



State of Ohio
Office of the Inspector General

THOMAS P. CHARLES, Inspector General

REPORT OF INVESTIGATION

File ID Number:	2007301
Agency:	Ohio Department of Transportation
Basis for Investigation:	Confidential Complaint
Allegations:	Failure to Exercise Adequate Oversight of Departmental Functions
Date Initiated:	September 26, 2007
Date of Report:	February 14, 2008

EXECUTIVE SUMMARY

File ID No. 2007301

On September 23, 2007, the Office of the Ohio Inspector General (“OIG”) received a confidential complaint which contained allegations that employees in the Ohio Department of Transportation’s (“ODOT”) Southwest Region Real Estate Office (“SW Region”) in Lebanon, Ohio, were misusing state funds and time. The SW Region is responsible for negotiating and obtaining ODOT property easements for ODOT transportation projects in ODOT Districts 7, 8 and 9, which encompass much of western and southern Ohio.

The complaint further alleged that supervisors in the SW Region, including former SW Region Manager Dan Frazee, and the current Administrator of ODOT’s Central Office of Real Estate, James Viau, have long been aware of these problems and have repeatedly ignored recommended measures to correct these problems. According to the complaint, mismanagement problems, as well as recommendations to correct them, have been reported to the Central Office of Real Estate in a series of SW Region Quality Assurance Reviews (“QARs”) dating back to 1999. These same problems were also the subject of a 2007 ODOT Office of Investigative Services (“OIS”) investigation. The results of the OIS findings, reported in May 2007, led to Frazee’s demotion to a lesser management role in the SW Region, as well as disciplinary action taken against other SW Region employees.

The most recent SW Region QAR report was published in June 2007. It contained the following findings: the SW Region spent 97.3 percent more than other ODOT real estate regions when it used consultants; the SW Region had closing costs that were 86.8 percent higher than other regions; the SW Region failed to collect thousands of dollars owed to ODOT by property owners, and in some cases paid more than market value for property; and the SW Region violated ODOT policies and procedures, potentially jeopardizing federal funding in some instances.

Our investigation found that ODOT's Central Office of Real Estate was, in fact, well aware of a long history of mismanagement in the SW Region. It is also evident that despite a history of recommended corrective measures, with promises of remediation by the SW Region management, Central Office leadership in the Real Estate Division failed to supervise, monitor or enforce compliance with corrective measures set forth in prior QARs.

The Central Office of Real Estate began to take an active role -- albeit a minimal one -- in addressing longstanding mismanagement issues occurring in the SW Region only after the OIS investigative report in May 2007, and the release of the June 2007 SW Region QAR. Moreover, we also found that in the six months following the June 2007 QAR, the Central Office of Real Estate failed to properly follow or enforce corrective measures identified in the 2007 QAR.

The mere fact that the same SW Region problems have been repeatedly reported to Central Office since 1999, yet have persisted, is evidence of a historical void in accountability. We find that managers in ODOT's Central Office of Real Estate, and James Viau in particular, have continued this pattern of unaccountability with respect to problems in the SW Region Real Estate Office.

We make three recommendations and ask ODOT to respond to this office within the next 60 days with a plan outlining how they will be implemented.

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I. BASIS FOR INVESTIGATION

In February 2007, complaints identifying instances of employee and management misconduct in the Ohio Department of Transportation (ODOT), Southwest Region of Real Estate (“SW Region”) in Lebanon, Ohio, were sent to ODOT’S Chief Legal Section via inter-office emails. An ODOT administrative investigation was commenced, resulting in the opening of two cases (#07-22 and #07-36) by ODOT’S Office of Investigative Services (“OIS”).

As part of the OIS investigations, ODOT Quality Assurance Reviews (“QARs”) for the years 2001, 2003 and 2005 were reviewed. As noted by the complainant, and verified by OIS, the QAR reports document a long history of mismanagement and employee discord in the SW Region. ODOT QARs are supervised by, prepared for and reported to the ODOT Central Office of Real Estate. At the time of the OIS investigation, James Viau, Administrator of the Central Office of Real Estate, was overseeing the 2007 QAR for the SW Region Office.

