



Illinois State Toll Highway Authority

Office of the Inspector General

SUMMARY ACTIVITY REPORT

September 1, 2022 through February 28, 2023

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 *JH*

Date: March 29, 2023

Re: Office of the Inspector General Summary Activity Report for the Period
Spanning September 1, 2022 to February 28, 2023.

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.

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.

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

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 by a Deputy Inspector General, a General Manager of Investigations, two Investigator IIs, two Investigator Is, and an Executive Secretary.

The Inspector General, Deputy Inspector General, General Manager of Investigations, and one of the Investigator IIs are certified by the national Association of Inspectors General. The Inspector General, General Manager of Investigations, both Investigator IIs, and one Investigator I are 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.

The position of Information Analyst is vacant and is expected to be posted this year.

² 605 ILCS 10/8.5 605 ILCS 10/8.5.

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

⁴ See 605 ILCS 10/8.5(d).

⁵ See 605 ILCS 10/8.5(f).

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.

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 law.⁸ Furthermore, state and federal Whistleblower laws prohibit retaliation against individuals who provide information to or cooperate with an OIG investigation.

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.

The OIG receives reports of wrongdoing in many ways: in person, by telephone, facsimile, and US and Electronic mail. The Tollway OIG Hotline (866-786-5544) has become one of the two primary means by which the OIG receives such reports. During the past six-month period, there were 37 incoming Hotline calls.

A second primary 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 30 online submissions.

From September 1, 2022 through February 28, 2023, the OIG took action in 87 matters:

Preliminary Investigations	15 opened 13 closed 2 converted (2 Reviews)
Investigative Assistance ⁹	0 opened 0 closed
Investigations	1 opened 3 closed
Reviews	3 opened 4 closed 1 converted (1 Referral)
Referrals	58 matters referred 4 to Law Enforcement
Declined	10 matters

As of February 28, 2023, the following matters were pending¹⁰:

Preliminary Investigations	11
Investigative Assistance	0
Investigations	5
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 after the discipline has been finalized.

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, 2022 and February 28, 2023. One Summary Report of Investigation and three Management Advisory Reports were issued. A fourth Management Advisory Report was issued in late August 2022 and has been included in this report because the response was not due until September 2022.

SUMMARY REPORTS OF INVESTIGATION

IG-22-001

An OIG investigation established reasonable cause to find that in late 2020, and through most of 2021, the Tollway Administration Department continued to improperly use a leave code, ALWP (Authorized Leave with Pay), to signify a full day of work for most of its employees, nearly a year after most other departments successfully transitioned to recording their time in Kronos, the Tollway's electronic timekeeping system. At the outset of the COVID 19 pandemic in March 2020, public health mandates barred Tollway workers from the workplace and because not everyone had remote connectivity, many employees were coded as ALWP to ensure that payroll was maintained. However, Tollway records reflect that, at least by the middle of 2020, Administration employees had the ability to remotely time stamp via Kronos or to physically swipe into Kronos when working at Central Administration (CA), but the majority of them did not use that system until late 2021.

Notably, in late 2021, after the departure of the former Chief of Administration and the issue had been identified in an Internal Audit preliminary finding, the Tollway instituted a strict limit on ALWP use and required employees to use electronic time stamping as much as practical.

The continued use of ALWP in lieu of time stamping or swiping into Kronos from late 2020 through late 2021, violated Tollway timekeeping policy, wasted technology resources, exposed the Tollway to potential liability under federal law, and undermined transparency required under state law. In addition, by continuing to use ALWP instead of available electronic timekeeping, Administration failed to uphold its leadership role as the department responsible for establishing and implementing Tollway personnel policies. Had the Tollway not taken the steps described above, OIG would have recommended corrective action.

This investigation also revealed that the Tollway developed a workaround allowing employees coded as ALWP during this time to be credited with 8 hours of work for FMLA eligibility calculation. OIG recommended that, to the extent that it has not already been done, this practice should cease now for employees coded as ALWP, as it should only be used in cases of leave.

Response

The response was expected on February 27, 2023 and received February 27, 2023.

The Tollway confirmed that in November 2021 it took corrective action to eliminate the inappropriate use of ALWP by Administration and other departments. Tollway Administration issued guidance agency-wide that expressly provides that ALWP may not be used to record actual hours worked, and directs that ALWP is only acceptable to record leave hours as approved by the Chief of Administration.

Furthermore, Tollway Administration also confirmed that as a consequence of these directives, employees now coded as ALWP are no longer credited with 8 hours of work when calculating FMLA eligibility.

MANAGEMENT ADVISORY REPORTS

R-22-003

OIG completed a review determining that the Tollway's ultimate decision in 2021 to amend its disparity study contracts to reduce the number of years to be studied without reducing the price did not violate the Procurement Code or Tollway policy. OIG initiated the review after receiving allegations that the decision to amend the contracts without a price reduction was improper and not in the best interests of the Tollway.

