

2017

Annual Report



Office of the
Inspector General

Internal Special Audit Unit

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Executive Summary

The Internal Special Audit Unit (“ISAU” or “Unit”) within the Massachusetts Office of the Inspector General (“Office”) respectfully submits the following annual report in accordance with M.G.L. c. 6C, § 9(e).

The Office is an independent agency charged with preventing and detecting fraud, waste and abuse in the use of public funds and public property. In keeping with its broad statutory mandate, the Office investigates allegations of fraud, waste and abuse at all levels of government; reviews programs and practices in state and local agencies to identify systemic vulnerabilities and opportunities for improvement; and provides assistance to both the public and private sectors to help prevent fraud, waste and abuse in government spending.

The Massachusetts Legislature created the ISAU as an independent unit responsible for monitoring the quality, efficiency and integrity of the Massachusetts Department of Transportation’s (“MassDOT” or “Department”) operating and capital programs. As part of its statutory mandate, the ISAU seeks to prevent, detect and correct fraud, waste and abuse in the expenditure of public and private transportation funds. Further, the ISAU is also responsible for examining and evaluating the adequacy and effectiveness of MassDOT’s operations, including the operations of the Massachusetts Bay Transportation Authority (“MBTA”).¹ To achieve these objectives, the ISAU performs in-depth reviews of MassDOT’s operations; evaluates whether MassDOT is complying with applicable policies, procedures, laws and regulations; works with the Department to strengthen its internal controls and procurement practices; and investigates complaints and allegations of fraud, waste and abuse in the expenditure of public and private transportation funds. This report highlights some of the ISAU’s accomplishments in 2017.

In 2017, for example, the ISAU evaluated the use of public funds that the Rose Fitzgerald Kennedy Greenway Conservancy (“Conservancy”) receives from MassDOT.² The Unit determined that the Conservancy used public funds for expenses that were not within the parameters of its agreement with MassDOT. These expenses included general office overhead, uniforms, recruiting and professional development. The Unit also found that the Conservancy’s per-acre expenses were considerably higher than other public parks in Massachusetts.

In May 2017, the Unit recommended that MassDOT postpone renewing its funding agreement with the Conservancy. Although MassDOT entered into a new agreement with the Conservancy, the Department modified the agreement to further restrict the Conservancy’s use of its funding and to reduce its financial commitment to the Conservancy.

In another investigation, the ISAU reviewed certain aspects of the MBTA’s contract with Clear Channel Outdoor, Inc. (“Clear Channel”) for billboard advertising. The ISAU reviewed the MBTA’s decision to amend the contract to permit Clear Channel to convert up to 18 billboards

¹ The MBTA is a part of MassDOT’s Rail and Transit Division and the ISAU has a separate legislative mandate to review certain of its procurements. *See* Section 196 of Chapter 46 of the Acts of 2015.

² The Conservancy is a non-profit entity created to oversee the operations and finances of the Rose Fitzgerald Kennedy Greenway, which is a 15-acre park located in downtown Boston.

to a digital format instead of conducting a new, public procurement for the billboards. Moreover, the Unit reviewed whether the MBTA was required to conduct a public meeting before allowing Clear Channel to construct a billboard on its property. The ISAU concluded that the MBTA was not required to conduct a new procurement for the 18 billboards; however, a shorter contract extension may have been more favorable to the MBTA. Also, the ISAU could find no statute, regulation or rule requiring the MBTA to hold public meetings before allowing a vendor to install a billboard on its property.

The ISAU also operates several public and internal hotlines to receive reports of suspected fraud, waste or abuse in the expenditure of transportation funds. In 2017, the Unit received 255 complaints; the ISAU evaluates each complaint it receives to determine whether it falls within its jurisdiction and whether it merits action. Some complaints lead to extensive investigations, some are referred to other agencies and others are closed if a preliminary inquiry fails to substantiate the allegations.

