OFFICE OF GOVERNMENT INTEGRITY

ANNUAL REPORT
2005

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TABLE OF CONTENTS

INTRODUCTION TO THE OGI 1

2005 OGI PARTICULARS 3

A. 2005 Statistics 3

1. Integrity Screening - - Prequalification Unit 3
2. Confidential Background Investigations 3
3. Other Assigned Matters 3

B. What was New in 2005 4

1. Official Deprivation of Civil Rights Incidents 4
2. Departure of Director John Kennedy 4
3. Naming of Tracy M. Thompson as Acting Director 4
4. Reorganization of the OGI 4
5. Internal Affairs Training 5
6. Ethics Training of Local Government Officials 5

C. 2005 Highlights 5

1. Professional Responsibility Unit 5
2. Unit of Fiscal Integrity in School Construction 6
3. Prequalification Unit 7
4. Investigations Unit 9

UNIT RESPONSIBILITIES 11

A. Professional Responsibility Unit 11

B. Unit of Fiscal Integrity in School Construction 12

C. Prequalification Unit 12

D. Investigations Unit 13

OTHER ASSIGNED RESPONSIBILITIES 13

INTRODUCTION TO THE OGI

The Office of Government Integrity (OGI) was created on May 21, 2002, by Attorney General Administrative Executive Directive 2002-2. It is the successor of the Office of the Inspector General (OIG), that was created in 2000, and whose duties, responsibilities and functions were memorialized by Attorney General Administrative Executive Directive 2001-1 on October 23, 2001. As provided by Attorney General Administrative Executive Directive 2002-2, the OGI included the Professional Responsibility Unit (PRU), the Unit of Fiscal Integrity in School Construction (FISC) and the Public Corruption Unit. Additionally, the OGI was directed to handle criminal cases and other matters specifically assigned by the Attorney General.

In October 2005, then-Attorney General, Peter C. Harvey, in consultation with Tracy M. Thompson, the Acting Director, reorganized the OGI. The prequalification-related functions of FISC were reassigned to a new unit designated as the Prequalification Unit (Prequal). Government integrity investigations and criminal investigations were assigned to a new unit designated as the Investigations Unit, which replaced the Public Corruption Unit. DAsG were designated to head the four units as Chiefs.

Although Attorney General Administrative Executive Directive 2002-2 and Attorney General Administrative Executive Directive 2001-1, to the extent not superseded by Executive Directive 2002-2, defined OGI's missions, in practice, OGI's work is diverse and complex – from guarding against waste, fraud and abuse in the school construction program, to overseeing the internal affairs process across the State; from criminal investigations and prosecutions to fact-finding inquiries specially assigned by the Attorney General.

These varied and unique assignments can only be handled because of the depth and breadth of experience in the legal and investigative staff OGI has assembled. OGI's investigators include, among others, former members of the New Jersey State Police, Division of Criminal Justice (DCJ), Federal Bureau of Investigation (FBI), State Commission of Investigations (SCI) as well as former County Prosecutor's detectives, a former United States postal inspector and a former deputy director and captain of municipal police department. They include three Certified Public Accountants and a licensed construction code inspector. Some spent years combating organized crime, and bring invaluable background knowledge to the job. Others performed forensic accounting and due diligence work in private industry, while another was a career inspector general in the United States military.

OGI's attorneys were drawn from the DCJ, the Division of Law (DOL), prosecutor's offices and private practice, and include a former County Prosecutor and chief County Counsel. Some spent 20 years in administrative and civil practice; others,

years prosecuting criminals. Their diverse experience and expertise, when combined in one group, leads to unique and insightful perspectives on many issues.

The OGI's mission is supported by four management information specialists, who combine knowledge of on-line research methods with natural inquisitiveness, and seven administrative support staff.

This is OGI's fourth Annual Report submitted to the Attorney General pursuant to §9 of Administrative Executive Directive 2002-2. It describes the nature of the work handled by the OGI and highlights some of the accomplishments achieved by the OGI during 2005.