OIG's review included evaluating available documentation and correspondence and interviewing relevant involved parties, and established that the evidence did not support these allegations. First, the amendment did not violate state Procurement rules – as articulated by the State Procurement Officer, the amendment did not alter the cost or the

due date of the contract. Second, it is not clear that the Tollway price negotiation process applied to this instance because the existing documentation provided to OIG expressly references “new awards, renewals, and change orders” and not amendments. Regardless, it appears that the Tollway negotiation was not circumvented because the Tollway twice sought a price reduction, but the vendor twice declined and provided a plausible explanation for her decision. Third, the Board’s Resolution approving award of these contracts specifically empowered the Chairman and CEO to effectuate the contract, so it appears that the Chairman and CEO had the authority to articulate the Tollway’s position on such contracts. Fourth, there was no evidence that a previous relationship between the vendor and any Tollway official improperly influenced the Tollway’s actions regarding these contracts.

However, this dispute illustrated the need for improved communication among stakeholders during the procurement process.

Response

The response was expected on September 28, 2022 and received on September 28, 2022.

The Tollway concurred with the OIG findings the decision to amend that disparity study contract did not violate the Procurement Code or Tollway policy, and reiterated points raised in the MAR that the Tollway’s amendments followed a similar amendment made by CMS and approved by the Illinois Chief Procurement Officer.

The Tollway reported that it will emphasize the need to ensure proper internal stakeholder communication between Procurement and other Tollway departments especially regarding proposed contract amendments or revisions.

R-22-002

OIG initiated a review of salary increases given to Tollway employees in 2021 based on concerns raised by a former Tollway Department Chief about salary increases given to two senior-level managers. The former Department Chief sent an internal memorandum in 2021 questioning the raises and suggesting the former Board Chairman acted improperly by moving forward with the raises prior to the completion of a Tollway-contracted compensation study.

OIG’s review found that between January 1 and November 30, 2021, 121 Tollway employees in 11 different departments received unscheduled salary increases. The review also confirmed that between 2020 and 2022, the Tollway had commissioned several compensation studies from different vendors, but no study was completed until late 2022. OIG’s review further revealed that the complaining former Department Chief actually effectuated salary increases in March 2021 for at least three employees from their

own department, despite knowing that a firm contracted in 2020 to perform a compensation study had not yet completed its work. This review found that the absence of a compensation study did not prohibit such raises or render them improper.

However, this review did reveal that the unscheduled salary increases in 2021 were provided without uniformity and without consistently documented justifications, which undermines confidence that the process was fair and equitable. OIG notes that a Tollway compensation study commissioned in 2022 was completed in late 2022. This study gives the Tollway the information and opportunity to standardize salaries and salary adjustments going forward. OIG recommends that the Tollway: 1) Establish a compensation plan based on position titles and duties; and 2) Establish a process for regular salary assessments and adjustments; and 3) Require written justifications for any unscheduled salary increases.

Response

The response was expected February 28, 2023 and received on February 27, 2023.

The Tollway reported that the Administration department is analyzing findings and recommendations resulting from the 2022 compensation study and will design a competitive pay program to standardize salaries and salary adjustments going forward. It said it intends to create a classification and compensation system by year's end that will ensure that the Tollway's positions are externally competitive and internally equitable.

Second, the Tollway reported that it is planning to implement merit increases for non-union employees contingent on annual performance evaluations. This is targeted for completion by 2023 – end of third quarter.

Third, the Tollway reported that Department Chiefs who seek to make unscheduled salary increases must now submit a justification memo to the Chief of Administration clearly defining reasons for the increase, such as additional job responsibilities. The Tollway Compensation Manager will review the proposed salary and the job description and, before any unscheduled salary adjustment is effectuated, the justification memo must be signed by the department Chief, the Chief of Administration, and finally approved by the Executive Director.

R-22-007

OIG initiated a review of the Tollway's drug and alcohol testing procedures for Commercial Driver's License (CDL) holders. OIG has learned that there are approximately 450 Tollway employees who are required to possess a valid CDL because their work involves at least periodic operation of large vehicles. Recognizing the significant health and safety issues associated with operating large vehicles, the US Department of Transportation (USDOT) has established strict regulations for employers regarding implementation and documentation of employee drug and alcohol testing and handling positive results. This review revealed critical gaps in documentation and record-keeping within the Tollway's drug and alcohol testing program, especially associated with test results and follow-up testing. This lack of documentation limited OIG's review of the Tollway's USDOT drug and alcohol testing program as it could not confirm that all positive results were properly tracked and all follow-up testing properly completed.

In the course of this review, OIG sought records that should have been maintained and easily retrieved per USDOT regulations, but the records were either not located, partially located, or located after a lengthy search. As detailed in this report, OIG found that since 2018, the Tollway has contracted with multiple vendors to provide drug and alcohol screening, but it does not appear that the Tollway has ensured that necessary records have been maintained. In addition, since June 2021, Tollway management has placed an employee in charge of this program who had no USDOT drug testing experience, minimal on-the-job training, and, until recently, zero formal training in USDOT regulations. These findings indicate that the Tollway's drug and alcohol testing program and documentation is not as robust as it should be.

