

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF
INVESTIGATION



AGENCY: OHIO CONSUMERS' COUNSEL
FILE ID NO.: 2014-CA00014
DATE OF REPORT: APRIL 28, 2016

The Office of the Ohio Inspector General ... The State Watchdog

“Safeguarding integrity in state government”

The Ohio Office of the Inspector General is authorized by state law to investigate alleged wrongful acts or omissions committed by state officers or state employees involved in the management and operation of state agencies. We at the Inspector General’s Office recognize that the majority of state employees and public officials are hardworking, honest, and trustworthy individuals. However, we also believe that the responsibilities of this Office are critical in ensuring that state government and those doing or seeking to do business with the State of Ohio act with the highest of standards. It is the commitment of the Inspector General’s Office to fulfill its mission of safeguarding integrity in state government. We strive to restore trust in government by conducting impartial investigations in matters referred for investigation and offering objective conclusions based upon those investigations.

Statutory authority for conducting such investigations is defined in *Ohio Revised Code §121.41* through *121.50*. A *Report of Investigation* is issued based on the findings of the Office, and copies are delivered to the Governor of Ohio and the director of the agency subject to the investigation. At the discretion of the Inspector General, copies of the report may also be forwarded to law enforcement agencies or other state agencies responsible for investigating, auditing, reviewing, or evaluating the management and operation of state agencies. The *Report of Investigation* by the Ohio Inspector General is a public record under *Ohio Revised Code §149.43* and related sections of *Chapter 149*. It is available to the public for a fee that does not exceed the cost of reproducing and delivering the report.

The Office of the Inspector General does not serve as an advocate for either the complainant or the agency involved in a particular case. The role of the Office is to ensure that the process of investigating state agencies is conducted completely, fairly, and impartially. The Inspector General’s Office may or may not find wrongdoing associated with a particular investigation. However, the Office always reserves the right to make administrative recommendations for improving the operation of state government or referring a matter to the appropriate agency for review.

The Inspector General’s Office remains dedicated to the principle that no public servant, regardless of rank or position, is above the law, and the strength of our government is built on the solid character of the individuals who hold the public trust.



Randall J. Meyer
Ohio Inspector General



STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF INVESTIGATION

FILE ID NUMBER: 2014-CA00014

SUBJECT NAME: Bruce Weston

POSITION: Ohio Consumers' Counsel

AGENCY: Office of the Ohio Consumers' Counsel

BASIS FOR INVESTIGATION: Complaint

ALLEGATIONS: Failure to Comply with State or Department Rules, Procedures, or Policies

INITIATED: February 4, 2014

DATE OF REPORT: April 28, 2016

INITIAL ALLEGATION AND COMPLAINT SUMMARY

The Office of the Ohio Inspector General received an anonymous complaint alleging that Ohio Consumers' Counsel Bruce Weston was rarely in his office and spent the majority of his day outside the office. The complaint alleged Weston's marked absence in the office has been occurring since 2005, and noted that in the last two years, his time in the office had decreased to a few hours a week. The complaint further alleged that Weston often "works" from home or another location outside the office, and that Weston reported working irregular hours, such as midnight to 3:00 a.m. or 11:00 p.m. to 2:00 a.m.

BACKGROUND

The Office of the Ohio Consumers' Counsel (OCC) is the statutory advocate for residential utility customers. OCC has statutory responsibility to represent the interests of 4.5 million residential customers of Ohio's investor-owned electric, natural gas, telecommunications, and water companies. OCC represents residential customers before state and federal regulatory agencies and courts, including the Public Utilities Commission of Ohio, the Federal Energy Regulatory Commission, and the Federal Communications Commission, as well as the Supreme Court of Ohio.

