person made decisions as a state employee that could have financially benefited the vendor, such as awarding a contract or an extra work order, in the year preceding the hire. This review included obtaining and analyzing the available Revolving Door documentation submitted to the OEIG, accessing vendor information from Tollway databases, and interviewing relevant personnel.

Ultimately, the OEIG did not restrict the former employee's hire, and this review showed that the Tollway provided accurate information in accordance with the then-existing Revolving Door guidelines.

But the OIG identified two potential risk areas for which it made recommendations. First, the OIG noted that, effective in 2022, the Illinois Revolving Door statute added the term "fiscal administration" to the list of activities that can cause an employee to be restricted from working for a Tollway vendor, and recommended that the Tollway take steps to inform employees of this change and modify its Revolving Door responses accordingly. Second, the OIG reiterated recommendations made in OIG Case # IG-20-005 that the Tollway strengthen its internal conflict of interest policy and standardize the disclosure and determination process for Tollway employees.

Response

The response was expected on December 28, 2021 and received on December 23, 2021. The response reported that in light of the Revolving Door amendments, The Tollway "will update policies and procedures once the ethics commission or the Auditor General has provided the new c-list to the Tollway." This statement incorrectly described the C-list process, which is developed by the Governor's office and the agency.

On March 29, 2022 the Tollway provided a comprehensive response that recognized that the Tollway creates the C-list, and identified steps it has taken to coordinate with the OEIG and the Governor's Ethics Officer to discuss and obtain guidance on the impact of the new "fiscal administration" language. The response detailed several specific actions it is taking to identify and inform employees of this new provision, and included target dates for accomplishing these tasks.

MANAGEMENT REFERRALS

OIG refers matters that are most appropriately handled by Tollway management. We provide responses to several of these referrals below.

RF-21-161

OIG received a Hotline call from a patron who was concerned that a Tollway vehicle was being driven erratically. The patron did not provide a name or contact number but did provide a truck number. OIG determined that the vehicle was assigned to Engineering and referred the matter.

Engineering responded that it reviewed GPS data for that vehicle and spoke with the driver and determined there was no cause to find erratic driving. Engineering could not follow up with the patron to gather more information.

RF-21-195

OIG received a Hotline call from a patron who was concerned that large Tollway trucks entered the highway from the shoulder without regard for traffic. Based on the information provided by the patron, the OIG determined that the trucks were assigned to Engineering and referred the matter.

Engineering responded that it reviewed the GPS data and spoke to the drivers who indicated that they were driving in tandem and entered the lanes when they reached a safe speed, and did not observe any traffic. Engineering contacted the patron, explained the situation, and assured them that safe driving expectations are continuously emphasized for Tollway employees.

SUMMARY OF OTHER ACTIVITY

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

- Provided orientation for new Board Chair and new Interim Executive Director.
- Regular engagement with Tollway stakeholders, including the Board Chair, Audit Chair, Internal Audit, Labor Relations, EEO/ADA, and Executive staff about common issues and ways to improve.
- OIG staff completed all required state and Tollway training.
- Provided feedback to Strategic Planning on Third Party Risk Management.
- Provided suggested revisions to the Tollway Policy Manual.
- Collaborated with Ethics, Internal Audit, and Legal on the Conflict Review Committee and Ethics-related initiatives.
- Published two redacted Summary Reports of Investigation.