On April 10, 2007, OIS issued a report in case #07-22 with findings of misuse of time, misuse of a state vehicle and falsification by employees in the SW Region Office. As a result of the findings, a SW Region employee was terminated and other SW Region employees were disciplined.

On May 21, 2007, OIS issued a report in case #07-36, finding gross mismanagement that resulted in financial loss to ODOT and compromised federal funding. As a result of the findings, SW Region Manager Dan Frazee was demoted to a lesser management position within the SW Region.

In June 2007, the SW Region QAR again identified management and fiscal deficiencies that had plagued the office since 1999. Those deficiencies previously had been reported to Central Office in QAR reports in 2001, 2003 and 2005.

On September 23, 2007, the Office of the Inspector General (“OIG”) received a faxed complaint from an individual who requested confidentiality. Referencing the 2007 OIS reports, as well as

the 2007 QAR, the complainant asserted that the SW Region and Central Office of Real Estate continue to ignore problems identified in those reports.

On September 26, 2007, the OIG initiated an investigation.

II. ACTION TAKEN IN FURTHERANCE OF INVESTIGATION

We reviewed OIS investigative reports #07-22 and #07-36. Information obtained by OIS in these cases included numerous documents, as well as interviews of ODOT employees and administrators. We also reviewed various position descriptions, personnel and disciplinary files, and the 2001 through 2007 SW Region QARs. Additionally, we interviewed the confidential complainant; as well as James Viau; Doug Maitland, the Acquisition Services Manager in Central Office; and Gary Link, current manager of the SW Region.

III. DISCUSSION

The SW Region is responsible for negotiating and obtaining ODOT property easements in ODOT Districts 7, 8 and 9 in western and southern Ohio. According to ODOT records, a region real estate office is characterized as follows:

A region office is part of the Office of Real Estate which exists to acquire real property needed for transportation projects developed by any of the 12 District offices located across the State of Ohio. Region offices fulfill this function by: 1) acquiring the right of way needed for a transportation project by the Region R/W Clear Date [i.e., requiring the right of way to be adequately controlled by a date certain so that construction contractors can adequately prepare plans]; and, 2) by acquiring the real property in compliance with a wide array of Federal and State laws and regulations that have been implemented into acquisition policies and procedures that are promulgated by the Office of Real Estate.” [Internal brackets added.] [See Exhibit A.]

In an effort to measure operational efficiency and effectiveness, as well as compliance with state and federal rules, ODOT utilizes a QAR process. The QAR process is ODOT run and driven,

and is used at all levels throughout the entire agency. Although QARs are not audits, they are a time-consuming and resource-intensive effort to identify both deficiencies and best practices.

The Real Estate QARs are managed by the Central Office of Real Estate and are conducted in region offices in two-year cycles. The QARs are staffed with teams of ODOT personnel, who are subject-matter experts tasked to evaluate the region offices and provide written findings to the Central Office of Real Estate. Contained within a QAR report are “General Recommendations,” as well as specific “Actions Needed.” The region office subject to a QAR is provided a copy of the QAR report and is required to provide a written response (also known as an “Answer”) to ODOT Central Office within twenty (20) days. An Answer is essentially a point-by-point action plan prepared by the administrative manager of the region office in response to the recommendations and actions stated in a QAR. The Central Office of Real Estate oversees the staffing of QAR personnel, the written report and the written response from the region office under review.

Allegation: ODOT managers in the Southwest Region Real Estate Office and the Central Office of Real Estate have long been aware of mismanagement within the Southwest Region and have ignored corrective measures recommended in four ODOT Quality Assurance Reviews dating back to 1999.

Quality Assurance Reviews (QARs) – SW Region

QARs were conducted in the SW Region in the following years:

- 2001 – Covering 1999-2001
- 2003 – Covering 2001-2003
- 2005 – Covering 2003-2005
- 2007 – Covering 2005-2007

Even a cursory review of the QAR findings in these reports revealed an ongoing pattern of problems: lack of project management, poor communication, absence of training and conflict among the employees and managers. Each QAR contains specific corrective-action recommendations which, according to findings in each subsequent QAR, were largely ignored.