The OCC provides information to customers regarding their utility services, and educates consumers on utilities issues. The OCC consumer education activities have become more complex and more sought after as Ohio has moved toward a competitive utility environment. Many of the OCC services are responsive to utility or regulator initiatives, and thus the services can be difficult to specifically estimate in advance. OCC anticipates representing consumers in approximately 100 or more cases each year, at varying levels of activities. These cases can take months, or sometimes even years to complete.¹

By law, the OCC bipartisan governing board is made up of nine members, three each representing residential consumers, organized labor, and family farmers. These board members are appointed for a term of three years by the Ohio Attorney General. The board members are confirmed by the Ohio Senate.

¹ Source: Biennial budget documents.

In March of 2012, the OCC governing board appointed Bruce Weston to lead the agency as consumers' counsel. Prior to that, Weston served as the deputy consumers' counsel and directed the OCC legal department.²

Applicable Policies

The Ohio Department of Administrative Services (ODAS) directive HR-D-08 on compensatory time³ applies to employees who are exempt from collective bargaining and are exempt from receiving overtime pay for overtime hours worked. The directive states, in part: "An overtime exempt employee who is required by an administrative supervisor to be in an active pay status⁴ for more than 40 hours in any calendar week may accrue compensatory time. ... No compensatory time can accrue during an employee's lunch hour or for work completed at home." The ODAS policy further states compensatory time accrued must be used within 180 days after accrual. ([Exhibit 1](#)) However, OCC compensatory time policy, which was revised on January 28, 2010, states compensatory time accrued must be used within 365 days after accrual.

[\(Exhibit 2\)](#)

The OCC compensatory time policy also states, in part:

Compensatory time may be accrued for any work done in carrying out agency business regardless of the location where such work is performed. Compensatory time may be earned performing work in the OCC office, working while traveling to a business location, conducting business outside of the office, or doing work at home. Any work done away from the OCC office will be considered done in conjunction with OCC's teleworking policy. ([Exhibit 2](#))

The ODAS time and attendance policy, dated February 5, 2008, defines teleworking as a flexible work arrangement where employees are directed and permitted to work remotely from a

² Source: www.occ.ohio.gov

³ Compensatory Time – Time off from regular work hours as defined in the *Ohio Administrative Code Chapter 123:1-43 Overtime and Compensatory Time*.

⁴ Pursuant to Section 123:1-47-01A2 of the *Ohio Administrative Code*, "active pay status" means conditions under which an employee is eligible to receive pay, and includes, but is not limited to: vacation leave, sick leave, bereavement leave, administrative leave, compensatory time, holidays, and personal leave. For the purpose of determining overtime or compensatory time for an employee who is eligible for overtime compensation, active pay status does not include sick leave or leave used in lieu of sick leave.

designated alternative work location. The policy states, in part: “Agencies must submit proposed teleworking policies to the Department of Administrative Services HRD Office of Policy Development, for their approval prior to adopting or utilizing teleworking.” ([Exhibit 3](#))

The OCC teleworking policy, which was effective September 2, 2003, and revised March 31, 2008, requires that OCC employees sign a teleworking agreement which makes them eligible to participate in the telework program. Employees cannot engage in the telework program without a “... separate and specific authorization from the employee’s director.” The policy states, in part: “... A teleworker will be responsible for documenting work accomplished during the teleworking.” ([Exhibit 4](#))

Weston signed a teleworker agreement on April 3, 2008, while serving as the deputy consumers’ counsel. ([Exhibit 5](#)) The agreement was signed by the former Ohio Consumers’ Counsel Janet Migden-Ostrander. This teleworking agreement is the most recent agreement on file for Weston.