In light of these gaps, OIG recommended that the Tollway review its drug and alcohol testing program and implement changes to promote employee and public health and safety and ensure compliance with applicable regulations. OIG made four specific recommendations:

1. Require all drug and alcohol testing and return to work documentation be properly stored and accessible by appropriate Tollway personnel, especially records required by DOT regulations
2. Create a continuity of operations document for the drug and alcohol testing program to ensure staff turnover does not impact Tollway testing or recordkeeping,
3. Ensure that every designated employer representative (DER) is provided timely training, and periodic updates as appropriate, on DOT and Non-DOT drug testing and record-keeping responsibilities, and

4. Include the DER responsibilities in the job description for any position that assumes the DER role, so those duties are taken into consideration when selecting and evaluating employees in that position.

Response

The response was expected February 28, 2023 and received February 27, 2023.

The Tollway agreed with the findings and recommendations and indicated that any changes not already in place will be completed by June 30, 2023.

First, Tollway Administration reported that its DER will have access to drug test results and ensure that testing and return to work records are properly maintained in a secured fashion and accessible by authorized personnel as outlined in USDOT regulations.

Second, continuity of operations will be enhanced by the new document storage measures detailed above, and the DER and Deputy Chief of HR Services, will create and maintain standard operating procedures manual to be used for future training purposes.

Third, on January 24, 2023, two Administration employees attended an online training course that provided a comprehensive education of the duties required of a DER, and were awarded certifications. Going forward, the DER will be required to take this course annually, and is registered to receive updates from the Federal Motor Carrier Safety Administration (FMCSA).

Finally, Administration will review and update job descriptions as appropriate to incorporate DER responsibilities and expectations for any current or future positions responsible for administering and maintaining the Tollway's continued USDOT compliance.

R-23-001

OIG has completed a review that confirmed that, while employed by the Tollway, a former high-level employee incorporated a limited liability consulting company in Illinois in early 2021, entered into a one-year contract for \$200,000 to provide services to a social services not-for-profit company in late 2021, and, before they left State service, received payments of more than \$90,000 from the company between November 2021 and March 2022.

OIG further determined that the former high-level employee submitted only one Outside Employment form during their Tollway tenure, which indicated that they had no outside employment. Based on Tollway policy and guidance sent to all Tollway employees, the former high-level employee should have submitted an Outside Employment form and

received approval prior to executing and receiving payment under a services contract with a third party.

Correspondence obtained by the OIG shows that the former high-level employee did seek general advice from the then-Ethics Officer about potential conflicts of interest associated with setting up a consulting company (albeit two months after doing so), but that inquiry did not satisfy the requirements of the Tollway's Outside Employment policy because it did not identify any specific engagement.

These findings highlight the importance of continued and consistent outreach to Tollway employees at all levels about disclosing potential conflicts of interest, including the requirement to disclose and seek approval before engaging in outside employment. In addition, OIG recommended that high-level employees should disclose such arrangements to the Tollway Board, especially when the expected compensation for such services approaches their Tollway salary.

Response

The response was expected on February 27, 2023 and received on February 27, 2023.

The Tollway agreed with the findings and confirmed that the Outside Employment policy requires employees to complete and submit the Outside Employment Approval Request form at the time of hire and indicate if they have outside employment. Going forward, the Ethics Officer will send the form annually to all employees. It is the responsibility of the employee to update their outside employment status annually by completing and submitting a new Outside Employment Approval Request form. The form will be updated to include an option for the employee to certify that they do not have outside employment. The approved Outside Employment Approval Request forms will continue to be filed with the Ethics Officer and in the employee's personnel file.

Administration also said it will work with the Ethics Officer to develop a process that includes a review and approval by the Board Chairman of outside employment arrangements for executive-level employees.

MANAGEMENT REFERRALS

OIG refers matters that are most appropriately handled by Tollway management. The following summarizes the actions taken in response to one of these referrals.

RF-22-134

OIG received a complaint regarding the Tollway's authorized towing company program. As noted on its website, the Tollway has guidelines for authorized companies that are selected to provide towing and vehicle recovery services. The Tollway also requires companies to apply for and submit to periodic audits to ensure compliance with the standards. We referred the complaint to the Engineering department with recommendations to reinitiate inspections and improve outreach to potential towing companies.

Engineering reported that, by the end of January 2023, it had completed facility inspections for all 25 towing companies providing services on the Tollway system, and planned follow-up inspections. It also said it had coordinated with the Diversity and Strategic Development Department so that the Towing and Recovery Program would be included vendor outreach events in 2023. Finally, the Tollway provided application information to a potential vendor.

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 Chief Operating Officer.
- Participated in bi-monthly new employee on-boarding to introduce and describe the OIG's role, and to emphasize Tollway's expectation of, and commitment to, integrity for all employees, officials, and vendors.
- 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 a week-long training on the PEACE interview method.
- An Investigator I successfully completed training and testing requirements for certification by the Association of Certified Fraud Examiners.
- Provided feedback to Strategic Planning on Third Party Risk Management.
- Collaborated with Ethics, Internal Audit, and Legal on the Conflict Review Committee and Ethics-related initiatives.