The result is a history of discordant operations, failure to follow policies, procedures and law in acquiring property, retention of sloppy and incomplete records, poor work quality, and costs that far exceeded averages found in the other regional real estate offices.

A review of prior SW Region QARs also revealed that the Central Office of Real Estate, and specifically James Viau, was well aware of the problems in the SW Region because the QAR reports, recommendations and responses were always provided to administrators in the Central Office of Real Estate.

2007 Office of Investigative Services Investigation (OIS) -- SW Region

In February 2007, complaints containing allegations identical to many findings reported in past QARs were forwarded to the ODOT Chief Legal Section via two separate emails. Inquiry by OIS resulted in two separate internal investigations. In case #07-22, OIS reported misuse of state time, misuse of a state vehicle, false statements and falsified employment documents.

Responsible employees were disciplined, and one was terminated.

In case #07-36, OIS discovered a number of documents that revealed waste and financial loss to the State due to mismanagement of projects in the SW Region. These projects included [See Exhibit B.]:

- A small parcel of land in Warren County at the intersection of State Route 132 and State Route 133 -- The SW Region paid two different owners for the same parcel of property as a result of tardy filing.
- Land in Butler and Warren Counties along Interstate Route 75 -- The Region paid double the established fair market value for this parcel.
- A parcel in Hamilton County along Colerain Avenue -- The Region failed to collect \$9,000 from a property owner who wanted to retain signage.
- A parcel along US Route 52 in Scioto County -- The acquisition process violated 11 State laws and Federal regulations, seriously jeopardizing federal funding for this project.

In March 2007, OIS forwarded transaction documents relative to the above real estate acquisition projects to James Viau for review. Upon review, Viau and Maitland found “gross violations” and expressed concern about the SW Region Office’s ability to perform its job in accordance with policy and procedure. [See Exhibit C.] As a result, on April 9, 2007, Viau temporarily assigned Maitland to manage the Southwest Office. [See Exhibit D.] On April 26, 2007, in an interview with OIS for case #07-36, Maitland stated, “[t]he region needs a major culture change.” Maitland heaped much of the blame on Dan Frazee, the SW Region Manager at that time, saying that there was a general lack of management leadership, understanding of laws, regulations, policy and procedure. Maitland stated that Frazee was “oblivious and 100 percent responsible” for what was occurring.

In the report for case #07-36, dated May 18, 2007, OIS concluded that mismanagement in the SW Region was responsible for several thousand dollars, “being either misspent or unreimbursed.” According to OIS findings, three of four real estate transactions reviewed pursuant to the investigation “contain numerous violations of the State of Ohio’s Real Estate Manual, the Ohio Revised Code and the Code of Federal Regulation.”

In light of the recurring problems cited in the QARs of 2001, 2003 and 2005, OIS interviewed James Viau. He told OIS that deficiencies and corrective action plans set forth in a given QAR are discussed by Central Office with the region office under review, so as to identify corrective actions to be taken by the region office. He further told OIS that corrective actions in a prior QAR are subsequently reviewed and evaluated at the next QAR conducted in a given Region Office. Notably, at the time of Viau’s interview with OIS in May 2007, Viau was in the process of administering the 2007 SW Region QAR, which was conducted from May 8 through May 11, 2007. [See Exhibit E.]

With regard to the ongoing problems in the SW Region, as well as the failures to implement corrective plans, Viau (as echoed by Maitland) assigned the responsibility to Frazee. In report #07-36, dated May 21, 2007, OIS found that Frazee failed to efficiently and effectively carry out his duties. [See Exhibit B, p. 16 of 16.]

2007 QAR -- SW Region

Doug Maitland issued a six (6) page executive summary, dated May 18, 2007, which accompanied a forty-three (43) page 2007 SW Region QAR report, dated June 6, 2007. [See Exhibit E.] The cover page of Maitland's summary reflects that copies were sent to James Viau and Tim McDonald, Deputy Director of the Division of Production Management. Maitland characterized the subject of his summary as "Recommendations to correct the chronic acquisition deficiencies plaguing the SW Region Office." In his summary, he recommended that the Central Office perform audits of the SW Region acquisition process on a 30-day schedule, with written reports to be submitted to Viau on a monthly basis. Maitland further recommended that the audit schedule should continue until the acquisition process is compliant with regulation and procedure and until the SW Region managers "can continually deliver projects" in a timely manner.