INVESTIGATIVE SUMMARY

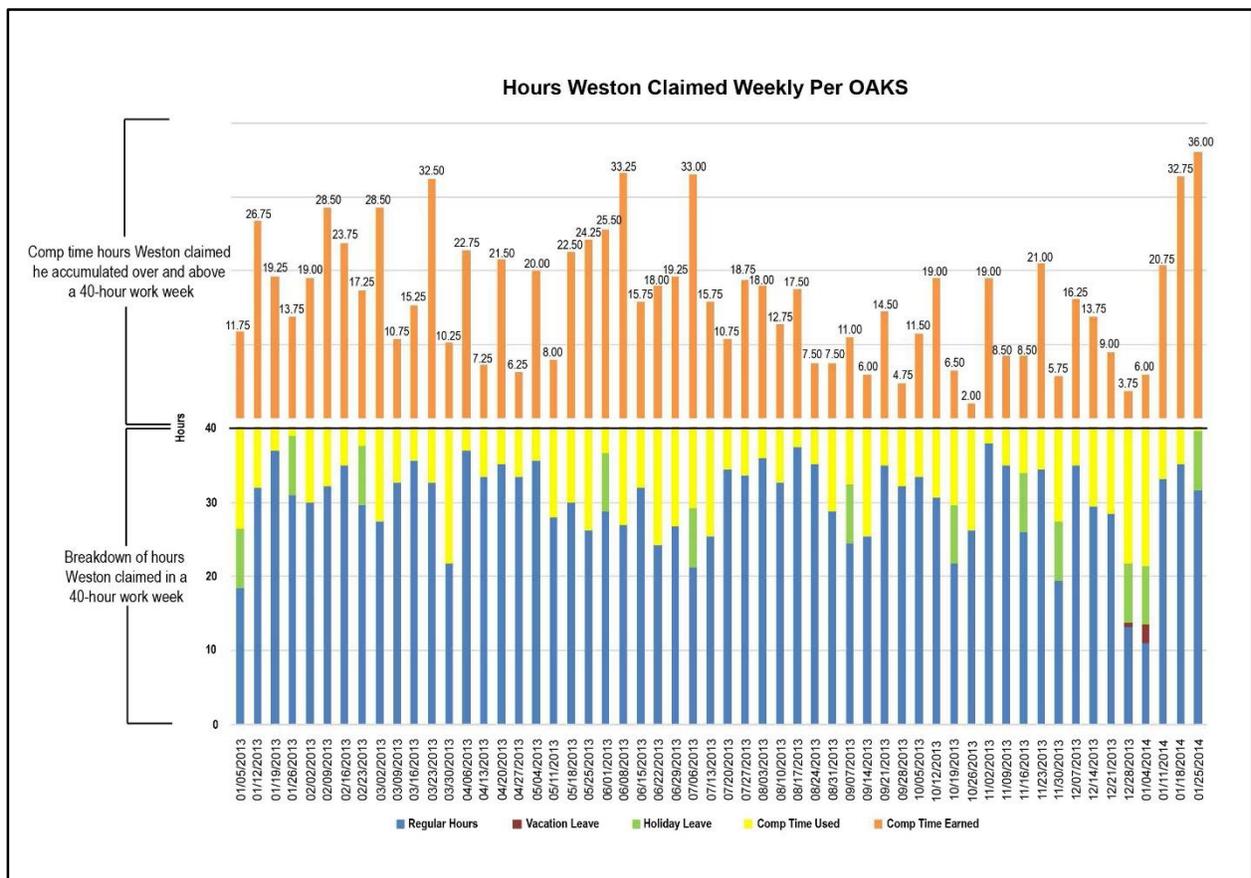
The Office of the Ohio Inspector General received and reviewed the following records:

- Weston’s timesheets;
- Weston’s OAKS⁵ time reporting;
- Weston’s access card swipe records;
- Weston’s parking card swipe records;
- OCC policies on teleworking, work hours, and compensatory time.

Investigators contacted LAZ Parking in downtown Columbus to request the parking access card records for Weston. LAZ Parking stated they maintained records from May 2013 to the current date, and reported that Weston’s parking access card had not been used at all since May 2013. LAZ Parking noted that Weston’s parking card was disabled on January 8, 2014.

⁵ OAKS (Ohio Administrative Knowledge System) is the state’s computerized accounting system containing both fiscal and payroll records.