The ISAU continues to participate in the Registry of Motor Vehicles' ("RMV") Disability Placard Abuse Task Force ("Task Force"), which is dedicated to addressing and resolving issues surrounding the misuse of disability parking placards, increasing enforcement of the current laws, amending state law to increase the penalties for placard abuse, and tightening administrative controls to prevent and detect abuse more easily. In 2017, the ISAU provided input to the Task Force on topics, such as enforcement initiatives, legislative changes and general process improvements. The ISAU also collaborated with other Task Force members about specific allegations of abuse.

After the ISAU completed an investigation into the misuse of disability parking placards in 2016, the Office filed legislation – with input and support from member agencies of the RMV's placard task force – to strengthen the placard laws. *See* House Bill 14, An Act Relative to Disability Placards. In 2017, the Legislature enacted legislation modeled after the Office's bill. *See* Chapter 137 of the Acts of 2017. In 2017, the Governor signed the legislation into law. The new law increases fines, penalties and license suspensions for persons who misuse placards, as well as improves the RMV's ability to obtain sufficient medical information from placard applicants.

Background

I. ISAU

The ISAU has a staff of six professionals dedicated to performing audits, investigations and reviews of MassDOT's operating and capital programs. The Unit assists the Commonwealth, the taxpayers, MassDOT and the MBTA by identifying potential cost savings, waste or misuse of transportation funds, fraudulent activities and the abuse of public authority. The ISAU's activities include, but are not limited to:

- Investigating allegations of fraud, waste and abuse in the expenditure of public and private transportation funds. This includes handling complaints from members of the public, as well as from MassDOT and MBTA employees, regarding suspected wrongdoing.
- Reviewing MassDOT's operations and programs to ascertain whether they are efficient, cost-effective and achieve established results. This includes reviewing the MBTA's operations, as well as the operations of other divisions within MassDOT.
- Determining whether MassDOT is complying with applicable policies, procedures, laws and regulations.
- Evaluating the MBTA's outsourcing of certain goods or services under Section 196 of Chapter 46 to determine whether the outsourcing resulted in a cost savings while maintaining the same level of quality.
- Working with the Department to strengthen its internal controls and procurement practices.
- Auditing, investigating or reviewing specific operations at the request of the Inspector General Council, the Legislature, MassDOT's Board of Directors and MassDOT's management, as appropriate.
- Participating in the RMV's Disability Placard Abuse Task Force and supporting its placard abuse hotline.

These activities enable the ISAU to promote responsible spending of taxpayer funds, transparency in government and increased public accountability.

II. MassDOT

Created as part of Transportation Reform in 2009, MassDOT manages the Commonwealth's roadways, public transit systems, and transportation licensing and registration. It is made up of four divisions: the Highway Division, the Rail and Transit Division, the RMV, and the Aeronautics Division.

The Highway Division is responsible for the roadways, bridges and tunnels of the former Massachusetts Highway Department and the former Massachusetts Turnpike Authority. The

Rail and Transit Division oversees the MBTA, the commuter rail and the state's 15 regional transit authorities. Among other duties, the RMV is responsible for the administration of driver's licenses, motor vehicle registrations and vehicle inspections across the state. The Aeronautics Division coordinates aviation policy and oversees the safety, security and infrastructure of 36 public airports across Massachusetts.

Audits, Investigations and Reviews

The ISAU conducts a variety of investigations, reviews and audits related to the use of public and private transportation funds. Some of the ISAU's work results in public reports and letters, and some activities lead to referrals to other divisions or agencies for administrative, civil or criminal action. Below is a summary of reviews that led to public reports or letters.

I. Rose Fitzgerald Kennedy Greenway Conservancy

In 2017, the ISAU evaluated the use of public funds that the Rose Fitzgerald Kennedy Greenway Conservancy ("Conservancy") receives from MassDOT. The Conservancy is a non-profit organization created to oversee the operations and finances of the Rose Fitzgerald Kennedy Greenway ("Greenway"), a 15-acre park located in downtown Boston. Since 2008, MassDOT has provided public funds to the Conservancy through a series of subsidy agreements. As of June 2017, MassDOT had spent over \$24 million to help fund the Conservancy. The ISAU examined the Conservancy's operating costs and its compliance with its subsidy agreement with MassDOT.