The substance of the 2007 QAR report is largely a rehash of un-remediated deficiencies noted in past QARs. However, the report also contains an eleven (11) page cost-accounting that probes deeper, revealing the fiscal impact of mismanagement occurring in the SW Region. The problems cited in the 2007 QAR track well with the allegations contained in the complaints received by OIS and the OIG. The 2007 QAR sets forth detailed analysis and specific recommendations, including the following:

- When the Region uses consultants, the costs are 97.3 percent higher than the state average. The analysis concludes by stating, "This area needs to be investigated . . ." [See Exhibit E, p. 37 of 43.]
- The cost for closings when consultants are used is 86.8 percent higher than the state average. The analysis concludes by stating, "**THERE NEEDS TO BE RESEARCH INTO THIS AREA.**" [Emphasis in the original, see Exhibit E, p. 39 of 43.]
- As suggested in Maitland's May 18, 2007, summary, 30-day audits should be conducted by the Central Office of Real Estate with a monthly report forwarded to the Administrator (in this case, James Viau). [See Exhibit E, Executive Summary, p. 6 of 6.]

The cover page of the 2007 QAR report reflects that Viau and Maitland were copied, as they were in the 2001, 2003 and 2005 QARs.

2007 SW Region QAR Answer

On August 13, 2007, Travis Carpenter, Acting SW Region Manager, and Dan Frazee¹ responded with an Answer to the 2007 QAR. [See Exhibit F.] The Answer addressed the QAR recommendations and cost-accounting comments, promising specific corrective action, including:

- Immediately beginning the 30-day audit process based on details worked out by Maitland and the Region manager. [See Exhibit F, p. 3 of 10.]
- Requiring consultants to complete monthly relocation reports, including their notes if needed, to ensure compliance on parcel work. [See Exhibit F, p. 6 of 10.]
- Frequent review of the quality and progress of all consultant work, including monthly reports on the acquisition and relocation processes. [See Exhibit F, p. 7 of 10.]
- A commitment to “research the high closing costs and . . . take steps to correct it.” [See Exhibit F, p. 9 of 10.]

The cover page of the 2007 QAR Answer reflects that Viau was copied.

2007 OIG Complaint -- SW Region

In an interview with the OIG on September 23, 2007, the confidential complainant stated that virtually none of the corrective measures set forth in the 2007 QAR and Answer had been implemented or enforced. According to the complainant, only one 30-day audit was conducted, no monthly consultant reports had been submitted, no training was offered and mismanagement continued even in the wake of the 2007 QAR and OIS findings. The complainant did say that communication and morale had improved dramatically since the October 2007, hiring of Gary Link, the new SW Region Manager.

¹As a result of OIS findings in case #07-36, Dan Frazee was demoted from his position as SW Region Manager into a lesser management role with the SW Region.

In a December 4, 2007, interview with the OIG, Link admitted that he had not read the 2007 QAR and was unfamiliar with the SW Region's Answer, which contained a pledge of 30-day audits, monthly consultant reports and research into high closing costs. Link promised to consult with his superiors.

In an interview with OIG on December 5, 2007, James Viau said that he thought "one or two" 30-day audits had been conducted. Viau added that he thought the audits were suspended in June 2007 by Acting SW Region Manager (Travis Carpenter) because "conditions changed." Viau stated, "... this guy was down there running the whole show and making sure it was all done according to Hoyle."²

In a follow-up interview with OIG on December 6, 2007, Viau acknowledged that only one 30-day audit was actually completed. The one audit that was done is dated July 31, 2007, and was prepared by Doug Maitland. [See Exhibit G.] In the audit, Maitland reiterates the 2007 QAR requirement that there be audits of the SW Region on a 30 day cycle. Maitland's audit also points out that of 26 'billing packages' reviewed, 62 percent were not compliant. Maitland further noted that of 11 "closed parcels" reviewed, none were compliant. Additionally, Maitland states, "...two RSM's [Realty Specialist Managers] do not adequately understand policy and procedures governing acquisitions."