A review of Weston’s timesheets and OAKS time reporting from January 1, 2013, to January 25, 2014, revealed that Weston regularly reported working hours in the middle of the night, and used compensatory time and earned compensatory time both during the same 24-hour period. Of the 28 pay periods reviewed, investigators found 12 pay periods in which Weston’s paper timesheet submitted for signature to the OCC director of operations did not match his OAKS time reporting. On numerous occasions, Weston reported earning compensatory time on the first Sunday of a new pay period, before reporting 40 hours of active pay. An analysis of Weston’s timesheets is depicted on the following chart:



Investigators contacted current OCC employees and requested interviews; however, the majority of those contacted refused to be interviewed. The Office of the Ohio Inspector General also contacted several former OCC employees who all stated that Weston was constantly working, whether it was in the office, at home, or at the statehouse. Those interviewed said that Weston’s absence from the office did not inhibit his ability to manage the office, because he would

forward his office phone to his cell phone, and was always checking and responding to email communication.

On February 24, 2014, investigators interviewed Chuck Repuzynsky, former director of operations at OCC.⁶ Repuzynsky explained to investigators the OCC timekeeping process; specifically, as it related to Weston. Repuzynsky identified himself and the assistant director of operations as the two agency “timekeepers.” Repuzynsky stated that Weston prepared his own paper timesheets, entered his requests for leave in OAKS, and entered his requests for compensatory time in OAKS. Repuzynsky stated that either he or his assistant director of operations signed Weston’s paper timesheets and approved his leave requests and compensatory time accrued requests in OAKS. Repuzynsky noted that either he or his assistant reviewed Weston’s paper timesheets and compared them to what Weston had entered into OAKS.

Repuzynsky explained that all OCC employees sign teleworking agreements when they are hired, which authorizes them to telework, although “individual instances” require approval by the employee’s supervisor, either verbally or in writing. Repuzynsky stated that the agreement does not “... mean they can telework anytime they want.” He stated that employees “... still need the permission to actually telework.” Repuzynsky agreed that even though Weston signed the teleworking agreement, it did not grant him authorization to telework. Repuzynsky said the way the policy reads, Weston would need to seek authorization to actually telework. When investigators asked Repuzynsky from whom Weston would seek authorization to telework, he stated:

... that’s a good question. When he was deputy consumers’ counsel ... he would be seeking approval from the Consumers’ Counsel. Now that he is Consumer Counsel ... that situation actually wasn’t addressed which speaks to the fact that we don’t have an updated policy. ... Bruce Weston reports to the ... governing board members who are appointed by the A.G.

Investigators then asked Repuzynsky whether the governing board members would have to approve Weston’s request to telework. Repuzynsky replied,

⁶ Charles Repuzynsky retired from Ohio Consumers’ Counsel on September 27, 2014.

Well, ... I'm inclined to say ... yes; although I will say that ... governing board members usually don't ... get involved with day-to-day operations at all. ... we've actually never ran across ... this situation before. So this is a situation that'll ... have to be addressed. Either the governing board ... would have to approve his ... teleworking or ...the governor, I guess.

Repuzynsky was asked if Weston was teleworking on a daily basis instead of reporting to the office to complete his eight-hour work day, and he replied,

... Weston is usually in the office ... a good... part of the week. ... the exceptions would be Mondays ... and/or Fridays or part of Fridays. ... Bruce Weston teleworks ... to some degree every day, okay, but ... even the days he's in the office he will telework ... before coming to the office and he'll telework at home at the end of the day, ... sometimes ... in the middle of the night

Repuzynsky stated that he or his assistant director of operations approved Weston's compensatory time earned requests. Repuzynsky explained that Weston usually submitted a request to work 45-50 hours of compensatory time at the beginning of every pay period. Repuzynsky stated that Weston had been doing this for at least eight years. Repuzynsky said that Weston works "24/7."

On February 11, 2014, investigators interviewed Lindsey Lewis, former OCC assistant director of operations.⁷ Lewis stated that Weston oversees the work of the other attorneys in the office, but does not carry a caseload himself. Lewis said that even when Weston was out of the office, "... he's always connected, um, so he will send e-mails."