2005 OGI PARTICULARS

A. 2005 Statistics

1. Integrity Screening - - Prequalification Unit

Total Cases Received from SCC 670

Total Cases Completed 1222
(Includes cases opened in 2004)

SCC Alerts	341
General Denials	15
Integrity Denials	6

2. Confidential Background Investigations

Total Background Investigations 94
(Gubernatorial Appointments)

3. Other Assigned Matters

Total Cases Opened 185

	PRU	FISC	Inv.
OAG Referrals	1	9	25
Referrals: Other Governmental Agencies	0	1	8
Citizens Complaints	2	7	51
Other Self-generated	17	57	7
TOTAL	20	74	91

Total Cases Closed 115
(Includes cases opened in prior years)

	PRU	FISC	Inv.
OAG Referrals	0	8	22
Referrals: Other Governmental Agencies	0	1	4
Citizens Complaints	2	4	47
Other Self-generated	12	14	1
TOTAL	14	27	74

B. What was New in 2005

1. Official Deprivation of Civil Rights Incidents

On June 28, 2005, then-Attorney General, Peter C. Harvey, signed Attorney General Law Enforcement Directive No. 2005-01 that assigned the responsibility to the Director of the OGI pursuant to §5 thereof to receive such information from law enforcement agencies as may be required concerning criminal investigations into the possible commission of the crime of official deprivation of civil rights in violation of N.J.S.A. 2C:30-6, or a pattern of official misconduct in violation of N.J.S.A. 2C:30-7 which are based upon two or more violations of N.J.S.A. 2C:30-6. That section also authorized the OGI, in consultation with the DCJ and County Prosecutors, to develop standards and procedures for these notifications and for review of the above offenses for issuance by the OGI. Upon authorization by the Attorney General, these functions, duties and responsibilities were assigned to the PRU.

2. Departure of Director John Kennedy

Director John Kennedy, who served as the first Deputy Inspector General when the office was created as the OIG in 2000, and who later became the first Deputy Director of OGI when it was created in 2002, left the OGI in August 2005 for the Office of Insurance Fraud Prosecutor in the DCJ.

3. Naming of Tracy M. Thompson as Acting Director

Upon the departure of Director John Kennedy in August 2005, Tracy M. Thompson, the Deputy Director of the OGI, was named as Acting Director. The position of Deputy Director remained vacant for the remainder of 2005.

4. Reorganization of the OGI

In early October 2005, then-Attorney General, Peter C. Harvey, reorganized the OGI in consultation with Acting Director Thompson. FISC was divided into two units, FISC and Prequal. General governmental investigations and criminal prosecutions were placed under a newly-defined Investigations Unit that replaced the Public Corruption Unit. There was no change to the PRU. Lastly, an attorney, designated as "Chief" was named to head each unit.

5. Internal Affairs Training

PRU personnel conducted internal affairs presentations at two county police academies on the importance of compliance with the Attorney General's Internal Affairs Policy and Procedures Program. Both presentations were attended by municipal internal affairs officers. Additionally, a similar presentation was provided to members of the New Jersey Internal Affairs Officers Association.

6. Ethics Training of Local Government Officials

As a result of requests from representatives of local government and associations of government officials, DAsG and the Acting Director made six ethics presentations to municipal and school board officials, including officials from the City of Newark, school district business administrators, and municipal managers.

C. 2005 Highlights

1. Professional Responsibility Unit (PRU)

Internal Affairs Audits of County Prosecutors Offices. Eight (8) of the internal affairs units of County Prosecutor's Offices were audited to assess compliance with internal affairs standards published by the Attorney General in a program that will eventually result in assessments of all 21 County Prosecutor's Offices. The audits included evaluation of the level of oversight by each County Prosecutor of the internal affairs function of local law enforcement agencies within each County Prosecutor's jurisdiction. Emphasis was placed upon the effectiveness of internal affairs programs, whether there were adequate controls in place, and whether the program was functioning in accordance with the Attorney General's standards. Results of each completed audit have been submitted to each county for review and corrective action. All findings have been systematically reviewed. A final analysis will be published upon completion of all 21 county audits. To date, fifteen (15) audits have been conducted. The remaining six (6) will be completed in 2006.