The ISAU found that in 2016, the Conservancy spent approximately \$326,328 per acre to operate the Greenway.³ In comparison, the collective parks managed by Boston Parks and Recreation cost the city \$11,627 per acre in 2016. The Department of Conservation and Recreation's cost-per-acre in fiscal year 2017 was \$193. This discrepancy in per-acre expenses raises concerns about the Conservancy's need for, and stewardship of, the public funds it receives.

The ISAU also evaluated the Conservancy's compliance with its subsidy agreements with MassDOT. According to the subsidy agreements that were in effect through June 2017, the Conservancy could only use MassDOT funds for horticulture and maintenance programs, *i.e.*, expenses directly related to maintaining the park's green spaces and hardscape areas. Horticulture and maintenance expenses include maintaining the landscaping, fountain and gardens in the park. In its limited review, the Unit determined that the Conservancy used MassDOT funds for expenses that were not related to horticulture and maintenance. In particular, the Conservancy spent public funds on:

- General administrative overhead
- Uniforms
- Training programs
- Conferences
- Memberships in professional societies
- Recruiting

³ This amount includes public art expenses.

- Cell phone charges

Most notably, the Conservancy used funding from MassDOT to pay for 57% of its entire overhead costs. This included information technology costs, office supplies, telecom charges and other administrative costs associated with running an office. In the ISAU's view, the subsidy agreements did not permit the funds to be used for general overhead. Specifically, these administrative expenses did not directly relate to maintaining the park's green spaces and hardscapes, contrary to the restrictions in the subsidy agreement. While the remaining expenses listed above pertained to horticulture and maintenance staff, the ISAU found that they were not attributable to the operation of the park itself.

When the Department began financially supporting the Conservancy in 2008, MassDOT expected the Conservancy to become self-sustaining; consequently, it intended the funding to be temporary. In May 2017, before the then-current subsidy agreement expired, the Unit recommended that MassDOT postpone signing any new subsidy agreement with the Conservancy in light of the Unit's findings. The ISAU recommended that, at a minimum, any new agreement be based on a demonstrated need for public funds.

While MassDOT did not postpone entering into a new subsidy agreement with the Conservancy, the Department's new agreement reduces funding over the next six fiscal years. By fiscal year 2020, MassDOT will decrease its funding to \$750,000 per year, down from nearly \$2 million per year in the previous subsidy agreement. Moreover, MassDOT added new language to further protect public funding. The new subsidy agreement, which is for fiscal years 2017 through 2023, stipulates that if MassDOT determines the Conservancy used the funding for purposes other than those specified in the subsidy agreement, the Conservancy must repay that amount to the Department. Conversely, MassDOT may deduct the amount in question from any future subsidy payments. This language provides additional protections for public funding that were not in the prior agreement.

The Unit supports this revised agreement and commends MassDOT for its commitment to limiting and protecting the use of public funds.

II. The MBTA's Billboard Contract with Clear Channel Outdoor, Inc.

In 2017, the ISAU evaluated certain aspects of the MBTA's contract with Clear Channel Outdoor, Inc. ("Clear Channel") for billboard advertising. The contract allows Clear Channel to erect outdoor billboards on various MBTA properties. In return, the MBTA receives a portion of the advertising revenue that Clear Channel earns from the billboards. The Unit reviewed whether the MBTA appropriately amended the contract to allow Clear Channel to convert 18 billboards to a digital format. The Unit concluded that the MBTA was not required to conduct a new procurement because the amendment did not constitute a material change and was not out of the scope of the original contract. The ISAU also concluded that while digital billboards should bring in more revenue for the MBTA, a shorter extension for the 18 digital billboards may have been more favorable to the MBTA.