Also in his July 31 audit report, Maitland goes on to say that the SW Region was required to provide a summary report of efforts to correct deficiencies identified in the audit; as well as provide the summary to the Administrator (in this case, James Viau) by September 4, 2007. When asked about the September 4 report requirement, Viau told the OIG that the September 4 report was not done because it must have slipped Carpenter's mind. Viau clearly did not follow up on this requirement.

²A Google search provided the following information regarding "Hoyle": "Edmond Hoyle (1672-August 29, 1769), ... is a writer best known for his works on the rules and play of card games. The phrase 'according to Hoyle' came into the language as a reflection of his generally-perceived authority on the subject; since that time, use of the phrase has expanded into general use in situations in which the speaker wishes to indicate an appeal to a putative authority."

Adding to his earlier explanation about why the 30-day audits did not continue, Viau said the General Assembly changed eminent domain laws and the agency had only 60 days to revise policies and procedures and begin training. Viau pushed off responsibility onto Maitland as the individual who decided both to halt the audits and to focus on instituting changes in the law. However, this representation conflicts with Maitland's July 31 audit, in which he recommends the continuation of 30-day audits.

In an interview with the OIG on December 4, 2007, Gary Link acknowledged that training had been suspended but was to restart in 2008. In two conversations with the OIG -- on December 5, 2007, and December 6, 2007, respectively -- Viau acknowledged that training had been suspended at the end of July 2007. Interestingly, however, in his July 31, 2007, audit, Maitland recommended weekly training. In a subsequent interview with the OIG, Viau emphasized that it was his intention to resume training, as well as to require the SW Region to submit 30-day audits in January 2008.

On December 17, 2007, the OIG asked Viau to provide information as to what action had been taken regarding other corrective actions cited in the 2007 QAR, namely researching the SW Region's high closing and consultant costs and requiring the submission of monthly consultant reports. According to Viau, after the OIG inquiry, he and staff rechecked the numbers reflected in the 2007 QAR.³

In an interview with the OIG on December 18, 2007, Viau provided an alarming revelation after rechecking the 2007 QAR findings -- Viau told us that the numbers reported in the 2007 QAR were miscalculated by the ODOT personnel who prepared the report. According to Viau, the staff "should have used the numbers off the original database matrix...nobody caught it."

According to Viau's calculations, consultant costs per parcel in the SW Region were actually \$17,499.70, versus \$28,316 reported in the 2007 QAR. Viau also told us that the statewide average for consultant costs was wrong too -- it should have been \$9,670, rather than \$14,349 as

³ Clearly, the research had not been done as recommended in the 2007 QAR. [See Exhibit E, p. 39 of 43.]

reported in the 2007 QAR. As a result of his new calculations, Viau said that the consultant costs per parcel in the SW Region were really only 44.7 percent, rather than 97.3 percent, higher than the statewide average.⁴

Viau also stated that the SW Region's closing costs per parcel, when consultants were used, were actually \$493, versus \$5,518 per parcel reported in the 2007 QAR. Viau reasoned that only four (4) real estate parcels were considered "closed" for the QAR calculation -- versus fifty (50) used by him in his calculations. Viau further said that the statewide closing cost figure reported in the 2007 QAR was wrong too -- it should have been \$609, as opposed to \$728.⁵

When asked about the 2007 QAR recommendation for monthly consultant reports, Viau said that the SW Region has been requiring consultants to file monthly reports, and they are being kept in the Region office. Asked whether the SW Region currently requires these reports, Viau said, "[T]hey damn well better be." As a result of Viau's representations, we contacted the new SW Region Manager, Gary Link. Contrary to Viau's representations, Link was unable to provide any monthly consultant reports. Instead, he told the OIG that the SW Region, "*will receive* a monthly status report from the consultants on major projects they are assigned." [Emphasis added.] [See Exhibit H.]

What is clear from the discrepancy in cost figures between those reported in the 2007 QAR with those reported recently by James Viau, is that the per parcel acquisition costs in the SW Region remain in question. What remains unclear is the total dollar loss to the state as a result of the SW Region and the Central Office of Real Estate's failures in meeting property acquisition requirements; no such calculations were included in any of the reports or documents obtained.