Lewis stated that Weston prided himself on all of the reported compensatory time he worked, but Lewis agreed that Weston was not working 40 hours prior to earning compensatory time. Instead, Weston was taking compensatory time to equal 40 hours and then reported compensatory time earned. Lewis stated that as assistant director of operations, she sometimes had to sign Weston's timesheets. Lewis said that starting in

⁷ Lindsey Lewis resigned from Ohio Consumers' Counsel effective September 18, 2014.

October 2013, she began signing Weston's timesheets as "timekeeper." Lewis said, "... I am just signing off on his stuff and I, I can't tell you if it's true or not. So when I remember, I do 'timekeeper'..." Lewis stated that she began this practice because there were several occasions when Weston would refuse to sign an employee's timesheet because, "... there's one little thing that's missing."

On June 5, 2015, investigators spoke to Kristin Rankin, former administrator for ODAS, Office of Human Resources Division/Office of Collective Bargaining Policy section.⁸ Rankin stated that OCC does not have an ODAS-approved teleworking policy that is required under the statewide ODAS time and attendance policy, dated February 5, 2008.

In July 2014, the Office of the Ohio Inspector General first contacted Weston requesting an interview, and an interview was scheduled for August 21, 2014. On August 20, 2014, investigators received notice of Weston's legal representation, attorney Dave Thomas, at which time Thomas requested postponement of Weston's interview that was scheduled for the following day. On September 2, 2014, investigators met with Thomas and an agreement was made that Thomas would review Weston's Outlook calendar and redact any privileged information.

On October 1, 2014, Thomas picked up a USB flash drive from the Office of the Ohio Inspector General that contained Weston's email account and related Outlook information. On January 5, 2015, an email was sent to Thomas requesting the status of his review for privileged information. Thomas responded on January 6, 2015, stating he was in trial all week and would respond by Friday or Monday. Another email was sent to Thomas on January 16, 2015, for a status update. Thomas responded on January 20, 2015, stating he was beginning another trial and that he would respond by the first of the following week.

On February 23, 2015, the Office of the Inspector General spoke with Thomas who stated the documents would be delivered by courier by the end of the week. On March 5, 2015, investigators received a response from Thomas indicating that Weston wanted to review the

⁸ Kristen Rankin is currently the interim deputy director, ODAS Office of Collective Bargaining.

documents one more time to redact confidential, privileged information. The documents were received by the Office of the Ohio Inspector General on March 18, 2015.

On April 1, 2015, the Office of the Ohio Inspector General contacted Thomas to schedule an interview with Weston. An interview was scheduled with Weston for April 17, 2015, and was subsequently cancelled by Thomas at 8:00 a.m. on the morning of April 17, due to an "... unavoidable conflict that arose for Weston." Communication was sent to Thomas on April 17, 2015, stating that due to scheduling conflicts, the interview would have to be postponed to the first week of May 2015. On May 11, 2015, Thomas sent an email requesting that the interview be scheduled the week after Memorial Day. The Office of the Inspector General responded the following day, providing available dates and times for Thomas to choose. Thomas responded on June 8, 2015, agreeing to schedule the interview on June 12, 2015.

On June 11, 2015, the Office of the Inspector General received communication from Thomas stating the interview needed to be rescheduled due to medical issues involving Weston. Thomas rescheduled Weston's interview for June 29, 2015. On June 29, 2015, both Thomas and Weston appeared for Weston's interview. After a brief conversation with Thomas regarding the topics of the interview, Thomas stated that Weston had not prepared to answer questions on OCC policies. After Thomas spoke with Weston, Thomas requested the interview be rescheduled as Weston was not prepared to answer questions on his agency's policies.

On June 30, 2015, investigators emailed Thomas with available dates and times for Weston's interview. Thomas responded to tentatively schedule the interview for July 15, 2015. On July 6, 2015, email communication was received from Thomas requesting to move the interview to July 17, 2015, instead of July 15, 2015. Thomas was notified by investigators that July 17, 2015, was not available. On July 13, 2015, investigators emailed a communication to Thomas confirming the date of July 15, 2015, and advising a time be set. On the afternoon of July 13, 2015, Thomas notified investigators that he was withdrawing as Weston's attorney due to a conflict. Thomas stated that he would be assisting Weston in obtaining new counsel.