Professional Standards Policy. Twelve divisions within the Office of Attorney General/Department of Law & Public Safety (OAG/DL&PS) are required to have a professional standards policy for the investigation of allegations of misconduct by professionals or law enforcement personnel employed by the OAG/DL&PS. PRU staff made nine visits to divisions and conducted a briefing on policy requirements. The PRU staff has completed reviews and approved four division policies.

Racial Profiling Complaints. The OGI was notified of two racial profiling complaints. The first is pending investigation, which will be reviewed by OGI upon

completion. In the other matter, the complainant alleged that a Evesham Township Police Officer committed racial profiling during a motor vehicle violation stop involving his son. Upon completion of an investigation by the Evesham Police Department and the Burlington County Prosecutor's Office, followed by an OGI review, the complaint was determined to be unfounded.

County Forfeiture Program Protocols. In compliance with Attorney General Administrative Executive Directive 2002-2, PRU staff completed proposed protocols to be followed by the DCJ in the monitoring and enforcement of all applicable laws, regulations, directives, guidelines and standard operating procedures applicable to the forfeiture programs of the 21 County Prosecutor's Offices, after consulting with the DCJ.

Addendum to CPA Manual - - External Audits and County Prosecutor Internal Audits of County Confidential Fund Accounts - In compliance with Attorney General Administrative Executive Directive 2002-2, PRU staff developed an addendum to the CPA Manual for External Audits to be followed by independent auditors and the staffs of County Prosecutor's Offices to ensure a uniform approach to the audit and reconciliation of the confidential fund accounts maintained by the 21 County Prosecutor's Offices. PRU staff is recommending that outside auditors conduct these audits without compromising the confidentiality of information associated with these accounts. The draft of this addendum is under review.

2. Unit of Fiscal Integrity in School Construction (FISC)

Partnership with the Inspector General. Shortly after her appointment, the Inspector General (IG) requested that the OGI partner with her and assist in investigating the New Jersey Schools Construction Corporation (SCC). Approximately one-fourth of the OGI's staff were assigned to this task, performing legal, auditing and investigative services. As a result, several reports were issued by the IG. Three on-going FISC investigations were incorporated into the IG's initial and subsequent reports. Additionally, FISC is undertaking 10 follow-up performance audits on matters specifically raised in the IG's reports to ensure that the SCC complies with the recommendations.

Land Acquisition Investigations. While investigating land acquisition practices in the school construction program, circumstances, such as the payment of $300,000 to a seller and free rent for over one year, without SCC Board knowledge and approval, and no SCC policy on rent payments for hold-over occupants, were noted. FISC staff developed cost-savings recommendations for internal controls and SCC Board policies and regulations. FISC personnel also recommended that the SCC investigate the possibility of acquiring shuttered parochial schools. Additionally, FISC staff

investigated the SCC's selection of contaminated sites for new schools, requiring costly remediation. The FISC investigation of this issue focused upon the identification of purchased contaminated sites and the procedures used by the SCC to determine if the sites were contaminated. In one case, it was determined that the SCC Board approved a property purchase that was on the Department of Environmental Protection's (DEP) list of chromium contaminated sites for years. FISC is continually developing recommendations to correct these problems.

Relocation Investigations. FISC staff uncovered numerous instances of wasteful and unauthorized practices by the SCC in relocation payments to displacees and to relocation companies under contract with the SCC. These practices included the unauthorized expenditure of $70,000 per month for housing allowances for employees of the relocation companies and the payment of $5,000,000 to a company to relocate nine months after the SCC dropped the property from consideration. In making the relocation payment to the company, SCC staff repeatedly failed to follow its own procedures. The SCC also violated the requirement that it pay relocation costs after displacees moved by paying these costs in advance. Recommendations to the SCC and referrals to the DOL for recoupment are ongoing with regard to the housing allowances. Recommendations for better internal controls were forwarded to the SCC after the $5,000,000 payment was discovered.