The ISAU also analyzed whether the MBTA was required to hold a public meeting before Clear Channel constructed a billboard on MBTA property in Dorchester. The Unit found

no statute, regulation or rule requiring the MBTA to hold public meetings before allowing a vendor to install a billboard on its property. The ISAU also determined that the Office of Outdoor Advertising held a public hearing before issuing a permit for the billboard in question. *See, e.g.*, M.G.L c. 93D and 700 CMR 3.00.

III. Investigations Referred to the Office of the Inspector General and Attorney General's Office

In accordance with M.G.L. c. 6C, § 9(d), the ISAU may report and refer findings to the investigative division of the Office, and the results of such investigations may be referred to the Attorney General for appropriate action. During 2017, the ISAU continued to work collaboratively with the Office's other divisions on a number of matters, referring cases to those divisions as appropriate.

Other Activities

I. ISAU Hotlines

The ISAU maintains two hotlines for members of the public to anonymously report suspected fraud, waste or abuse in the expenditure of MassDOT funds; the hotlines are available on the Office's, MassDOT's and the MBTA's websites. The ISAU also maintains an employee hotline on MassDOT's intranet. The Unit evaluates each complaint it receives to determine whether it falls within its jurisdiction and whether it merits action. Some complaints lead to extensive investigations, some are referred to other agencies and others are closed if a preliminary inquiry fails to substantiate the allegations. During 2017, the Unit received 255 complaints from the public and employees.

Additionally, the Unit monitors the RMV's disability parking placard hotline and receives reports of suspected placard abuse from the public. The RMV's Medical Affairs Bureau records this information for further investigation. In 2017, 24 of the 255 complaints the Unit received pertained to reports of alleged placard abuse.

II. Massachusetts Disability Placard Abuse Task Force

This misuse of disability parking placards continues to be an ongoing public concern across Massachusetts. The Office has conducted several investigations into this abuse over the past decade and has identified numerous repetitive issues in each of its investigations. Given the importance of this issue, the ISAU continues to stay involved in the collaborative effort to combat placard abuse. In addition to monitoring the placard abuse hotline, the ISAU participates in the RMV's Disability Placard Abuse Task Force ("Task Force"), which is dedicated to addressing and resolving issues surrounding the misuse of disability placards. The ISAU participates in the Task Force along with members of the RMV, the Massachusetts Office on Disability, the State Police, the Boston Office of the Parking Clerk, the Boston Commission for Persons with Disabilities, the Boston Police Department, the Burlington Police Department and the Massachusetts Executive Office of Elder Affairs. The Task Force is committed to increasing enforcement of the current laws, amending state law to deter placard abuse, and tightening administrative controls to prevent and detect abuse more easily. The ISAU provides input to the Task Force, makes recommendations and discusses proposed legislative initiatives.

III. Legislation

After the ISAU completed an investigation into the misuse of disability parking placards in 2016, the Office filed legislation – with input and support from member agencies of the RMV's Task Force – to strengthen the placard laws. See House Bill 14, An Act Relative to Disability Placards. In 2017, the Legislature enacted legislation modeled after the Office's bill. See Chapter 137 of the Acts of 2017. In 2017, the Governor signed the legislation into law. The new law:

- Imposes criminal penalties for forging, counterfeiting or stealing a placard.

- Prohibits using a deceased person's placard, imposing a \$500 fine for first-time violators and a \$1,000 fine for a second violation.
- Increases the driver's license suspension for a person wrongfully displaying a placard to 60 days for a first offense and 120 days for a second offense.
- Imposes a \$50 fine for obstructing the number or expiration date of a placard.
- Allows the RMV to request additional documentation or information from an applicant to support the medical necessity for a placard.

Reports and Publications

The ISAU's reports and publications are available at the Office's website at <https://www.mass.gov/service-details/oig-2017-reports-and-recommendations>.