After hearing nothing from an attorney, investigators contacted Weston directly on July 23, 2015, in an attempt to schedule an interview. On July 24, 2015, Weston notified investigators he had learned of Thomas' conflict during the previous week and was working on obtaining new counsel.

On August 4, 2015, investigators left another voicemail for Weston. On August 13, 2015, the Office of the Ohio Inspector General received notice of representation for Weston by Samuel Shamansky. Investigators discussed the case with Shamansky on August 20, 2015. On September 16, 2015, investigators provided Shamansky's office with several available dates in September for the interview. The Office of the Ohio Inspector General sent an email to Shamansky on October 7, 2015, requesting to schedule Weston's interview. Shamansky was advised that he had until October 21, 2015, to respond or the case would move forward if no response was heard. On October 16, 2015, Shamansky's office scheduled an interview with Weston for November 2, 2015, at 10:00 a.m.

During the interview with Bruce Weston on November 2, 2015, Weston stated that OCC has a nine-member governing board that is responsible for appointing the director of the agency, the Ohio Consumers' Counsel. Weston explained that the governing board oversees the consumers' counsel, but does not manage the day-to-day activities. Weston stated, "... I don't have a direct supervisor."

Weston stated that his timesheet is signed and approved by the chief of staff, non-case services, which is a new title for the director of operations or another designated timekeeper. Weston admitted that his timesheets are signed by individuals that report to him either directly or indirectly.

Weston confirmed that he is familiar with the OCC handbook that is distributed to employees, but stated that he participated in writing "... very little of it." Weston said that many of the OCC policies "... pre-dated his time as Consumers' Counsel. But I'm thinking that there likely are some policies that I approved ... because they were new policies during my time as Consumers' Counsel."

When asked to explain his understanding of the OCC's teleworking policy, Weston replied, ... teleworking provides an opportunity for employees subject to agreement and authorization by their supervisors ... to work outside the offices. That's generally. Of course, ... when attorneys are representing Ohioans in cases at the PUCO and elsewhere, they could be outside the office without it being telework. Our telework covers most --- examples of working outside the agency offices, but some are --- some others are not telework; they're just authorized ... work outside the agency.

Weston stated that the teleworking policy allows employees to work out of their home. Weston noted there are "relatively few" employees at OCC that currently telework.

Weston confirmed that he signed a teleworking agreement in 2008, while serving as the deputy consumers' counsel, which is the most recent one he signed. Because the OCC teleworking policy requires, "... separate and specific authorization from an employee's director to telework," investigators asked Weston who gave him authorization to telework. Weston explained the board does not supervise his day-to-day activities and, therefore, he would not consider them his supervisor. He further explained the policy does not account for someone who does not have a supervisor or is the head of the agency, which in this case would be himself.

When asked if he was saying the policy did not apply to him, Weston said:

I want to ... fulfill the intention of our policies so ... it's difficult for me to say ... that the policy doesn't apply to me, but the policy isn't written for my position, you know. In light of this discussion we're having, ... I've been thinking that potentially policy should have be[en] revisited ... to consider how they could be written better to account for the head of the agency. ... I want to be good example for the agency and I want to ... certainly ... conforming to our policies. But the policy doesn't provide clarity for someone who's the head of the agency on what to do about approvals.

Weston admitted to investigators that his teleworking is "largely driven" by two important responsibilities in his life: the agency and Ohio consumers and caring for his elderly parent. Weston estimated that he may telework approximately two-and-a-half days a week. When asked how he documents the work he completes while teleworking, Weston stated:

... I haven't documented that work in some sort of paper form. ... at the time I telework ... it's often something where I'm involved with others in the agency so they're often emails, ... or reviews of documents, that sort of thing which is some documentation. ... there's not a specific document I'm creating to reflect that.