Project Management Firm (PMF) Change Order Examination. FISC staff examined a select number of SCC contracts with PMFs. Of 24 contracts examined, eight had change orders that resulted in a substantial increase in the base contract price. Substantial changes in contract terms were made without SCC Board approval. More than $15,000,000 in change orders were approved with minimal justification. Additionally, problems with the SCC's lack of supporting documentation, pricing, oversight and the change order review process were uncovered. Specific recommendations were made to rectify these problems.

Bovis Lendlease (Bovis). During an investigation into allegations that Bovis, a PMF engaged by the SCC, improperly placed the relatives of local politicians on the payroll of a Small Business Enterprise under an SCC contract, FISC staff discovered that the PMF made campaign contributions for local elections and solicited campaign contributions from other SCC vendors. These findings were forwarded to the New Jersey Election Law Enforcement Commission for administrative prosecution and the SCC for action.

3. Prequalification Unit (Prequal)

Bogey's Trucking & Paving Company (Bogey). When Bogey applied to the SCC for initial prequalification, the president of the company failed to disclose his prior

criminal record that included federal convictions for filing a false income tax return and for manufacturing and distributing methamphetamines. Prequal staff recommended to the SCC that initial prequalification be denied and that the president and Bogey be debarred for five years. The matter is pending a hearing in the Office of Administrative Law (OAL).

Schultz Demolition, Inc. (Schultz). When Schultz applied to the SCC for initial prequalification, the president of the company failed to disclose a prior criminal record and his ownership in other companies involved in construction or automotive matters. OGI recommended to the SCC that initial prequalification be denied. After an OAL hearing began, the Administrative Law Judge granted a recess for settlement discussions. An agreement was reached pursuant to which Schultz would withdraw its prequalification application conditioned upon it not reapplying to the SCC for initial prequalification for two years. The proposal is currently under review by the SCC.

Arkay Construction, Inc. (Arkay). Arkay applied for initial prequalification after a lengthy lapse from the expiration date of its previous prequalification. In November 2001, Arkay was debarred for three years by the United States Department of Labor for federal prevailing wage violations. During that period, on several occasions, Arkay certified to the SCC, in both bid and contract documents, that it was not debarred. OGI recommended to the SCC that the initial prequalification be denied and the president of the company and Arkay be debarred for four years. The matter is pending a hearing in the OAL.

Facilities Maintenance Corporation (Facilities). When Facilities applied to the SCC for initial prequalification, the president of the company failed to disclose that he agreed to accept debarment for prevailing wage violations of a former company for which he served as vice-president and provided daily managerial oversight. OGI made the discovery during the screening process of the president's background. OGI recommended to the SCC that the initial prequalification be denied and that the president and Facilities be debarred for three years. The firm failed to appeal a debarment by the SCC and is currently listed on the Consolidated Debarment List maintained by the New Jersey Department of the Treasury until March 2008.

Child Safe Products Corporation (Child Safe). When Child Safe applied to the SCC for initial prequalification, it failed to reveal corporate convictions for unlawful hazardous waste disposal and illegal disposal of toxic substances. OGI recommended to the SCC that the initial prequalification be denied and that the president and Child Safe be debarred for three years. The matter is under review by the SCC.

Insucom d/b/a Core Mechancial (Insucom). When Insucom applied to the SCC for initial prequalification, the firm failed to disclose numerous outstanding tax liens

against the firm's president and a former company that he owned. OGI recommended to the SCC that the initial prequalification be denied and that the president and Insucom be debarred for two years. The firm failed to appeal a debarment by the SCC and is currently listed on the Consolidated Debarment List maintained by the New Jersey Department of the Treasury until March 2007. The debarred parties subsequently moved to reopen the debarment alleging defective service of the Notice of Adverse Action. The motion is pending before the SCC.

4. Investigations Unit

State v. Manny Bana (Bana) and Icon Construction Company (Icon). In a matter that may have been the first of its kind in the state, Bana, chief executive officer of Icon, and Icon were indicted in an eleven-count indictment for falsely certifying to the Edison Township Board of Education that Icon had paid its subcontractors, when it had not, for the submission of false government contract representations and theft by deception of over $900,000 during the course of an SCC-funded schools construction project. Bana and Icon entered into a plea agreement that called for five years incarceration for Bana and for restitution in an amount to be determined by the court.