Based on failed compliance with the 2007 QAR corrective actions by the SW Region, as well as failed supervision and enforcement of those corrective actions by the Central Office of Real Estate and James Viau, we find that the allegations stated in the September 2007 OIG complaint

⁴ See Exhibit E, page 37 of 43, for consultant cost data reported in the 2007 QAR

⁵ See Exhibit E, page 39 of 43, for closing cost data reported in the 2007 QAR.

are well-founded. There is much credible evidence that managers in ODOT's Central Office of Real Estate and its SW Region were well aware of serious deficiencies in the operation of the SW Region for at least the past six years. The evidence also reveals that the Central Office of Real Estate failed to follow up to ensure compliance with corrective measures set forth in the 2007 SW Region QAR. We also find that the Central Office of Real Estate failed to follow up to ensure compliance with previous QARs conducted in 2001, 2003 and 2005.

Accordingly, we find reasonable cause to believe that wrongful acts, as well as omissions, occurred in this case.

IV. CONCLUSION

While ODOT's QAR program appears to be extremely informative, with seemingly valuable goals of achieving compliance and identifying best practices, the record amply reveals a historical theme of failed enforcement, compliance and accountability by both the SW Region and the Central Office of Real Estate, with respect to implementation of corrective actions recommended in the QARs. While Frazee's recent demotion appears to be appropriate, it represents a convenient solution that does not address Central Office's failure to provide appropriate oversight, training and accountability. The Central Office of Real Estate, and James Viau in particular, bear as much, if not more, responsibility for the failures of Frazee and the SW Region Real Estate Office.

It was not until recent pressures exerted by the 2007 OIS investigation; the 2007 QAR; and the subsequent 2007 OIG inquiry that Viau and the Central Office of Real Estate finally took seriously the longstanding and well-known mismanagement problems in the SW Region Real Estate Office. The fact that the same problems have been repeatedly reported to Central Office, and that corrective plans have never been implemented or enforced, are persuasive evidence of a historical void in accountability by both SW Region and Central Office leadership.

Also notable is that after the June 2007 QAR, but prior to the OIG inquiry in December 2007, there has only been minimal -- if any -- oversight or enforcement by Central Office of the corrective actions set forth in the 2007 QAR. Only one 30-day audit was completed, training was suspended and, most problematic, the validity of the cost data is in serious question. Either the numbers reported in the 2007 cost accounting, or the cost calculations recently provided by James Viau, are flawed. Neither scenario is acceptable. And, despite Viau's claim that monthly consultant reports were being done, the SW Region was unable to provide a single report. It is also clear that several other of Viau's representations to the OIG are, at best, uninformed and, at worst, disingenuous.

According to ODOT's job description for the position of Real Estate Administrator, Viau is called upon to use "principles of management to ensure efficiency and quality in complex interaction of bureaus and districts." [See Exhibit I.] He also is to "provide leadership and direction concerning all functions performed by this office." Years of repeated problems and a lax approach in compliance enforcement make it clear that Viau has, on more than one occasion, failed in his responsibility to ensure accountability and compliance in the SW Region.

While a review other Real Estate Regions were not within the purview of this report, QAR compliance and enforcement in those Regions is certainly in question. Based on evidence of a lack of oversight, non-existent compliance or enforcement, as well as questionable cost data, we question the effectiveness of Viau's management oversight in the other Region Offices of Real Estate.

V. RECOMMENDATIONS

Based on the results of our investigation, we make the following recommendations and request that ODOT respond to this office within the next 60 days with a plan as to how these recommendations will be implemented:

1. ODOT should closely monitor and document the SW Region and Central Offices of Real Estate compliance with the 2007 QAR recommended corrective actions;
2. ODOT should re-evaluate the QAR policies and procedures to provide an accurate measure of management's effectiveness in implementing and enforcing corrective actions and, ultimately, the progress towards eliminating deficiencies identified in the QARs;
3. ODOT should consider corrective action for managers within the Central Office of Real Estate for repeated failure to supervise and enforce compliance with QAR recommendations in the SW Region Real Estate Office.