When Weston was asked how he required his employees to document work they complete while teleworking, he responded:

They would have to provide some sort of documentation of what they did, ... could be an email; could be something to, to say what they did when they teleworked. The ... employee would provide the employee's director with enough ... information to satisfy the director.

When asked if the OCC teleworking policy was submitted to and approved by ODAS, Weston stated he could not recall if it was, because the policy had been developed by his predecessor. Weston said he relied on the operations department to ensure the policy was in compliance with state requirements, but admitted he did not personally know if the policy met those requirements. Weston stated he was not aware that OCC's current compensatory time policy did not align with the ODAS compensatory time policy.

CONCLUSION

The investigation found that Ohio Consumers' Counsel Bruce Weston had conducted much of his work while teleworking from locations outside his office. Former OCC employees that were interviewed stated that Weston was always working, whether it was in the office, at home, or at the statehouse, and that Weston's absence from the office did not inhibit his ability to manage the office, as he was checking and responding to email communication and forwarding his office phone to his cell phone.

The OCC has a teleworking policy which requires employees to sign a teleworking agreement and have approval from their supervisor prior to actually teleworking. Weston signed a

teleworking agreement in 2008, while serving as deputy consumers' counsel. Weston admitted that the governing board does not oversee his day-to-day activities and that in his position there is no one appointed as his supervisor to approve his teleworking.

The ODAS time and attendance policy dated February 5, 2008, requires that all agencies submit proposed teleworking policies to ODAS for their approval prior to adopting or utilizing teleworking. ODAS confirmed that OCC had not submitted their teleworking policy for approval, and therefore, are in violation of the ODAS time and attendance policy.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe that a wrongful act or omission occurred in this instance.

The investigation further found that Weston had reported compensatory time earned for work conducted at home. OCC's compensatory/overtime policy and procedure allows for compensatory time to be accrued for any work completed while conducting agency business regardless of the location where such work is performed. That policy is in direct conflict with the ODAS directive HR-D-08, which states, "... no compensatory time can accrue during an employee's lunch hour or for work completed at home.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe that a wrongful act or omission occurred in this instance.

RECOMMENDATION(S)

The Office of the Ohio Inspector General makes the following recommendations and asks the chairman of the Office of the Ohio Consumers' Counsel Governing Board to respond within 60 days with a plan detailing how the recommendations will be implemented. The Office of the Ohio Consumers' Counsel should:

1. Revise the existing OCC compensatory/overtime policy to ensure conformity with *Ohio Administrative Code* and ODAS directive HR-D-08.

2. Revise the existing OCC teleworking policy to state overtime pay may only be earned or compensation time accrued after an employee is in active pay status in excess of 40 hours in a calendar week.
3. Suspend the existing OCC teleworking policy until the revised policy has been submitted to and approved by ODAS to ensure compliance with the ODAS time and attendance policy.
4. Consider whether development of a separate OCC policy governing flexible work arrangements is in order.

REFERRAL(S)

The Office of the Ohio Inspector General has determined that no referrals are warranted for this report of investigation.



STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

NAME OF REPORT: Ohio Consumers' Counsel

FILE ID #: 2014-CA00014

KEEPER OF RECORDS CERTIFICATION

This is a true and correct copy of the report which is required to be prepared by the Office of the Ohio Inspector General pursuant to Section 121.42 of the Ohio Revised Code.

Jill Jones
KEEPER OF RECORDS

CERTIFIED
April 28, 2016

MAILING ADDRESS

OFFICE OF THE INSPECTOR GENERAL
JAMES A. RHODES STATE OFFICE TOWER
30 EAST BROAD STREET – SUITE 2940
COLUMBUS, OH 43215-3414

TELEPHONE

(614) 644-9110

IN STATE TOLL- FREE

(800) 686-1525

FAX

(614) 644-9504

EMAIL

OIG_WATCHDOG@OIG.OHIO.GOV

INTERNET

WATCHDOG.OHIO.GOV