State v. Frank Wayland (Wayland). Wayland, employed as a maintenance supervisor by the Department of Environmental Protection at Liberty State Park was charged in a five-count indictment with official misconduct, tampering with public records or information, and receipt of a gratuity by a state employee. Wayland falsified two of three bids received by the park for lawn care. Wayland pled guilty pursuant to a plea agreement to tampering with public records or information and receipt of a gratuity by a state employee. He was sentenced to five years probation, assessed a $500 fine and ordered to perform 150 hours of community service.

State v. George Smith, Jr. (Smith) and Statewide Hi-Way Safety, Inc. (Statewide). Smith, president of Statewide, and Statewide were indicted in a seven-count indictment for falsely certifying to the Department of Transportation that Statewide installed Adiems, energy absorbing crash cushions, on state highways, when they had substituted inferior products and that they had paid subcontractors when they had not, and for theft by deception in excess of $75,000. This matter is pending.

State v. Marty Small (Small). Small, a member of the City Council of Atlantic City, was indicted in an eleven-count indictment for tampering with public records or information, and willfully hindering or preventing voting. He is alleged to have presented civilian absentee ballot applications for filing with the county clerk designating him as messenger, when he was not so designated. He is also alleged to have hindered a voter in the exercise of the voter's right to cast his ballot. This matter is pending.

John Kennedy, Acting Director, OGI v. City of Atlantic City (City), Lorenzo Langford (Langford) and William Marsh (Marsh). OGI filed a civil action in 2002 alleging impermissible conflicts of interest of public officials against the City and seeking the invalidation of an $850,000 settlement of a federal court action filed by Langford, the mayor of the City, and Marsh against the City. The court, in deciding cross-motions for summary judgment, invalidated the settlement, citing conflicts of interest on the part of Benjamin Fitzgerald, the City business administrator appointed by Langford and Charles Ercole, Esquire, an attorney also hired by Langford. However, the court refused to order that Langford and Marsh make restitution of the settlement amount. OGI appealed this decision and Langford and Marsh cross-appealed. These appeals are pending.

UNIT RESPONSIBILITIES

A. Professional Responsibility Unit

The Professional Responsibility Unit, more commonly referred to as PRU within the OGI, was created by Administrative Executive Directive 2002-2 in May 2002. Under the directive, the PRU is authorized to monitor compliance by the OAG/DL&PS and by the County Prosecutors' Offices with the Attorney General's *Internal Affairs Policy & Procedures Manual*. The PRU is also directed to conduct operations audits of internal affairs units within the OAG/DL&PS and the County Prosecutor's Offices in order to identify systemic problems, and recommend solutions. The PRU is responsible for prescribing a system for the intake, referral, and monitoring of misconduct complaints against law enforcement or professional personnel in the OAG/DL&PS or by law enforcement personnel in the 21 County Prosecutors' Offices. The OGI, through the PRU, may exercise supervision over or supersede the handling of any internal affairs complaint.

In addition, the directive requires the PRU to establish protocols for periodic financial audits of accounts containing seized or forfeited property and of confidential accounts used by the County Prosecutors' Offices and the DCJ to purchase evidence or pay witness expenses.

Lastly, on June 28, 2005, then-Attorney General Peter C. Harvey signed Attorney General Law Enforcement Directive No. 2005-1 that assigned the responsibility to the Director of the OGI pursuant to §5 thereof to receive such information from law enforcement agencies as may be required concerning criminal investigations into the possible commission of the crime of official deprivation of civil rights in violation of N.J.S.A. 2C:30-6 (ODCR), or a pattern of official misconduct in violation of N.J.S.A. 2C:30-7 which are based upon two or more violations of N.J.S.A. 2C:30-6. Previously, the OGI was only informally authorized to review ODCR complaints. §5 also authorized the OGI, in consultation with the DCJ and County Prosecutors, to develop standards and procedures for these notifications and for review of the above offenses for issuance by the OGI. Upon authorization by the Attorney General, these functions, duties and responsibilities were assigned to the PRU.

B. Unit of Fiscal Integrity in School Construction

The Fiscal Integrity in School Construction Unit, created by statute as the Unit of Fiscal Integrity in School Construction, and known as FISC within the OGI, implements the Attorney General's *statutory* responsibilities pursuant to N.J.S.A. 18A:7G-43 over the school construction program, which include the authority to "investigate, examine and inspect the activities . . . related to the financing and construction of school facilities. . . ." FISC focuses on issues related to fraud, mismanagement and abuse in the school construction program and performs investigations, examinations, inspections, analyses, and financial and performance audits, and issues reports to the SCC, which is responsible for the school construction program, and others, indicating the unit's findings and recommendations.

Prior to the October 2005, reorganization of the OGI, FISC also performed the functions of the Prequalification Unit. These functions are described in the unit description of the Prequalification Unit.

In the course of its work, FISC frequently uncovers negligence and contractual breaches by both contractors and professionals, which are referred to the DOL for possible litigation. When violations of the prequalification regulations are uncovered, these matters are referred to the OGI's Prequalification Unit for debarment or other action, as appropriate. Criminal activity uncovered by the unit is further investigated and prosecuted in-house by the OGI's Investigations Unit, except that all investigations in which evidence of criminal conduct of SCC officials or employees is discovered is referred to the DCJ.

C. Prequalification Unit

N.J.S.A. 18A:7G-33 requires the Economic Development Authority to establish a process for the prequalification of contractors who desire to bid on school facilities projects. The SCC, by whom this responsibility was assumed, has entered into a Memorandum of Understanding, pursuant to the terms of which, the OGI performs background investigations of these contractors, which include general contractors , certain subcontractors, construction managers and professionals, and makes recommendations to the SCC based upon the investigations conducted. The Prequalification Unit, more commonly known as Prequal, conducts these background investigations and makes the recommendations.

In protecting the interests of state taxpayers by uncovering, prosecuting and debarring individuals and contractors implicated in the abuse of the public trust and

lacking integrity, recommendations are made by Prequal staff to the SCC in appropriate cases to deny prequalification to firms that lack integrity. These recommendations have also included recommendations that firms and one or more of their principals be debarred. Since denial of prequalification and debarment by the SCC trigger due process rights, Prequal prosecutes the administrative proceedings that result. Before August 2005, these proceedings were prosecuted before the SCC. Thereafter, these proceedings were prosecuted before the OAL.

Prior to the October 2005, reorganization of the OGI, FISC performed the functions of Prequal. However, as a result of the reorganization the described functions were reassigned to Prequal.

D. Investigations Unit

Under Attorney General Administrative Executive Directive 2002-2, the OGI has the authority to investigate and prosecute criminal matters assigned to it by the Attorney General which implicate the integrity, fairness or efficacy of governmental functions, including misconduct allegations brought against law enforcement officers, public employees and elected and appointed officials at all levels of government. The directive created the Public Corruption Unit to perform this function. In addition, the OGI handles other matters assigned to it by the Attorney General. While these referrals do not fall into any one category, most involve conducting a fact-finding review or investigation into conduct by a government official or government agency to determine whether any applicable or legal standards were violated. The OGI then reports back to the Attorney General or may conduct administrative, civil or criminal legal proceedings. The only exception to this authority applies to the investigation of any employee working for the SCC, in which case the investigation is referred to the DCJ.

The OGI also regularly receives complaints from a variety of other sources, including citizens, state and federal legislators, and other government entities. Each complaint is screened and a determination is made whether the matter is appropriate for review or investigation, or whether it should more appropriately be referred to another agency.

In October 2005, these functions were assigned to the newly-created Investigations Unit, which replaced the Public Corruption Unit.

OTHER ASSIGNED RESPONSIBILITIES

The Attorney General has assigned to the OGI the responsibility to review confidential background investigations performed on cabinet, prosecutorial and judicial appointees by the NJSP Special Investigations Unit before these investigations are transmitted to the Attorney General.